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Local and Regional Democracy

Abridged Handbook on Public Ethics at Local Level

Handbooks

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Abridged Handbook on Public Ethics at Local Level

Foreword

The Public Ethics Handbook is a collection of best practices in respect of public ethics in local government, compiled from contributions from across the member states of the Council of Europe. These practices suggest ways in which local, regional and central governments can work together to improve public ethics at local level and to bolster public confidence in local officials by rendering the political process more transparent.

The Handbook was prepared by the Council of Europe Steering Committee on Local and Regional Democracy (CDLR) and was adopted by a high level international conference which took place in Noordwijkerhout (the Netherlands) on 31 March – 1 April 2004.

The Handbook creates no legal obligations; instead it offers detailed examples of how to construct a comprehensive and effective public ethics regime at local level. Member countries and their respective local and regional authorities are encouraged to consider the Handbook's suggestions for reform, both separately and jointly with other sections of the handbook. Several member states have already found the Handbook useful in this way, but all municipalities, regions and countries could find benefit in using the Handbook as a resource, tailoring its recommendations to their own particular situation.

The Handbook has already been translated in a majority of the languages used by Council of Europe member states. It has inspired legal reforms in several countries, and in several others it has been included as such or has led to the preparation of training modules to be used in the curriculum for training local staff. Some countries have already prepared or are preparing national handbooks on public ethics at local level, adapting the Council of Europe handbook to their specific situation and aiming at offering help to the local representatives, both elected and appointed, in their day to day activity.

Taking account of the complexity of the Handbook and in order to ensure an appropriate level of promotion of its main findings, the CDLR decided to prepare a shorter document presenting only short summaries of the six sections of the Handbook to allow potential users to have a first glimpse of its most important ideas.

This document is mainly aimed at policy makers in local authorities, and offers them for consideration a set of good initiatives, practices and solutions which appear in the Handbook. Like the Handbook itself and in order to offer a full picture of the various practices and give local authorities a list of initiatives and conditions they could expect, this guide also contains examples of initiatives to be taken by other authorities, but mainly the central government.

This document can also be very useful for other audiences: central authorities, but also universities, political parties and structures in charge of training local and regional civil servants and elected representatives.

This document was adopted by the CDLR in November 2005.

For the full version of the Handbook, please refer to the Local Democracy website: www.coe.int/local.

A. Model initiatives relating to the status of local elected representatives

The status of local officials in relation to the central government is of fundamental importance in local governance and the promotion of public ethics.

In consultation with local authorities, the central government should provide the overall legal framework and model codes of conduct for local officials' rights and obligations. These rights and obligations should be publicised and monitoring procedures should be implemented. The framework should spell out any legal sanctions clearly but should not be so restrictive as to infringe on local authorities' independence.

Individual local authorities should have the freedom to adapt the model codes of conduct to their specific situation and should have a role in the monitoring of the compliance with them.

Reasons and procedures for disqualification of a person as a candidate for office and removal of a local elected official from office should be strictly and clearly regulated. Such action should either be taken by a judicial body or subject to review by the courts.

Local elected representatives, like other elected officials, must carry out their duties impartially and must refrain from promoting or appearing to promote their own interests or the interests of any entity other than the local authority. To that end, local elected officials should where possible refuse gifts from parties that may stand to benefit from the municipality's decisions. Any gift whose value exceeds a certain threshold should be given to the municipality. Additionally, no elected official should attempt to interfere with another official's independence. In all cases, elected representatives should exercise their activity with as much transparency as possible without compromising confidential or personal information. Optimally, officials should take affirmative steps toward rendering the decision-making process as open as possible.

A framework for sanctions against local misconduct should be set up at central level, but local authorities should have a role in implementing and enforcing those sanctions. Parties that are injured by an act or omission of local elected representatives should receive compensation, but the elected officials should not be personally liable unless their misconduct was serious or intentional. Elected representatives are entitled to hearings before specialised judges before personal sanctions are applied. Local authorities should consider pooling with other municipalities the risk of having to compensate those injured by poor municipal decisions.

Although most local elected officials should not receive a salary from the municipality, officials should not suffer financially because of their municipal service. If necessary, the local authority should compensate the official or the official's employer for time spent on municipal business. The central authority has a role in promoting fair remuneration, but the local authority should retain considerable flexibility. The local authority should reimburse officials for expenses and provide equipment and training (at least partial reimbursement). To determine the level of remuneration, local authorities should set up an independent panel, rather than leaving discretion to the officials themselves. As in other areas of local administration, information about remuneration should be made public to the greatest extent possible.

Central authorities, local authorities and local elected officials should work together to ensure that all local officials receive adequate training regarding their duties and other aspects of municipal management. Authorities should keep a look out for opportunities to promote cooperation and sharing of information and best practices across municipal, regional and international lines. Whenever possible and appropriate, authorities should integrate information technology into officials' training.

B. Model initiatives relating to the funding of political parties, political associations and individual candidates at local level

Central, regional (if applicable) and local authorities or their associations should work together to create a clear and simple legal framework for the funding of political parties, political associations or action groups and political candidates. This framework should apply equally to all candidates at all levels of government, except where the size of the entity in question dictates otherwise. Along with organising local elections, local authorities should enforce and widely publicise the political funding legal framework. In turn, political parties should ensure that candidates are aware of their obligations and should help publicise those obligations.

Local political parties could receive from central government funding or other support such as free or discounted airtime on public television or radio or other advertising space, but only through an impartial mechanism that preserves fairness and local independence.

Citizens have a right to support local political parties financially, but the certain conditions for such donations may be set at the national level. The true sources and beneficiaries of any funding from private entities for political parties or especially election campaigns should be made as transparent as possible. To prevent private donors from exercising undue influence over local officials, there should be set a reasonable ceiling and other conditions on such donations. For example, entities that receive public funds or are under public control could be barred from making donations. Local authorities, in turn, should not render financial support to political parties without creating additional procedures to ensure that such funding does not bias local officials. Parties must keep detailed records of income and expenditure for all candidates, and candidates are forbidden from making a contract in exchange for a campaign contribution. Candidates and elected officials must scrupulously follow the legal framework for funding and for making records of their assets and campaign spending available to the public.

Some form of politically independent body should be created to monitor compliance with political funding laws, including supervising political parties' income and expenses. This body should have all the resources necessary to do its job effectively, and it should have the authority to impose fines on violators. These penalties should be subject to judicial review. Local authorities, candidates, officials and political parties should cooperate fully with the monitoring body and should provide all documentation, including budgets and balance sheets, that the body may require.

As in other areas of public ethics, publicising the rules and any violations of the rules is an essential feature of good practice. Central and local authorities should take joint responsibility for making known to the public and to local officials the legal framework and other guidelines, and should publicise any decisions by the monitoring body or breaches of the legal framework.

C. Model initiatives relating to the control and audit of local authorities

Mechanisms for audit and control of local authorities should reflect a commitment to rule of law, transparency, democratic participation, and effective internal and external control of local elected officials.

A legal framework should be laid out and external oversight of local governments' compliance with legal obligations should be exercised, but central authorities should refrain from interfering with local autonomy or passing judgment on policy choices by the local authority.

External audits should be performed by independent agents and should include annual certification that the local authority's accounts are accurate. The auditor may also perform a management audit to assess the quality of local services. The law could also designate certain local officials to monitor the local authority's activity and report any actual or potential wrong-doing to the whole authority.

The goal of external audits is to provide a politically independent assessment of municipalities' procedures and practices, with an auditing body that has its own budget and is insulated from political pressure. A body that is independent from the local authorities should be responsible for any disciplinary action against a local authority. Such disciplinary action will be administrative, not criminal, in character, but the auditing authority should inform authorities responsible for dealing with criminal offences if they become aware of such offences.

A priori external control or control over the expediency of the local authorities' action should only be exercised in matters which the latter exercises on behalf of the central government (delegated competencies) and according to criteria clearly laid out in legislation.

Local authorities have an obligation, as in other areas of public ethics, to cooperate fully with external control bodies and to foster an atmosphere of independence and transparency among its officials.

Internal control is an essential component of a programme to minimise intentional and unintentional mismanagement, as well as poor service delivery. A legal framework for internal control of local authorities should be established at central level, including provisions for oversight of budget preparation, municipal procedure, the awarding of contracts, and staff recruitment and management.

Internal control officials should investigate any lapses in compliance and work within the local authority to rectify the situation. A specialist service should perform the internal control function unless a local authority is too small to make such a service practicable. A local authority may, and in certain circumstances should, engage an external financial or management audit firm. The local authority should cooperate fully and share all relevant information with the internal control body.

When and if the judiciary becomes involved in matters of local administration, mechanisms should be created to ensure that the courts do not impinge on the local authority's autonomy and also that the court's judgments are executed fully and immediately.

A framework for the dissemination of the external auditor's findings should be established and should be made public. Similarly, the local government should publicise the results of internal audits. Aggregated statistical analyses of external audits also help provide the public with a fuller picture of their government's functioning, and can aid both local and central authorities in identifying problem areas and best practices.

Finally, both local and central authorities should strive to find alternative mechanisms of communication and improvement that do not fall under the legislative framework. These tools include promoting dialogue between local and central authorities and among local authorities; strengthening the authority of bodies like associations of local authorities, mediators, anti-corruption agencies and professional bodies; utilising information technology to improve accounting and managerial effectiveness; and protecting “whistleblowers”.

D. Model initiatives relating to the status of local public servants

Legislation by the central authority, in consultation with local authorities, should establish clearly and simply local appointed officials’ rights, responsibilities, protections, remuneration, conditions and mechanisms of control. Such a framework should reserve a certain amount of flexibility for municipalities to define their officials’ roles in keeping with local needs.

A model code of conduct for local public servants should also be created at central level, some of which may be incorporated into legislation or may be otherwise made mandatory. Once a local authority adopts a particular code of conduct including sanctions for violations, that code becomes legally binding and enforceable against violators. In keeping with the goal of transparency, the relevant legislation, the model code of conduct and any pertinent court decisions should be publicised. Local authorities and their elected and appointed officials should work together to make sure that the code of conduct is known, promoted and enforced among all local public servants.

Under certain circumstances, a local official may be disqualified from particular duties or from his or her position. For example, such disqualification is appropriate in cases of conflict of interest or when the official is convicted of a serious crime or other serious misconduct. The central authority should create a legal framework for disqualification, while the local authority may have a certain degree of discretion to define what constitutes a conflict of interest or an appropriate sanction or period of disqualification. Within the framework set out by the central authority, local authorities should have enforcement and oversight power over possible disqualifications of local officials.

Local officials should avoid even the appearance of a conflict of interest; declare all personal interests that may affect their ability to manage local affairs impartially; inform or obtain permission from their superiors in some cases to ensure that their private actions are compatible with their public duties; and comply with final decisions ordering them to withdraw from a particular situation or renounce an advantage possibly gained through a conflict of interest.

Local public servants should be guaranteed good employment conditions and access to appropriate remedies for illegal measures taken against them. Local authorities should provide appropriate working conditions and resources for public servants, including by establishing clear codes of conduct and lists of responsibilities. While fostering accountability and proper supervision within the municipal administration, local authorities should also protect public servants' rights, including maintaining confidentiality of sensitive personal information, when appropriate. In turn, local public servants should honestly and impartially discharge their duties, working within the appropriate hierarchy and acting according to the law and the best interests of the municipality.

Like local elected representatives, local public servants should refrain from gaining any private advantage for themselves, friends or family, and even from creating the appearance of any such impropriety. If offered gifts by those in a position to benefit from municipal decisions, local public servants should refuse the gift when possible and report the offer to the municipality. In case they cannot refuse the gift, they should declare it to the local authority. Any gift whose value exceeds a certain threshold should be given to the municipality. Public servants should always aim to promote public confidence and increase transparency and should report to competent authorities any suspected violations.

In the event of a breach of public ethics, the law should provide for compensation to victims that are unduly damaged by the breach. Local public servants should not be held liable if they exercised due diligence in that matter in question, and public officials are entitled to adversarial hearings before being sanctioned. The local authority should implement and enforce compensation to injured parties, and recover costs from individual public servants when the injurious action was seriously negligent or intentional misconduct.

Municipalities may wish to consider setting up risk-sharing schemes or insurance with other municipalities.

Recruitment and promotion of public servants should be grounded in equal opportunity, individual merit, open competition and non-discrimination. Procedures should be transparent, but sensitive personal information by applicants should be treated confidentially. Promotion and transfer procedures should also be transparent and should guard against the use of transfers as punishments in disguise. The local authority has discretion to set remuneration levels within a particular set of guidelines; remuneration should be sufficient to sustain a reasonable standard of living. Candidates' integrity should be checked before hiring. In turn, once hired, public servants should disclose any offer of employment that they receive from a potential beneficiary of the municipality's decisions. Further, upon leaving municipal employment, former public servants should refrain from working for or advising private interests on municipal matters on which the former public servant worked.

A framework should be provided at central level for, and local authorities should implement, general and specialised training programmes for local public servants. The central government's involvement could also include creating training manuals or modules, providing seminars where municipalities can share information, and promoting the use of information technology in training. Training, as implemented by local authorities, should focus both on specific skills and on fostering a positive work atmosphere. Where possible, judges, prosecutors, and local ombudsmen should be involved in training public servants. The local authority should also provide on-going resources for public servants to ask advice about particular situations and keep up to date on the rules, procedures and techniques of promoting public ethics. Mayors and other senior officials bear a particular responsibility to foster an atmosphere of adherence to codes of conduct and of support in helping public servants resolve issues appropriately.

E. Model initiatives relating to transparency, access to information and administrative procedures

A legal framework for local government transparency should be established at central level and based on the principle that transparency is the rule, while secrecy is the exception, appropriate only for specific, well-defined reasons. Municipalities' financial documents in particular should always be made public, and any investigators of possible abuses, whether administrative or criminal, should have full access to records.

Local authorities should also take steps to inform the public about document accessibility and to facilitate accessibility, such as by putting information on the internet, storing information in user-friendly formats, charging only reasonable fees to recover the costs of providing the information, and providing adequate staff to respond to requests for information. Similarly, local public officials should cooperate with and facilitate the public's right of access to information about the municipality's dealings, except for carefully defined spheres of confidentiality.

Local governments' administrative decisions should state the reasons for the decision taken. Among the most important areas in which the municipality should provide criteria and reasons for its decisions are recruitment, the awarding of contracts, land-use planning and building permits. Private contracts should be awarded on a competitive basis, with a procedure modelled on the European Union law on public contracts. Local authorities bear the responsibility for establishing and publishing criteria for private contracts and other financial dealings with private entities. Such private contracts should clearly state the persons responsible for oversight and the timeframe within which the private entity is to fulfil its contractual obligations.

F. Model initiatives relating to local authorities' relations with the private sector

Because public procurement presents such clear risks of corruption, rules for procurement must be very clear, strict and well-enforced. The principles and general procedures should be laid out at central level, with a focus on open competition, what characteristics may disqualify a supplier, and the minimum levels of transparency and confidentiality that must characterise the procurement process. Lists of ineligible suppliers should also be maintained at central level. EU legislation should serve as a model, which countries can adapt to their particular circumstances.

Local authorities should lay out more detailed criteria for the vendor selection process; these may include quality, cost, lead-time, continuity, risks, sustainable development, job protection, and so forth. Criteria and rules of procedure should be clearly delineated and disseminated. Local authorities are also responsible for obtaining feedback from both the public and from experts before inviting tenders for a major contract. Bidders for contracts should sign agreements with the local authority laying out rules on transparency, equal treatment of bidders, penalties for offering or accepting undue advantage during the award process, and so forth.

Local elected representatives and local authority staff should not be involved in any way with a bid in which they or their family members have a personal interest. Local officials must scrupulously ensure that they give equal information and advantage to all bidders and that they maintain bidders' confidentiality. As in other situations, local officials should refuse and immediately report any offers they receive for personal gain in exchange for preferential treatment.

Such rules should apply equally when a municipality decides to delegate a public function to the private sector. Good governance could be facilitated by central authorities by preparing guidelines, handbooks and training courses. A national database of statistics and best practices could also be established, and, in close co-operation with local authorities, benchmarking or auditing scheme could be established to monitor private administration of public services.

The local authority should base its decision to outsource a public service solely on the public interest, preferably referring to clear, reliable data; it should not delegate a function if doing so would jeopardise basic individual rights and freedoms, including the right to be consulted, to hear reasons for decisions and to appeal municipal decisions. When the local authority does delegate authority, it should make clear the division of risks and responsibilities, as well as the assessment procedures. Authorities should consider allocating certain of the risks to the supplier so as to make that entity more responsible for the outcome. Using pre-determined performance indicators, the local authority is responsible for monitoring the private entity's performance. The period of the contract should usually be between five and ten years in order to allow the supplier to recoup its costs and develop its policies over time, but also create an incentive to perform well in order to earn a renewal of the contract. Funding should be fair and adequate, and all contractual obligations on both sides should be written out in advance. Subsidies for services should only be used in order to share costs between direct and indirect beneficiaries, assist the disadvantaged, and encourage sustainable, environmentally-friendly development.

Under some circumstances, local authorities may have the right to form or invest in commercial companies and may invest their savings, but not in speculative, unreliable schemes. In such cases, the central authority may produce handbooks and training courses to give local officials the knowledge to invest wisely. Forming or investing in a company should be a somewhat exceptional practice, implemented only for specific reasons, such as when the market is deficient or as a short-term economic boost. Any such companies should have competent management, and the local authority should monitor their performance. Local officials should refrain from serving on too many outside corporate boards and should declare all compensation from private sources.

When public assets and undertakings are privatised, the rules on private contracts should apply, as should additional policies and guidelines established by the central and local authorities to ensure clear and fair procedures. Free competition and the transparency of the selection process are paramount values when a function is privatised.

Local authorities may subsidise private non-profit associations if the associations promote activities in the public interest. Guidelines and objective criteria for “public status” could be set at the national level, that local authorities can then apply to individual organisations. Local authorities should monitor, and publish, the use of any funds they disburse, following rules and procedures similar to those governing relations with for-profit private entities. As with for-profit entities, local public officials should refrain from taking part in decisions concerning non-profit associations in which they have an interest. Similarly, decisions for subsidies must be based solely on objective criteria.

The issuance of licenses and permits should be based on clearly delineated laws that spell out objective criteria. Those denied a license or a permit should receive an explanation for the denial and should be allowed to appeal the denial before an entity that the local authority has established. Like any other decision of the local authority, the decision to grant or refuse a licence or permit should be subject to appeal in the Court. Local authorities should ensure that applications are processed rapidly and efficiently and should disseminate to the public information about application procedures and criteria. As in other areas, local officials should not be involved in evaluating a permit or license application in which they have a personal stake, and reasons for issuance or denial should be available to the public.

Finally, the central authority should work with local authorities to promote high standards of management of municipalities' real estate and other assets. The central authorities may provide a legal framework and may aid in creating training programmes and nation-wide benchmarking systems. Local authorities should ensure that their staff is well-trained in management techniques and should keep detailed databases of their properties. They should regularly assess and improve their properties and keep accurate track of income and expenditure related to the properties.

