

31st SESSION

CG31(2016)06final
20 October 2016

Preventing corruption and promoting public ethics at local and regional levels

Governance Committee

Rapporteur: ¹Herwig VAN STAA, Austria (R, EPP/CCE)

Resolution 401 (2016).....	2
Explanatory memorandum.....	5

Summary

Corruption continues to pose a major threat to local and regional governance and democracy in Europe, which governments and parliaments at all levels urgently need to address.

This report shows that corruption can be found in many forms, namely in conflicts of interest and clientelism, recruitment of staff, public procurement and the use of administrative resources in election campaigns and points out that transparency is a key mechanism in combatting corruption and promoting public ethics.

The Congress undertakes to develop its fight against corruption at various levels, by developing its work in several thematic reports, by revising the 1999 European Code of Conduct on the political integrity of local and regional representatives and by continuing to develop its co-operation activities in this field with local and regional elected representatives. It also invites local and regional authorities and their associations to develop their own anti-corruption policies, and to elaborate continuous training programmes for elected representatives and public officials.

1 L: Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group
ILDG: Independent Liberal and Democratic Group
ECR: European Conservatives and Reformists Group
NR: Not registered

RESOLUTION²

1. In choosing “Ethics and transparency at local and regional level” as its theme for 2016, the Congress recognises that corruption continues to pose a major threat to local and regional governance and democracy in Europe, a threat which governments and parliaments at all levels urgently need to address.
2. As public awareness of the risks and scale of corruption in local and regional public life grows, partly spurred by the rapid developments in communications, there is a corresponding increase in impatience and intolerance with this situation. Citizens now expect higher standards of probity from public officials and trust in politicians and civil servants remains dangerously low, threatening the democratic process and encouraging the rise of various forms of political extremism.
3. Corruption, which has been described as a ‘multi-headed monster’, takes many forms and no single strategy can be expected to provide all the answers. The fight against corruption in all its forms needs to remain a long-term priority for local and regional governments and their associations. For this reason the Congress proposes to tackle this challenge on several fronts, using the whole range of its activities and tools.
4. The Congress therefore:
 - a. bearing in mind:
 - i. Congress Resolution 316 (2010) on Rights and duties of local and regional elected representatives: the risks of corruption;
 - ii. the Council of Europe’s Programme of Action Against Corruption, the Council of Europe Criminal Law Convention on Corruption (ETS No. 173) and the Council of Europe Civil Law Convention on Corruption (ETS No. 174);
 - iii. Parliamentary Assembly Recommendation 2019 and Resolution 1943 (2013) on Corruption as a threat to the rule of law;
 - b. adopts the roadmap appended to this resolution;
 - c. recommends that local and regional authorities:
 - i. develop and make public their own anti-corruption strategies, taking inspiration from the guidelines and examples of good practice highlighted by the Congress and other international bodies;
 - ii. put in place continuous training programmes for elected representatives and public officials to raise awareness of the risks of corruption and the strategies for tackling it;
 - d. calls on associations of local and regional authorities to develop their own anti-corruption strategies and to contribute to the Congress work in this respect;
 - e. agrees to strengthen its co-operation and work closely with its institutional partners in this respect, and in particular with the Committee of Ministers, the Group of States against corruption (GRECO) and the Committee of the Regions;
 - f. proposes the fight against corruption as a future annual theme for the European Local Democracy Week.

² Debated and adopted by the Congress on 19 October 2016, 1st sitting (see Document CG31(2016)06final, rapporteur : Herwig VAN STAA, Austria (R, EPP/CCE))

Appendix: Roadmap of activities for preventing corruption and promoting public ethics at local and regional levels

The Congress,

1. undertakes to develop its fight against corruption at several levels, by developing its work in several thematic reports, by revising the 1999 European Code of Conduct on the political integrity of local and regional representatives and by continuing to develop its co-operation activities in this field with local and regional elected representatives of the member states of the Council of Europe and, if requested and appropriate, the countries of the Council of Europe neighbourhood policy;
2. resolves to apply these standards to its own structures and to continue to introduce greater transparency in its own activities and procedures;

A Thematic reports

3. instructs its Governance Committee to prepare the following thematic reports:
 - i. Transparency;
 - ii. Conflicts of interest and clientelism;
 - iii. Protecting whistleblowers;
 - iv. Nepotism (recruitment of staff);
 - v. Public procurement;
 - vi. Abuse of administrative resources in election campaigns;

i. Transparency

4. Open methods of government are proving to be a powerful weapon in the fight against corruption. Opening up meetings, opening up decision-making processes and making information, documents and data available for public scrutiny, raise the levels of public accountability and act as an effective deterrent to abuses of the political process. Developments in information technology have vastly expanded the options and tools available to making government more transparent and lowered the costs. Local and regional governments need to take inspiration from the authorities which are setting the pace in this respect to transform their own governance processes.

ii. Conflicts of interest and clientelism

5. Elected representatives and public officials are required and expected to put public service ahead of their personal interests. Conflict of interest rules and procedures or codes of conduct are therefore necessary to prevent representatives and officials from making decisions in circumstances that could be perceived as violating this principle. A key tool to limit such risks is the maintenance of registers of the financial and non-financial interests of elected representatives and their close family members. The report will survey the wide variations in practice in this respect at local level, with a view to establishing some principles of good practice.

iii. Protecting whistle-blowers

6. The risk of corruption tends to be higher where the reporting of wrongdoing is not supported or protected. Public officials have access to information concerning their workplaces' practices, and are often the first to recognise malpractice. However, those who report such wrongdoings may be subject to intimidation, harassment, dismissal or violence by colleagues or superiors. Whistleblower protection is therefore essential to encourage the reporting of misconduct, fraud and corruption. This report will build on the 2014 Committee of Ministers "Protection of whistleblowers" recommendation and examine its application in the local and regional context.

iv. Nepotism

7. Nepotism, also known as cronyism and favouritism, includes hiring, or awarding contracts, on the basis of personal connections rather than merit. It is also linked to patronage, paying back those who may have helped elect the person to office. This can lead to low morale amongst staff, and a loss of efficiency by failing to recruit the most competent staff or award contracts to the most suitable providers. In some countries it is so deeply engrained in the political culture that it is taken for granted by large sections of the public. This report will examine the range of strategies that have been introduced by European local governments to combat this problem, with the aim of providing guidelines for good practice.

v. *Public procurement*

8. Corruption in public procurement involves the allocation of government contracts for personal gain or third persons such as political parties. The risks of corruption in this sphere are huge, with procurement at local and regional level accounting for a large proportion of public spending. Standards and examples of good practice are already available in many countries, but a robust regulative framework is required to ensure that they are implemented. A multi-strategy approach is required to combat this problem, including proper staff training, strict regulation and full transparency of the procurement process.

vi. *Abuse of administrative resources in election campaigns*

9. The misuse of administrative resources during the electoral process involves unlawful or abusive behaviour on the part of politicians and civil servants, who use their positions or connections to influence the outcome of elections, and thus undermine the fairness of the election. The election observation experience of European bodies, including the Congress, suggests that this remains a significant problem in many European countries. This report will examine the application, in the local and regional contexts, of the 2016 Venice Commission/OSCE “Joint Guidelines for preventing and responding to the misuse of administrative resources”.

B Code of Ethics

10. The 1999 European Code of Conduct on the political integrity of local and regional representatives has long served as a reference text for local and regional authorities in Europe. It will now be revised and updated, to extend its application to all local and regional officials and to take into account the developments of the last 20 years in the understanding of corruption issues and how best to tackle them.

C Events

11. The Congress undertakes to organise the following events:
- i. Strategies for tackling corruption at local and regional level. Joint conference with the Committee of the Regions (Brussels, January 2017);
 - ii. Hearing with youth representatives on the role of youth in the fight against corruption (date and place tbc);
 - iii. Evaluation conference to be organised in autumn 2017 (date and place tbc.)

D Co-operation activities

12. The Congress undertakes to pursue the work on the fight against corruption and the promotion of ethics through its co-operation activities. In 2016, a range of seminars and workshops will be organised in the framework of its projects in Armenia, Georgia, Republic of Moldova and Ukraine. Within the activities targeted at young local leaders, mayors and local councillors, specific sessions will be dedicated to the tools and best practices that can be used in the fight against corruption and the promotion of ethics at the local level.

13. A programme to support local initiatives with coaching and funding will be launched for the mayors from Armenia, Georgia, Republic of Moldova and Ukraine, who participated in the previous activities of the project. Their initiatives will aim at increasing transparency and accountability of local government in the targeted countries by introducing new tools and mechanisms addressing higher ethical standards and ensuring sustainable collection of feedback and public oversight.

14. The Congress Secretariat will work on the development of a methodology to assess the impact of its activities on a long-term perspective.

EXPLANATORY MEMORANDUM³**Table of contents:**

A	Introduction.....	5
B	A thematic approach to tackling corruption	7
1.	Transparency.....	7
2.	Conflict of interests and clientelism.....	8
3.	Protecting whistleblowers	9
4.	Nepotism (recruitment of staff).....	10
6.	Abuse of administrative resources in election campaigns.....	12
C	Towards a new code of ethics.....	13
D	Tackling corruption in the field (co-operation activities).....	13
E	Conclusions and recommendations	14
	Bibliography	15

A Introduction

1. Why is the fight against corruption so important? In many countries in Europe corruption continues to be a huge drain on public funds with a resulting negative impact on the quality and scope of public services.

2. Local authorities are responsible for a large proportion of public expenditure and in recent years regions have become increasingly involved in the co-financing and management of European funds. Both have seen their budgets and competences increase. However, decentralisation can bring an increased risk of misappropriation of public funds, if the necessary audit and control mechanisms are not in place at local and regional levels.

3. The responsibilities and powers given to local and regional elected authorities and the fact that local governments are the major employers and service providers in many cities and regions raises an important risk of corruption, clientelism and nepotism and misuse of public funds. Corruption is a serious threat to local democracy and is often used to justify increased centralisation and increased oversight by higher-level authorities.

4. Lack of voter confidence in local elected representatives and corresponding disinterest in politics can undermine democratic legitimacy and credibility. Out of 43 Council of Europe member states covered by Transparency International's "Corruption Perception Index" (rating from 0 "highly corrupt" to 100 "very clean"), only 25 score more than 50.^{4 5}

5. While developments in new technologies have great potential for rendering governance more transparent, they also have the effect of raising public expectations in this sphere. As Transparency International observes, "although decentralisation processes can help strengthen accountability by bringing government closer to the people, decentralisation can also present corruption risks since corruption is a problem at all levels of government. Local officials may have greater vested interests based on family, friendship and business ties that can influence decision-making. Wages at the local

³ The rapporteur would like to thank Francesco Merloni and Daniele David, for their contributions to this report.

⁴ https://en.wikipedia.org/wiki/Corruption_Perceptions_Index#2015

⁵ These findings are also borne out by the corruption rankings of the World Democracy Audit, a consortia of NGOs - <http://www.worldaudit.org/corruption.htm>

level can be low in comparison to the national level and institutions designed to hold local public officials to account are not always adequate.”⁶

6. Corruption in all its forms represents a drain on public resources that are intended to guarantee social services and rights (Galtung et. al., 2013). It is not only the large-scale larceny of contract rigging, kickbacks and misappropriation of public funds that are involved, leakage can also come in the form of unofficial user fees, grease payments or even time off when services not performed, under-the-table user charges (i.e. small bribes), absenteeism, personal advantage accruing from different types of membership or relationships, or the sale of documents, information or data: all such behaviour constitutes the misuse of public funds for private profit, in other words constitutes a form of corruption. All of these phenomena produce distrust on the part of citizens towards regional and local government institutions, because of their incapacity to act independently and answer to the real interests and needs of their communities.

Defining and measuring corruption

7. It is difficult to isolate a single definition of corruption because, as noted by several scholars (Vannucci, 2012), the same behaviour can be considered as corruption within one specific legal framework or cultural tradition but not within another, and so has no single, comprehensive, universally accepted definition. Corruption can involve a variety of different kinds of behaviour with different economic or social impacts, but always involves a distortion of the exercise of public office so that it meets private rather than public interests.

8. It is difficult to grasp the relationship between corruption and decentralized government because there are many factors involved and because of the social, economic and historic heterogeneity that exists at regional or local level: for example, the income of citizens, the quality of governance, the size and characteristics of territory. There is a lack of empirical studies, data and information available on this issue.

9. Despite this, there is broad consensus in academic research and NGO reports that corruption is one of the most pressing public policy challenges faced by governments of different levels and across regions and countries, due to its corrosive effect on public trust and the quality and efficiency of government. However, there is also little consensus on how it should be measured and what are the appropriate instruments to do so. As several scholars have demonstrated, attempting to measure corruption is a “vexed question” (Heywood, 2014). Nevertheless this issue must be addressed if authorities are to stand any chance of developing effective anti-corruption policies. At international level, we can see different attempts to put in place a system to measure corruption, notably a system based on the perception by citizens or organizations via cross-national indices drawn from a range of surveys and expert assessments, i.e. perception-based measures. Despite the importance of this measurement system, corruption perceptions suffer from being closely related to the conduct of governments or administrations, interpretations of the media and social structures. For those reasons, it is widely acknowledged that such measures produce imperfect indicators for actual levels of corruption, and could have different results if applied in different regions or territories.

10. In recent years, many European countries have introduced new national policies to prevent and fight corruption with help from international NGOs and international governmental bodies, such as GRECO. While this approach has certain advantages, in terms of harmonising policies and facilitating their enforcement, there is also a risk that such policies reduce the autonomy and the independence of regional and local governments to take action that is tailored to their specific contexts. Another important result of these international measures is the creation of national anticorruption authorities with different kinds of legal status or organization. Normally, anticorruption authorities act at national level and have powers of monitoring and audit on the enforcement of anticorruption legislation.

11. The difficulties with agreeing on a common definition of corruption, combined with the problems of developing a reliable framework of its measurement, risks inverting the process of decentralization and decreasing the autonomy of regional and local government. The Congress, through its studies, reports and debates, could contribute to a better understanding of the relationship between regional and local governments and corruption. This could constitute a first step in

⁶ http://www.transparency.org/whatwedo/activity/strengthening_local_government_integrity

developing a set of indicators and sharing data sets and information about corruption at regional and local levels..

12. Over the last twenty years, policies to fight corruption have followed two different strategies. In the first, the fight against corruption is based on a repression strategy, using the penal and judiciary system. Across Europe, we see a reinforcement both of the categories of criminal offence and of the punishments ordered. The repression of corruption remains one of the most favoured ways to fight corruption, but the limit of ex post repression is that this is difficult to carry out, especially when corrupt behaviour is difficult to identify or to prove in front of a judge.

13. For these reasons, it is not enough to base a robust anticorruption policy only on penal repression, especially in regional and local governments where corruption can be widespread and elusive, but rather we need a robust strategy to prevent corruption and abusive or illegal behaviours. The adoption of a wide range of organizational solutions targeted at reducing the risk of corruption is important. Among others, the following solutions can be mentioned: the review of the performance of public procurements procedures (to reduce the term of conclusion, simplify participation and citizen control), the review of internal controls and the rotation of public officials, especially in the administrative sector which is at risk.

14. Generally, this kind of prevention goes hand in hand with organizational and procedural prevention strategies. A series of measures needs to be implemented to reduce the risk of decisions being taken contrary to the public interest and to ensure that they are compatible with the status of civil servants, administrators and governors. The aim is to avoid the risk that a public official makes or is involved in a decision under improper influence or pressure, or worse in a condition of conflict of interest, between public and private interests. To prevent access to decision-making positions to people considered unworthy and to make sure that public interest decisions are made impartially, it is important to take measures to promote the integrity and public ethos of political administrators and governors, as well as civil servants.

B A thematic approach to tackling corruption

15. This report is based on a literature review of previous Congress reports, OECD, EU and academic papers, on the challenges of preventing corruption and promoting public ethics at local and regional levels. Different aspects around this issue are summarized around six principal themes to enable comparisons between countries and to define further lines of reflection:

1. Transparency
2. Conflicts of interest and clientelism
3. Protecting whistleblowers
4. Nepotism (recruitment of staff)
5. Public procurement
6. Abuse of administrative resources in election campaigns

1. Transparency

16. Transparency is one of the most important strategies for preventing corruption and promoting public ethics at local and regional levels, as it empowers citizens to participate in and follow up on local government activities. If regional and local governments disclose important aspects of their organization and activities, such as information, rules, plans, budgets and results, it is difficult for corruption to occur. In that respect, transparency is an important tool, a precondition even, for guaranteeing the level of integrity and accountability of governments at regional and local level and should be regarded as a way of enhancing democratic control by citizens and increasing their trust in the government.

17. For transparency to work, citizens need to be able not only to access information but also to understand that information. It is not sufficient that public organizations reveal information about their operations, procedures and decision-making processes (Wong and Welch 2004), but they should reveal information in a way that helps citizens to understand the organization and the use of public power and resources (Ponti, 2011; Merloni, 2008).

18. In that respect, politicians and public managers have a fundamental role to play in implementing the measures and mechanisms necessary to promote day-by-day transparency. The possibility of achieving an adequate level of transparency is largely dependent on the capacities of public managers in managing and implementing transparency procedures and developing a culture of transparency in the public sector. The public sector should be able to respond to the demand for information by citizens and civil society without waiting for specific requests by citizens or judicial decisions.

19. Every citizen should have the right of access to information held by public administrations, and this right could be limited only in very specific circumstances. Limitations must be proportionate and justifiable, such as in cases of privacy or particular public interests defined by the law. The right to access is the precondition of the right to know and a fundamental feature of citizenship. In many countries, access to public information has become a fundamental right (de Fine Licht 2011), anchored in the constitution, or an ethical value defined by a modern public administration (Merloni, 2008). Hence, transparency as a means of promoting citizen engagement and involvement through citizen centred government can lead to “an informed citizenry that is able to engage in political discourse and shape the future directions of the government”.

20. Another way of guaranteeing awareness of citizens is by publishing or disseminating information and data about the administration through institutional websites. ICTs, with particular attention to open data and public institution websites, play an important role and have the potential to create a new forms of dialogue and informal interaction, for example by using social networks, that enable greater involvement and participation of citizens in matters that affect them directly (Pina, Torres, and Royo 2010).

21. An important issue with regard to transparency is the quality and timeliness of the information made transparent. The information disclosed or published should be accurate, timely, and useful, in accessible or machine-readable format. Regional and local governments should introduce procedures to ensure that documents and information are accurate and of high quality through effective reporting procedures.

22. There are already many examples of regional and local governments introducing new mechanisms to promote greater transparency in the political and decisional process with the aim of improving the quality and legitimacy of decisions. These demonstrate that transparency can foster active citizenship through more participative forms of governance, giving citizens a greater role in policy decisions and the co-design, coproduction and co-maintenance of public services (Stivers, 2008). A greater level of transparency can contribute to the enhancement of government accountability to its citizens and serve to improve the quality of decisions and governance (Hood, Heald 2006; Bauhr, Grimes 2014). The importance of transparency, as a tool for preventing corruption and promoting public ethics, justifies the development of international instruments of monitoring in this respect, in the framework of common and shared values, with a view to better understanding corruption and obtaining data and information about it.

2 Conflict of interests and clientelism

23. Because of the proximity of decentralised governments to the citizen and the often close relationships that exist between the key actors in these governments and the possible sources of corruption, conflicts of interests in regional and local government are all too common. The key actors in regional and local governments often lack appropriate tools, instruments and incentives to fight this type of corruption.

24. One of the most important ways to prevent the occurrence of conflict of interests is by regulating the legal status of administrators and elected representatives. This kind of regulation could introduce a certain degree of uniformity at national level. It should set out the conditions to access to public office (incompatibility and ineligibility) and the obligation to abstain from taking a decision in case of personal or private interests, that might impact (or be perceived to impact) upon official duties. Regional and local governments should clearly define who is subject to conflict of interest provisions. In that regard, particular attention should be given to politically elected officials and staff who are contracted to serve in public sector functions and administrators employed in enterprises or agencies owned by regional and local governments. Some important instruments for dealing with cases of

conflicts of interest are codes of conducts or ethical codes, which have various degrees of legal status and can have legal, disciplinary and political consequences.

25. From this point of view, a robust strategy could seek to draw up a European Legal Status for regional and local administrators, defining a common and shared framework of rules through a Code of Conduct. This could be an important tool for building a common transversal culture in preventing corruption. However, for such a tool to be effective would require a system of monitoring, with particular attention to the enforcement of the Code and empowerment of the administrators on this matter.

26. Another instrument to avoid possible conflict of interests by the above-mentioned categories is the declaration of personal interests. Such declarations should cover activities, paid or unpaid, or the acceptance of positions or functions outside the official's public service employment, which could have a bearing on their public role. Moreover, public officials should declare any membership of organizations or political parties, which could detract from the proper performance of their duties as public officials. The declaration of interests as a tool for avoiding (potential) conflicts of interests should be made transparent and available to the public, as a form of direct control by the citizen and to discourage possible unethical behaviour, and must be regularly updated. Conflict of interest declarations should be specifically defined by the law, and serve to identify and guard against the "revolving door" phenomenon and hence prevent abuse of office or power by those who may use their influence while in office to shape a policy or to ingratiate themselves with companies, which might later advantage them. In this way it is important to verify not only the previous interests but also the interests of public officials after they leave public office (i.e. pantouflage).

3 Protecting whistleblowers

27. Whistleblower protection is integral to fostering transparency, promoting integrity, and preventing corruption. Several cases demonstrate that corruption, fraud and misconduct, as well as violations of ethical rules or codes of conducts, are more likely to occur in organisations that are closed and secretive. In many cases, employees will be aware of the misconducting or wrongdoing, but feel unable to say anything for fear of reprisals, concern about acting against the organisation's culture, risk of marginalization, or lack of confidence that the matter will be taken seriously or it will face with the right instruments. The negative implications are far reaching for both organisations and society as a whole. A strong and effective whistleblower protection for employees in "blowing the whistle" on corruption, fraud or wrongdoing, could become an important tool to fight corruption in regional and local governments.

28. This kind of protection should be granted for disclosures made with a reasonable belief that the information is true, detailed and relevant for the case at the time of disclosure. The system of protection could be extended to those who make inaccurate disclosures, if they are made in honest error.

29. The system of whistleblower protection should preserve the confidentiality and the identity of the whistleblower, which should be disclosed only with the individual's explicit consent. Full protection should be granted to whistleblowers who have disclosed information anonymously and who subsequently have been identified without their explicit consent. A protection system should be defined for whistleblowers whose lives or safety, or that of their family members are in jeopardy. This is particularly important at regional and local level, where relationships are narrower than national level and adequate resources should be devoted for such protection measures.

30. There are two possible forms of reporting. The first and simpler form is reporting within the workplace, giving information to high-level managers or elected administrators. In such cases, internal regulations or codes of conduct should be clear and transparent, capable of maintaining confidentiality and anonymity, and define procedures for independent and timely investigations of whistleblower disclosures.

31. The second system of reporting is consists of referral to the appropriate regulatory agencies and authorities for follow-up, corrective actions and/or policy reforms. Often, especially at local level, where organizations are smaller, it is difficult to guarantee the confidentiality of whistleblowers and reporting at the workplace can seem particularly risky. For this reason, it is important to have a referral

agency or institution that is able to protect the identity of the whistleblower, such as National Anticorruption Authorities. These channels may include regulatory agency, law enforcement or national and regional investigate agencies, or specialised agencies established to receive such disclosures, such as a dedicated hotline. Moreover, Anticorruption Authorities can play an important role in defining tools available to staff in regional and local administrations, including advice lines, in verifying codes of conduct or compliance offices and establishing internal or external ombudsman offices.

32. A whistleblower protection system requires an organization or institution that is capable able of receiving information from whistleblowers and of protecting them. For this reason it is important to provide comprehensive training for regional and local government public servants, managers and administrators on the importance of whistleblowing as a tool for fighting corruption. In order to avoid sanctions or penalties against whistleblowers and to reinforce the protection of them, a manager must clearly and convincingly demonstrate that any measures taken against an employee are in no sense connected with, or motivated by the whistleblower's disclosure. A full range of remedies should cover all direct or indirect, present or future consequences of any reprisals, with the aim of providing complete protection for the whistleblower. This should include interim relief, legal and mediation fees, transfer to a new department, administration or supervisor, compensation for lost past, present and future earnings and status and compensation for pain and suffering.

4. Nepotism (recruitment of staff)

33. Nepotism, or favouritism, is a complex phenomenon, which involves the abuse of discretion or illegal behaviour. The particularity of nepotism is that it not considered as serving the direct self-interest of an official, but rather the interest of someone linked to the official through membership of a family, association, trade union, political party or other economic or social relationship. Generally, when we are speaking about nepotism we are referring to a specific action, such as bribing an official to hire somebody.

34. Nepotism can result in inefficiency for two reasons. Firstly, it represents a sort of "leakage" of resources, because the administration is not able to recruit and hire the best people with appropriate abilities, resulting in a decrease in the quality of public services. Secondly, nepotism and the abuse of the recruitment of staff create a loss of confidence in the public administration, with the result that the best graduates decide against pursuing careers in the public sector, preferring other career avenues. In that way, the quality of public administration suffers two serious losses, on account of abusive or illegal recruitment procedures. This inefficient and illegal recruitment creates a fertile breeding ground for corruption, diverting already scarce public service resources, and can lead to a vicious circle replicating this behaviour in the subsequent recruitment of staff.

35. In order to maintain their impartiality in the delivery of services and the application of rules, public servants of regional or local administrations should not be able to hire or influence the hiring of relatives or partners for jobs with a local government agency or department where they work.

36. The only way to avoid damage due to nepotism is to prevent civil servants or political administrators from exercising authority over any contract that could benefit a relative or partner. Staff recruitment procedures should be regulated by a code of conduct and characterized by independence, impartiality and transparency, to minimise any influence that civil servants or politicians might have over recruitment procedures.

37. Nevertheless, it is still possible for two or more individuals with a personal relationship (family members or partner) to be employed in the same administration, a situation which is common at local level. In such cases, regulations and the law should ensure that they do not work in the same line of authority and that their relationship does not unduly influence their work.

5. Public procurement

38. Public procurement refers to the administrative process by which public administrations, such as regional or local administrations, purchase works, goods or services from private companies. At regional and local level, preventing corruption in the public procurement processes remains one of the most important and complex fields for anticorruption policies. It is important because public

procurement accounts for a large and growing share of public spending across Europe – between 15% to 30% of national GDP- and because it is an area that is undergoing great change, as a result of outsourcing and increased use of public-private partnerships on the purchase of services, works and supplies. In many sectors, such as energy, transport, waste management, social protection and the provision of health or education services, regional and local administrations are the principal buyers and principal suppliers of services to the citizens.

39. Transparent, fair and competitive public procurement across countries can generate business opportunities, drive economic growth and create jobs. Nevertheless, public procurement processes at regional and local level are often influenced by factors that can have a negative economic and social impact and increase the risks of corruption. Public administrations could be made more efficient and effective, and more citizen and business-friendly by rethinking the entire approach to purchasing, professionalising public servants, using ICT to benefit from the digital revolution and simplifying processes. This is particularly important because companies are often better resourced and equipped than regional and local administrations. On the one hand, that problem is exacerbated by regional and local government having weak financial resources, so that they may be unwilling or unable to allocate resources to strengthen back office functions, such as contracting, or pay high salaries to outsourced professionals, such as lawyers and consultants. On the other hand, in case of public service, the public's ability to hold service providers to account is often significantly reduced where services are outsourced. A procurement policy should therefore aim to minimise corruption risks and maximise the chance that the economic, social, environmental and political benefits of regional and local public procurement are realised.

40. Corruption in public procurement can occur in any stage in the process and with different mechanisms or tools. For this reason it is difficult to identify the main risk areas of corruption in public procurement since this can vary according to the procedural rules and on the heterogeneity of regional and local governments across countries.

41. Administrative processes and decision-making procedures should comply with rules established by law, which should limit the scope for discretionary decision-making. Regional and local government should implement and provide training on a code of conduct that commits the contracting authority and its employees to a strict anticorruption policy. As a way to enforce the principle of integrity, codes of conduct should include a commitment to integrity and ethical behaviour, including an obligation of abstain from collusion giving or accepting bribes and facilitation payments, or "revolving door" mechanisms. As we have described, code of conducts should define the rules against conflicts of interest and require a disclosure to the public managers involved in the decision-making processes. From an organizational point of view, the public administrations should be organized to rotate staff in sensitive positions (for example managers with decision making authority).

42. Transparency is an important instrument for preventing corruption in the public procurement process, except when information is legally protected, for example in case of privacy or commercial information. In that case, rigorous anticorruption legislation is required to avoid possible abuse. Transparency in the public procurement process should also be applied to the selection criteria and technical specifications of the process. The participation of civil society organizations and associations through ICT and e-procurement, as independent monitors overseeing all stages of the procurement process, can prevent negative effects, prompting administrators to think twice about manipulating or abusing the contracting process if there is a possibility that such behaviour will be revealed and their reputation and career could be damaged.

43. Administrative positions, especially decision-making positions, should be filled and duties assigned on the basis of abilities, skills and talent and not based on previous administrative roles, family connections or political influence. Staff involved in public procurement processes or with powers of decision-making should be adequately remunerated in order to attract well-qualified people, while continuous training should be made available to reinforce their abilities and improve their contracting expertise.

44. It is important to have an independent audit process that covers not only financial data but also the implementation of the procurement process and the execution of the contract. An independent audit institution with relevant expertise, at the disposal to regional and local governments, can also serve to protect them from possible austerity cuts and recentralization of powers. Audit bodies should analyse information and data from different contracts in order to discern

patterns of collusion or other abuses. As a form of internal control, particular attention should be afforded to the protection of whistleblowers, since it is insiders who have access to the relevant information and will know when something is being covered up.

6. Abuse of administrative resources in election campaigns

45. The misuse of administrative resources during the various steps of an electoral process at regional and local level is widely recognised as an unlawful or an abusive behaviour of civil servants, incumbent political candidates or parties, in order to use their public positions or connections with government institutions with a view to influencing the outcome of elections, and thus undermine the application of the right to vote, through artificial and unjustified restrictions. Over the past 20 years in Europe there has been steady progress towards reinforcing the conduct of regional and local elections, through international binding texts and soft law developed through the process of observation and monitoring by international organizations and NGOs.

46. The European Commission for Democracy through Law (Venice Commission) has produced some reference documents on this issue, firstly beginning with a "Report on the misuse of administrative resources during electoral processes" adopted in 2013. More recently, in 2016, the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights adopted "Joint Guidelines for preventing and responding to the misuse of administrative resources". These guidelines are the fruit of more than 20 years of election observation in Europe and are aimed at initiating concrete measures to prevent and act against the misuse of administrative resources during electoral processes. They define the misuse of administrative resources as the use of equipment (phones, vehicles, meeting rooms, etc.) or the access to human or financial resources (civil servants, officials, budgets...) in territorial and local public institutions aimed at promoting the campaign activities of the political incumbents. Misuse could be also related to unequal access to media.

47. Such misuse or abuse damages the ability for equal competition between the government and the opposition. Even more serious is the reported penetration of illegal funds into politics, stemming for example from foreign sources and organized crime. Regional and local authorities sometimes use their administrative capacities to create advantages in election campaigns for certain political forces, as well as to exert pressure on undesired election participants. Such abuses lead to inequality between candidates, particularly between incumbents and other political parties or candidates.

48. From this point of view, a clear distinction should be made between the use and the misuse of administrative resources. The use of resources should be permitted and governed by law. It should imply a lawful possibility of using administrative resources during electoral processes for the proper functioning of the institutions and providing that such a use is not devoted to campaigning purposes but to guarantee impartiality and an equal possibility of competition between candidates. Many electoral systems allow candidates to use budgetary funds to finance their campaigns, on the principle of impartiality and equal access. On the contrary, the misuse of administrative resources should be sanctioned by law, to punish the unlawful use of public resources by civil servants, incumbent political candidates and parties which use their official positions or connections with national, regional or local government institutions to influence the outcome of elections.

49. In order to prevent the misuse or abuse of administrative resources a strong and operative framework is required. This may include a formal constitutional or legislative basis at the national level, while other elements can be embodied through codes of ethics or regional and local regulations, in order to reinforce ethical standards related to the electoral processes of the public authorities in office, and the actions of elected incumbents, particularly while campaigning.

50. The necessary conditions should be put in place for the observations of elections by public associations, international organizations and NGOs. The interference of executive branch officials and institutions in the conduct of elections should be ruled out and sanctioned with vigorous penalties for abusing official advantages during the elections.

51. Another risk factor is the lack of transparency in the financing of the election funds of parties and candidates, which can create an opaque electoral process. This opaqueness can be exacerbated by the use of funds linked to political parties which accumulate a significant proportion of party funds, but whose donors are not publically disclosed. For these reasons, there need to be tighter controls

over campaigning activities financed and organized outside the scope of election funds, such as by using administrative resources and unequal access to the media, and through publishing information on the financing sources of election funds.

C Towards a new code of ethics

52. The European Code of Conduct on the political integrity of local and regional representatives was adopted at the sixth plenary session of the Congress in 1999 and has since become a reference text of the Congress for promoting public ethics. However, the fight against corruption has evolved significantly in the 20 years since this text was drawn up. Debates in the Congress have highlighted the need to revise and update this text and to extend its application to all local and regional officials.

53. A revised Code of Conduct should define a general framework of obligations of public officials and governors, which should be complemented by national codes of conduct and regional and local codes of conduct, based on local contexts and requirements. The most important aspect is that this top-down movement should form the basis of a minimum ethics infrastructure of rules, tools, duties, sanctions and mechanisms of accountability aimed at preventing and fighting corruption.

54. Together, these various codes of conduct could pave the way to the formulation of a robust European Legal Status of public servants, administrators and governors. The goal is to strengthen the impartiality of public officials and foster a public service ethos according to the principles of loyalty, diligence, impartiality and exclusivity, which then have to be complemented by the specific duties and requirements of individual regional and local administrations.

55. To address the themes outlined in the previous section, there needs to be a corresponding series of tools and mechanisms that support and reinforce each other, working together to promote impartiality and a public service ethos.

56. In reviewing a Code of Conduct, it is necessary to pursue two lines of reflection. Firstly to review and fine-tune existing mechanisms and instruments. Secondly, to examine new problems and new tools for addressing them, such as the new opportunities of transparency through ICTs and open data or the protection of whistleblowers.

57. With that in view a new Code of Conduct should not refer only to the political and electoral administrators but also to public servants and administrative managers. In addition, it should give special attention to the connection between public duties and penalties and the resultant strengthening of public accountability mechanisms, with the condition that, under an internal disciplinary system, public officials and elected representatives should be liable for any violation of the code of conduct. Special attention should be given to the stages of adoption and subsequent implementation, ensuring a degree of discretion and autonomy to adapt the code of conduct to the conditions of the regional and local administrations and institutions. Attention should also be given to the empowerment and monitoring system by civil society groups, NGOs and national or supranational authorities, such as the Congress or National Anti-corruption Authorities.

58. The challenge of preventing and fighting corruption and reconstructing public ethics requires a strong investment in the political and administrative capacities of leadership at regional and local level. Otherwise, there is a risk of mere formal adherence to the Code and a minimal implementation by drafting formalistic plans and administrative programs. For that reason, it is important to develop not only rules but also a strong awareness about the importance of building a public ethos culture.

D Tackling corruption in the field (Co-operation activities)

59. The Congress activities in the combat against corruption are not limited to its statutory activities, such as the debates during its plenary sessions and the reports, resolutions and recommendations which are prepared by its committees. The Congress is an increasingly important actor in the organisation of activities in specific member states, aimed at reinforcing local and regional democracy and assisting in the implementation of its standards.

60. The co-operation activities of the Congress will pursue the work on the fight against corruption and the promotion of ethics and hence actively contribute to the strategy. Since 2014, the Congress'

activities in those fields have reached 193 young local leaders, 95 councillors and 244 mayors in Armenia, Ukraine, Georgia and Moldova. In 2016, a range of seminars and workshops will be organised in the framework of its projects in Armenia, Georgia, Moldova and Ukraine. Within the activities targeted at young local leaders, mayors and local councillors, specific sessions will be dedicated to the tools and best practices that can be used in the fight against corruption and the promotion of ethics at the local level. These sessions consist of theoretical sessions that provide the participants with basic knowledge on relevant European standards and interactive parts, where the participants can exchange with members of the Congress and put their knowledge into practice through work in groups.

61. A regional seminar entitled “Local public ethics: from vision to action” will take place in June 2016 in Kyiv. This seminar will aim to increase the awareness and readiness of mayors to implement higher ethical standards in public policies and to promote ethical governance and transparency in their local authorities. Furthermore, a programme to support local initiatives with coaching and funding will be launched for the mayors from Armenia, Georgia, Moldova and Ukraine, who participated in the previous activities of the project. Their initiatives will aim at increasing transparency and accountability of local government in the targeted countries by introducing new tools and mechanisms addressing higher ethical standards and ensuring sustainable collection of feedback and public oversight.

62. The Congress Secretariat will also work on the development of a methodology to assess the impact of its activities on a long-term perspective.

E Conclusions and recommendations

63. Although corruption has always been a scourge of the political process and development of government, the attempts to combat and curtail it have taken on a new urgency and a new dynamic in the past ten years. There are many reasons for this, not least the economic crisis in Europe which has highlighted the risks and huge wastage of corrupt practices in Europe. As more and more governments at all levels have sought financial aid and bailouts, these have been accompanied with ever stricter demands for good governance and transparency by the donor bodies. Public demand for transparency has also increased as the Internet and information revolution makes it much easier to access and make information available.

64. The monitoring activities of the Congress have also underlined the close links between the eradication of corruption and the development and implementation of the standards of local democracy set out in the European Charter.

65. By choosing ‘Ethics and corruption’ as its main theme for 2016, the Congress is sending a clear signal of its intention to make this a priority activity for the years to come and to make a concerted effort to improve local and regional democracy standards in this area.

Bibliography

- “Codes of Conduct for Local Governments – Helpdesk Answer”, Transparency International, 2013, http://www.transparency.org/files/content/corruptiongas/Codes_of_conduct_for_local_governments.
- “Municipal Finances: A Handbook for Local Governments”, World Bank, 2014, <https://openknowledge.worldbank.org/handle/10986/18725>
- “Open Governance Standards”, Transparency International, 2013.
- Bauhr, M., Grimes M., (2014), Indignation or Resignation: The Implications of Transparency for Societal Accountability., in *Governance: An International Journal of Policy, Administration and Institutions* 27 (2): 291.
- de Fine Licht, J. (2011), Do We Really Want to Know? The Potentially Negative Effect of Transparency in Decision Making on Perceived Legitimacy.” *Scandinavian Political Studies* 34 (3): 183–201.
- Ferreira da Cruz, N., Tavares, A.F., Marques, R.C., Jorge S., de Sousa L., (2016) Measuring Local Government Transparency, *Public Management Review*, 18:6, 866-893
- Fisman, R., Gatti R., Decentralization and Corruption: Evidence across countries?, World Bank, 2005
- Galtung, F., et al., eds. *Measuring corruption*. Ashgate Publishing, Ltd., 2013.
- Grimmelikhuijsen, S., G. Porumbescu, B. Hong, and T. Im, (2013), The Effect of Transparency on Trust in Government: A Cross-National Comparative Experiment.” *Public Administration Review* 73 (4): 575–586.
- Heywood, P.M., Rose, J. (2014). “Close but no Cigar”: the measurement of corruption, *Journal of Public Policy*, 34, pp 507-529
- Hood, C., Heald D., (2006) “Transparency: The Key to Better Governance? in *Proceedings of the British Academy* (135), Oxford: Oxford University Press.
- Making Decentralization Work for Development: Methodology of the Local Government Performance Measurement (LGPM) Framework”, Decentralization Support Facility, 2008, pp. 25– 27, http://www.wds.worldbank.org/external/default/WDSContentServer/WDS/IB/2008/12/31/000334955_2008123_1034216/Rendered/PDF/470090ENGLISH010Box334113B01PUBLIC1.pdf
- Merloni F., *La trasparenza amministrativa*, Giappichelli ed., 2008.
- Pina, V., Torres L., Royo, S., (2007). Are ICTs Improving Transparency and Accountability in the EU Regional and Local Governments? An empirical study, *Public Administration* 85 (2): 449–472.
- Ponti B., *Open Data and Transparency: A Paradigm Shift*, in *Informatica e diritto*, (1-2), 305-320, 2011
- Stivers, C. (2008), *Governance in Dark Times: Practical Philosophy for Public Service*. Washington, DC: Georgetown University Press.
- Transparency International. (2015). *Local Governance Integrity: Principles and Standards*. Berlin: Transparency International.
- Vannucci, A., *Altante della corruzione*, Egea ed., 2012
- Wong, W., Welch. E., (2004), Does E-Government Promote Accountability? A Comparative Analysis of Website Openness and Government Accountability, *Governance* 17 (2): 275–297.