

Strasbourg, 19 June 2017

Public
Greco(2017)5-fin

Assessment of the Code of Conduct for Members of the Parliamentary Assembly of the Council of Europe

Expertise provided by GRECO
under Rule 21.3 of its Rules of Procedure¹

Adopted by GRECO 76 (19-23 June 2017)

¹ This expertise was provided at the request of the Committee on Rules of Procedure, Immunities and Institutional Affairs of the Parliamentary Assembly.

TABLE OF CONTENTS

| | |
|--|----|
| EXECUTIVE SUMMARY | 3 |
| I. INTRODUCTION | 4 |
| <i>Background and purpose</i> | 4 |
| <i>General situation of the Parliamentary Assembly of the Council of Europe (PACE) and specific risk factors</i> | 4 |
| II. GENERAL STATUTORY ARRANGEMENTS AND TRANSPARENCY OF PACE'S WORK | 5 |
| III. "CODE OF CONDUCT FOR MEMBERS OF THE PARLIAMENTARY ASSEMBLY" AND OTHER INITIATIVES | 6 |
| IV. CONFLICTS OF INTEREST | 8 |
| V. DECLARATION OF ASSETS, INCOME, LIABILITIES AND INTERESTS | 9 |
| VI. PROHIBITION OR RESTRICTION OF CERTAIN ACTIVITIES | 10 |
| <i>Gifts and other benefits</i> | 10 |
| <i>Incompatibility and accessory activities ; post-employment restrictions</i> | 13 |
| <i>Financial interests; contracts with State authorities</i> | 14 |
| <i>Third party contacts and lobbying</i> | 15 |
| <i>Misuse of confidential information</i> | 16 |
| <i>Misuse of public resources</i> | 16 |
| VII. EFFECTIVENESS, SUPERVISION AND ENFORCEMENT | 17 |
| <i>Statistics</i> | 17 |
| <i>Supervision</i> | 18 |
| <i>Sanctions</i> | 20 |
| <i>Immunities</i> | 22 |
| VIII. ADVICE, TRAINING AND AWARENESS | 25 |
| IX. OTHER CONSIDERATIONS | 26 |
| X. RECOMMENDATIONS | 27 |

Executive summary

1. The Parliamentary Assembly of the Council of Europe (PACE) has adopted over the last ten years various rules to govern the conduct of its members and to preserve their integrity. However, the multiplication of texts – which have been imperfectly put together in 2015 in a compendium entitled “Code of conduct for members of the Parliamentary Assembly” (*Déontologie des membres de l’Assemblée Parlementaire*) – has led to a regulatory framework which needs a number of improvements. For instance, the restrictions and declaratory obligations concerning gifts and other benefits lack consistency and they can too easily be circumvented: it is noteworthy that, to date, only two declarations of gifts have been made. Likewise, the *ad hoc* disclosure of possible conflicts of interest (when such a situation arises) is not clearly and consistently required in relation to all parliamentary activities. PACE also has no mechanism for the systematic, periodic declaration of interests, income and assets – a system which is becoming standard practice in many Council of Europe member states. Moreover, while PACE has played a key role in promoting the need to regulate and increase the transparency of lobbying and third party contacts, the latter are not properly and comprehensively regulated as regards PACE itself.

2. The supervision by the President of the Assembly alone, and – to a very limited extent – by the various committees, is based on minimum arrangements which do not provide sufficient guarantees for it to be effective in practice. Decision-making is excessively discretionary. For instance, it is left entirely to the President – he may seek the advice of one of the committees – to decide when “serious or repeated breaches” have been committed and to determine for how long a parliamentarian is to be deprived of speaking rights or the ability to sign a text (e.g. a motion or a declaration). Overall, the supervision has been a particularly weak aspect of PACE’s arrangements: no sanction has been recorded so far in relation to integrity-related standards. It is also clear that under the current arrangements, the president him/herself cannot be held to account for his/her own breaches of the rules. The present expertise recommends carrying out a far-reaching reform of the supervisory mechanism by establishing one or more oversight body/ies provided with the necessary means, procedural tools and operational independence to perform their functions effectively.

3. The rules on immunity of PACE members concerning both non-liability and inviolability cannot be invoked to shield corruption-related offences. To avoid, *inter alia*, that its rules be misunderstood, PACE needs to adopt a set of criteria to be applied when deciding on the lifting of a member’s immunity.

4. Overall, members of PACE are reportedly little aware of the existing integrity standards. PACE needs to show greater determination in raising members’ awareness and providing training and guidance on the implications of the rules of conduct.

I. Introduction

Background and purpose

5. On 13 February 2017, the Chairperson of the Committee on Rules of Procedures, Immunities and Institutional Affairs of the Parliamentary Assembly (hereinafter referred to as "the Rules Committee"), Ms. Liliane Maury Pasquier (Switzerland, Socialist Group (Socialist Group)), requested GRECO's² expertise to assess the Code of Conduct of members of the Parliamentary Assembly, notably as regards the enforcement system and the sanctions regime, as well as the rules relating to lobbying. On 27 January 2017, the Bureau of the Parliamentary Assembly of the Council of Europe (PACE) had decided on a three-step approach in response to allegations of corruption at PACE³.

6. This expertise⁴ is meant to advise the Rules Committee in the framework of work on a report on "Follow-up to Resolution 1903 (2012): promoting and strengthening transparency, accountability and integrity of Parliamentary Assembly members" (rapporteur: Mr. Ian Liddell-Grainger, United Kingdom, European Conservatives Group). It is based on the Council of Europe's anti-corruption standards and GRECO's methodology. It takes into account the relevant PACE documents, the exchange of views held by GRECO's President with the Rules Committee on 26 April, the information available from open sources, as well as discussions held by GRECO Secretariat with members of the PACE Secretariat and two secretaries of political groups.

General situation of the Parliamentary Assembly of the Council of Europe (PACE) and specific risk factors

7. As one of the two statutory organs of the Council of Europe⁵, PACE brings together 324 members from the parliaments of the Council of Europe's 47 member states. PACE's tasks and powers represent an important share of the Council of Europe's overall work in the promotion of human rights, democracy and the rule of law and the preservation of peace and stability in a continent of more than 800 million inhabitants. PACE plays a key role in several institutional functions of the Organisation, such as the elections of the Human Rights Commissioner, of the judges of the European Court of Human Rights and of the Secretary General. It also plays an important role in promoting human rights, democracy and the rule of law in Europe, by translating these principles into concrete proposals for action by the Committee of Ministers, including in the area of combating corruption.

8. It would be erroneous to assume that because of the specificities of its (mainly Human Rights-related) activities, the Council of Europe and its organs are not exposed to pressures by economic or business interests (whether public or private). The Organisation's activities on certain issues related to human rights, democracy and the rule of law are taken into account in the decision-making of other international actors which may have direct economic implications, or for the purposes of international ratings and investment risk assessments.

9. PACE – like any other national or supra-national parliamentary assembly – is not immune to corruption risks. Its reports (e.g., in the context of monitoring of countries' compliance with the commitments they entered into when joining the Council of Europe) on country or region-specific situations have a direct impact on the human rights, the political, the social and the economic standing of these countries or regions and, as such,

² GRECO is the Council of Europe anti-corruption body which monitors compliance of its members with the Council of Europe's anti-corruption standards. It launched, in 2012, a Fourth Evaluation Round devoted, *inter alia*, to the prevention of corruption in respect of members of parliament. See www.coe.int/greco

³ See <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6514&lang=2&cat=13>

⁴ Rule 21.3 of GRECO's Rules of Procedure reads as follows: "GRECO may provide expertise within its field of competence to Council of Europe bodies and to other bodies if considered appropriate."

⁵ Article 10 of the Statute of the Council of Europe

are closely followed by various sectors of society, by the media and by policy makers. PACE also plays a key role when observing elections in member States under monitoring or post-monitoring procedures, giving “legitimacy” or otherwise to their outcome with an obvious impact on the democratic standing of the country concerned. In addition, PACE work on topical and not always consensual societal issues, combined with the absence of comprehensive regulations on lobbying, opens the door to possibilities of undue pressure and opportunities for corruption. Finally, the absence of financial transparency of PACE political groups (whose accounts are not public – see below for more details) combined with the fact that they are not required to declare external sources of funding is an area of concern that will need to be addressed.

10. Corruption allegations in PACE are not new. In 2012 and in the following years, allegations that corrupt or improper practices were used to influence final conclusions on the monitoring of elections and of specific human rights issues were publicly voiced by civil society representatives. These allegations were repeated in 2016⁶. In the same year, prosecutors in a member state launched a criminal investigation on a former PACE member and political group leader accusing him of receiving a substantial amount of money from another country’s PACE member to allegedly steer the vote on a PACE Report. The judicial procedure is ongoing.

11. Pending the outcome of this judicial procedure, during a TV interview in November 2016, reference was made to substantial amounts of money agreed upon, and partly received in the form of donations, and of compensation for consultancy services by a foundation and a company respectively, linked to a former PACE member from an NGO headed by another country’s PACE member. This (allegedly business) arrangement was reportedly not declared by the PACE members concerned in the context of their PACE conflicts of interest obligations.

12. PACE members are subject to both their national and their PACE integrity frameworks. Indeed, a number of activities they carry out, if not properly regulated and monitored, may give rise to opportunities for corruption. These include influences through organisations created to foster friendly bilateral relations between states; parliamentarians’ parallel activities or post-mandate occupations in the form of consultancy or lobbying work to the benefit of third countries; hospitality and related gifts.

13. These kinds of allegations do impact PACE and the Council of Europe as a whole in terms of reputation, trust, credibility and authority. It is for this reason that all steps need to be taken to prevent any potential instances of corruption from occurring in the future. As the Secretary General noted in his letter to Mr Agramunt on 24 March 2017, “it is paramount that all of [PACE] members act with integrity and are perceived as doing so by the wider public”⁷.

II. General statutory arrangements and transparency of PACE’s work

14. As indicated earlier, PACE consists of members of the national parliaments designated by their national Parliaments. PACE’s work is mainly regulated by the Statute of the Council of Europe and its Rules of Procedure (RoP). In accordance with articles 22 and 23 of the Statute, PACE is a consultative assembly and the deliberative organ of the Council of Europe. It shall debate matters within its competence under the Statute and present its conclusions, in the form of recommendations, to the Committee of Ministers. It shall also discuss and may make recommendations upon any matter referred to it by the Committee of Ministers with a request for its opinion.

⁶ See the various reports produced by the European Stability Initiative (ESI) between May 2012 and December 2016, available at <http://www.esiweb.org/index.php?lang=en&id=262>

⁷ See <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016807029e2>

15. PACE holds one continuous session per year, divided in four part-sessions. Extraordinary sessions can be organised upon the initiative either of the Committee of Ministers or of the President of the Assembly after agreement between them. The Standing Committee acts on the Assembly's behalf between plenary sessions. It is composed of the President and Vice-Presidents of the Assembly and the chairs of the political groups, national delegations and Assembly committees, totalling some 60 parliamentarians from all Council of Europe member states.

16. As a rule, sittings of the Assembly are public (unless decided otherwise for certain items) and broadcasted live on the Internet. Reports are made available on-line at least two weeks before the opening of the part-session. Voting results, including individual members' votes, are published on-line immediately at the end of the debate concerned. Committee meetings are held *in camera* (closed doors) unless the committee concerned decides otherwise. The only texts which shall be made public are the reports approved by the committee, and statements issued under the responsibility of the chairperson. In practice, non-governmental organisations – whether or not they enjoy consultative status with the Council of Europe – can attend committee meetings on a case by case basis, when authorised by the chairperson to do so. PACE's website allows to retrieve for each PACE member, past or current, the list of reports and committee opinions, motions, written declarations and questions made/submitted, as well as his/her votes on adopted texts.

III. "Code of Conduct for members of the Parliamentary Assembly" and other initiatives

17. As noted above, PACE's composition is unique in that it comprises members who are also members of national parliaments. As such, these members are subject, where they exist, to a set of integrity standards which are, however, very diverse. Accordingly, while acknowledging that in some respect these national integrity standards may apply to individual PACE members when they perform work in the context of PACE, PACE should - and does - have a specific set of standards relating to the integrity, accountability and transparency of PACE members. PACE transmitted to GRECO a document from January 2015 entitled "Code of Conduct for members of the Parliamentary Assembly".

18. This document is actually a compendium of different texts and provisions (adopted between 2007 and 2013 and subsequently amended) most of which have been incorporated in PACE's RoP. It is available on-line as a separate document⁸; therefore, those involved in interactions with PACE and its members, and the public at large may thus find out more easily which conduct they can expect from PACE members and which possible restrictions may apply to their relations. The content of the compendium is as follows:

- Rule 13 of the Rules of Procedure – Code of conduct for members of the Parliamentary Assembly
- Code of conduct for members of the Parliamentary Assembly, 2012
- Procedure for registering gifts and similar benefits of a minimum value of € 200
- Transparency and members' declaration of interest, 2007 (Rule 13 of the RoP)
- Code of conduct for rapporteurs of the Parliamentary Assembly, 2011
- Conduct of members of the Parliamentary Assembly during Assembly debates, 2013 (Rule 22 of the RoP)
- Special rules on the title and prerogatives of Honorary President of the Parliamentary Assembly of the Council of Europe (extract), 2013
- Special rules on honorary association with the Parliamentary Assembly (extract), 2013
- Guidelines on the observation of elections by the Parliamentary Assembly (extracts)

⁸ Available in English and French at http://website-pace.net/en_GB/web/apce/procedure

19. The compendium contains principles and rules which regulate the general conduct of PACE members and place an emphasis on a series of fundamental principles such as integrity, honesty, primacy of the public interest. They also address specific matters, including the management of conflicts of interest, reactions to and declaration of gifts and other benefits, (mis)use of information, etc.

20. That said, the approach followed by PACE lacks coherence and consistency, making it very difficult to understand the system and jeopardizing its effective implementation in practice.

21. First of all, when the RoP refer in Rule 13 to a code of conduct, requiring all members of the Assembly to comply with it (Rule 13.1), they refer to the above-mentioned code from 2012 (second bullet above), which is appended to the RoP (Appendix II), and not to the compendium of 2015 and the other texts contained therein. Likewise, when Rule 13.2 draws attention to the provisions governing transparency and declarations of interest, a footnote only refers to the general regime of 2007 concerning candidate rapporteurs. By placing such emphasis on one or two sets of rules, the RoP conveys the wrong message.

22. The interaction between the various texts is unclear and may give rise to confusion. Different sets of standards have been adopted successively to deal with various categories of parliamentary activities/functions. For instance, although the "Code of conduct for members of the Parliamentary Assembly" (2012) is normally applicable to all PACE members, "rapporteurs" are also subject to an additional "Code of conduct for rapporteurs of the Parliamentary Assembly" adopted in 2011. Since the two texts deal with the same or similar issues, at times in different ways, it is unclear which text applies in which situation. This makes it unnecessarily complex for parliamentarians themselves to determine which standards to apply in which situation.

23. Secondly, other relevant texts appear to be missing in the compendium. Election observers have their own Guidelines of 2004 (last updated in 2015)⁹ which include in an appendix a form for the declaration of conflicts of interest, gifts and other benefits. For some reason, however, this form does not appear in the compendium (only the Guidelines are reproduced). In addition, as pointed out later in the present report, in several respects (e.g. retention period, receiving entity in PACE, publicity) this form is actually different from the one adopted in January 2013 under the general mechanism applicable to all PACE members, which appears on page 9 of the compendium. It should be noted however that, during the discussions, the interlocutors met indicated that the form for the declarations of gifts related to election observation missions and the one for the declaration of gifts set up under the code of conduct have different purposes, are interrelated and not contradictory.

24. During the discussions, reference was made to an earlier text from 2001 which is specific to the Monitoring Committee: the "Code of Conduct for co-rapporteurs on the honouring of obligations and commitments by member States of the Council of Europe"¹⁰. It contains two sets of provisions: one on procedural aspects and another one on ethical principles for co-rapporteurs. By remaining a distinct set of rules not included in the RoP¹¹ or the compendium, it is unclear whether they interconnect with other texts which could be equally applicable, including the general enforcement mechanisms.

⁹ <http://website-pace.net/documents/10643/436801/GuidelinesElectionObservation-EN.pdf/81adc9f1-f750-4336-9a24-952da2f87506>

¹⁰ It appears in appendix H of Doc. 9198 of 11 September 2001 on "Progress of the Assembly's Monitoring Procedure (2000-2001)", which can be found at <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=9472&lang=EN>

¹¹ Annex VII reproduces part of the above document and Resolution 1115, as well as the updated terms of reference, but not the full text of the said appendix H (notably Part B of Appendix H appears to be missing).

25. Last but not least, the current integrity standards are not effective in practice (see Chapter VII below). It is clear that a single, comprehensive and more coherent regulatory framework on integrity standards, which would replace the various scattered texts, would increase the level of understanding and awareness of these standards by those who are meant to implement and comply with them. It would also contribute to limiting unnecessary doubts when it comes to their enforcement.¹²

Improvement recommended:

to consolidate and harmonise the various codes and guidelines on the conduct of PACE members in a single enforceable set of rules, so as to clarify the requirements and facilitate their effective implementation, and to provide for the regular review and update of these rules.

IV. Conflicts of interest

26. Members of PACE are under a general duty to avoid conflicts of interest and they shall not use their office for private gain. The requirement – often accompanied by a duty to disclose such situations *ad hoc* – is established in different provisions: paragraphs 5.5, 5.6, 8 and 12 of the Code of conduct for members of the Parliamentary Assembly (2012); paragraphs 19 and 21 of the Guidelines on the observation of elections by the Parliamentary Assembly; paragraph 1.1.1 of the Code of conduct for rapporteurs of the Parliamentary Assembly (2011), which largely draws inspiration from the Code of conduct of 2001 for rapporteurs of the Monitoring Committee¹³. In addition, pursuant to rule 13 of the Rules of Procedure, all candidate rapporteurs have to make an oral declaration of interests “which might be considered relevant or conflicting with the subject of the report or with the country concerned by the report at the time of appointment in committee”. It is then recorded in the minutes of the meeting. The rule – similarly to the Code of 2012 – requires notably that members should disclose a conflict of interest before they take the floor in a committee or in plenary. According to their Guidelines, candidates for membership of an election observation sub-committee must sign a written declaration on any possible conflict of interest in relation to the country where they will observe the elections.

27. The existence of rules addressing a broad range of conflicts of interests, requiring their resolution, and providing for *ad hoc* disclosure is a welcome feature of PACE’s integrity framework. However, the rules would benefit from dealing consistently with potential and actual conflicts of interest. In addition, the rules usually omit to explicitly spell out the consequences when a conflict of interests has occurred or the consequences of its disclosure, raising questions about their effective implementation. It remains unclear whether the communication of an interest and/or a possible conflict, as such, completely protects the PACE member from any disciplinary or other proceedings (see also below under the heading “supervision”). Is the PACE member’s declaration made for information purposes only and is the right to participate in a decision or activity retained? Does s/he have to withdraw or can s/he be asked to do so once his/her “case” has been discussed?

28. The *ad hoc* disclosure of possible conflicts of interest is not always clearly and consistently required. According to article 2.1 of the Rules for the application of Rule 13

¹² In GRECO’s Fourth Evaluation Round reports adopted to date, the introduction of a code of conduct for parliamentarians, or improving the general approach followed by the existing rules, was often one of the starting points recommended – it concerned more than 40 GRECO member countries. Specific recommendations on the consistency, uniformity and overall quality of the rules already in place were addressed in particular to Ireland (§50, recommendation i of the report), Italy (§46, recommendation i), Latvia (§38, recommendation iii), Malta (§31, recommendation i), Poland (§40, recommendation ii) and Portugal (§47, recommendation ii).

¹³ This provides that for the sake of neutrality “they should not have any interests – political, commercial, financial or other – in [the state undergoing monitoring] at personal, professional or family level”.

of PACE's Rules of Procedure¹⁴ "[b]efore speaking in committee or in plenary session on a subject on which they have a professional, personal, financial or economic interest which might be considered relevant or conflicting, members are encouraged to make ad hoc declaration of interest" (*emphasis added*). By using the word "*encouraged*"¹⁵, this rule appears to contradict the stricter language of paragraph 8 of the Code of conduct for members of the Parliamentary Assembly of 2012 ("shall be disclosed"). It is also at variance with the texts applicable to rapporteurs and election observers. This is an anomaly which needs to be corrected, especially given the fact that PACE members may play a lead role in various other positions, for instance, as chairpersons of political groups, of delegations or of committees.

29. Declarations concerning conflicts of interests are made under the sole responsibility of each PACE member. It is considered sufficient for him/her to merely state that s/he has no interests conflicting with the intended responsibilities. The rules do not provide for ways to object at a later stage to a PACE member, whose situation could have subsequently changed or who would have made a false statement, or for recusal or replacing him/her, such situations being ultimately handled politically. This situation is different from the declaration duties for rapporteurs which are normally sanctionable – see the sanctions described in Section VII below.

30. Lastly, it should be pointed out that if PACE introduces a reliable system for systematically publishing information on assets, income, liabilities and interests when PACE members take up their duty – as recommended in Section V below – the future rules on conflicts of interest would mostly have to focus on the ad hoc disclosure in specific situations.

Improvement recommended¹⁶:

to review the rules on conflicts of interest to (i) increase their consistency and spell out clearly the consequences of disclosure and false statements and (ii) ensure that all PACE members (irrespective of their role) are required to make ad hoc disclosures as and when conflicts of interest arise.

V. Declaration of assets, income, liabilities and interests

31. There is no overall system for the declaration of assets, income, and interests that applies as soon as a parliamentarian becomes a member of PACE, or within a reasonably time shortly thereafter (e.g., one to three months, or by the first part-session).

32. As far as general interests are concerned, there is thus no information on professional activities, financial involvement and further mandates or leading responsibilities exerted in a business entity, an entity representing certain political or national interests or not-for-profit organisation available from the beginning of the mandate in PACE (whereas such mechanisms exist in an increasing number of national parliaments). Such information is an essential complementary element for the management of conflicts of interest as it would – in the case of PACE – support the proper handling of potential conflicts of interest when they arise in connection with a given activity in PACE (see Section IV above). The publicity of such information also

¹⁴ Resolution 1554 (2007).

¹⁵ This word is also used in the Member's Handbook :

http://website-pace.net/documents/10643/375483/APCE_MembersHandbookE.pdf/

¹⁶ GRECO addressed recommendations to improve the rules on conflicts of interest (concerning for instance the need to provide for ad hoc disclosure and the consequences of disclosures, the consistency of rules etc.) to more than 20 countries in the Fourth Evaluation Round. See for instance the reports on Austria (§27, recommendation iii), France (§35, recommendation iii), (Georgia §44, recommendation iii), Germany (§55, recommendation ii), Montenegro (§38, recommendation ii), Poland (§41, recommendation iii), Romania §29 (recommendation iii), Sweden (§52, recommendation ii), United States of America (§63, recommendation iii).

constitutes a further incentive for a parliamentarian to disclose a conflicting situation when it arises.

33. GRECO has strongly insisted on the need to ensure the soundness of such declaratory arrangements for the robustness of national parliamentary integrity policies. The information to be disclosed needs to be (i) accurate – especially regarding elements of income and occupations in profit or non-profit organisations, and ultimate beneficial ownership interests held domestically or abroad; (ii) updated on an on-going basis; and (iii) complemented by information on close relatives. These declaratory arrangements can contribute significantly to transparency with respect to elected representatives, to the dissuasion of corrupt behaviour and to the better management of conflicts of interest. Moreover, in the particular context of PACE, discussions with various interlocutors highlighted how important it would be that information to be disclosed does not only cover MPs’ national interests but also their interests in relation to other states. As travelling to other countries is much linked to the tasks of PACE members, such information would also have to be included in the declarations.

34. This is one of the areas where PACE could actively cooperate with national parliaments and designated supervisory bodies to foster declaratory mechanisms. Many GRECO member states have been given recommendations to improve their national systems¹⁷ and PACE could thus usefully contribute to these efforts through its own reforms in this area.

Improvement recommended:

(i) to establish a common system applicable to all PACE members for the declaration of financial interests, income, gifts and outside activities that is adequate to reflect the information required by PACE's integrity framework; and (ii) to consider widening the scope of disclosure to include information on spouses and dependent family members (it being understood that such information would not need to be made public).

VI. Prohibition or restriction of certain activities

Gifts and other benefits

35. Gifts or benefits are subject to restrictions or prohibitions (depending on the case) through various provisions applicable to different parliamentary functions. For the sake of clarity, they are summarised in the following table:

| | Code of conduct of 2012 for parliamentarians | Code of conduct of 2011 for rapporteurs | Guidelines on the observation of elections | Code of conduct of 2001 for Monitoring co-rapporteurs |
|-------------|---|---|---|--|
| Prohibition | Para. 11 Not accepting “any fee, compensation or reward intended to affect the conduct | Para: 1.1.3, 1.1.4: Not accepting “any reward, honorary distinction, decoration, favour, | Guidelines 18, 20, 21, 25: Members of ad hoc committees a) must comply with | Under the principle of neutrality: Not accepting “any reward or honorary distinction from the authorities of that |

¹⁷ For further information on the various gaps identified in the national disclosure systems, for instance concerning the categories and accuracy of data to be disclosed, the need for a unified format, public access to declarations, the clarity of concepts etc., see for instance the Fourth Evaluation Round reports on Albania (\$48, recommendation iv), Armenia (\$228, recommendation xvii), Azerbaijan \$40, recommendation iv), Austria (\$55, recommendation vi), Belgium (\$46, recommendation iii), Czech Republic (\$70, recommendation iv), Denmark (\$55, recommendation iii), Germany (\$81, recommendation iii), Greece (\$52, recommendation viii), Hungary (\$74, recommendation iv), Iceland (\$50, recommendation iii), Ireland (\$81, recommendation iii), Luxembourg (\$40, recommendation ii), Netherlands (\$55, recommendation ii), Norway (\$72, recommendation iii), Spain (\$56, recommendation iii), Switzerland \$67 (recommendation iv), “the former Yugoslav Republic of Macedonia” (\$248, recommendation xvii), United Kingdom (\$41, recommendation ii).

| | | | | |
|----------------------------------|---|---|--|---|
| | as members, particularly in their decision to support or oppose any motion, report, amendment, written declaration, recommendation, resolution or opinion" "Avoid accepting an inappropriate payment or gift" | substantial gift or remuneration from a government or governmental or non-governmental organisation, a pressure group or an individual in connection with activities carried out in the exercise of their duties" Refraining from any act which may cast doubt on neutrality | the Code of 2012 b) "may not request or accept any fee, compensation or reward intended to affect the conduct" and c) must "avoid receiving inappropriate payments or gifts" Chairpersons must also comply with the 2011 Code for rapporteurs "over and above" (French: "en sus") the 2012 Code | state"; NB: the French version reads as follows: « ne pas accepter la moindre gratification ou récompense, même honorifique (...)» |
| Restriction or other requirement | Para. 14 Any gifts or similar benefits (such as travel, accommodation, subsistence, meals or entertainment expenses) are registered with the Secretariat when they exceed a value of 200 euros and are accepted in the performance of duties as Assembly members | | Guideline 18: Members of ad hoc committees must comply with the Code of 2012 Guideline 21: Candidate members of ad hoc committee: para.14 of the general Code of 2012 is applicable for gifts / benefits above 200 euros which were accepted in the last 24 months from the authorities of the country concerned, either directly or indirectly | |

36. The Bureau of the Assembly adopted in January 2013 (reproduced on page 8 of the compendium of 2015) a procedure for the declaration of gifts and other benefits within one month following receipt. A standard form was adopted, which requires that the beneficiary, the donator and information on the benefit in question and the estimated value be indicated. The completed forms are kept by the Secretariat for a period of five years. Access to the register is public and forms can be made available to anyone upon request. As pointed out in Section VII, two declarations have so far been made, raising questions about the effectiveness of the system.

37. The Guidelines on the observation of elections establish further declaration requirements concerning gifts and other benefits (as well as interests). The specific declaration form, which must be used, actually does not appear in the Compendium of 2015 - it is to be found in an annex to the said Guidelines. The form states that once it has been filled, it is available to the Bureau when it approves the composition of ad hoc committees. Filing the form is a pre-condition to engaging in election observation activities. The PACE member concerned is invited to tick one of two boxes corresponding to the following situations: a) "I also declare that I have not accepted in the last twenty four months gifts or similar benefits, of a value in excess of 200 €, from the authorities of the country concerned, either directly or indirectly"; b) "I also declare that I have registered with the Secretariat gifts or similar benefits, of a value in excess of 200 €, that I have accepted in the last twenty four months from the authorities of the country concerned, either directly or indirectly".

38. While at first sight these arrangements appear comprehensive, a number of consistency issues and contradictions exist. For instance:

- various terms are used in the different texts, in some cases even when they deal with the same form of benefit; in the absence of a systematic approach and further written guidance or clear definitions, it is difficult to understand exactly what is prohibited, what must be declared, under which circumstances, and whether special support provided for parliamentary work and benefits which are meant for a third party (natural or legal person) also fall under the restrictions or prohibitions¹⁸;
- contradictions arise occasionally even within a given text: para. 11 and 14 of the code of 2012 prohibit an “inappropriate payment or gift”, while, at the same time, appear to legitimise any “gifts or similar benefits” provided they are declared when their value exceeds EUR 200;
- in accordance with para. 11 of the code of 2012, financial benefits in whatever form (“fee, compensation, reward”) are prohibited but only where these are “intended to affect the conduct as members”; in the absence of further guidance, it remains unclear what kind of financial benefits would be legitimate and if these must also be declared under para. 14;
- all types of gifts and other benefits are not captured in the same way. For instance, only when a PACE member performs the functions of a rapporteur or election observer or “co-monitorer” are intangible benefits such as honorary distinctions, decorations and favours regulated and actually prohibited (for the time they perform such functions). Other PACE members could also be confronted with similar situations;
- PACE members participating in a committee responsible for election observation must comply with the requirements of three different texts which may be difficult to reconcile and implement in concrete situations. The precise extent of the obligations of the chairpersons of this committee is particularly difficult to determine;
- according to the current wording of the code of 2012 only two options are possible for gifts: either to keep a gift without declaration (less than 200 EUR) or to declare it and keep it. The rules do not contemplate a situation in which gifts must be returned (or repaid with an equivalent amount of money) or situations where a gift can, or should, become the property of PACE / the Council of Europe, for instance for all protocol gifts and for gifts which cannot be returned or valued.

39. The existence of various forms¹⁹ for declaring gifts and other benefits - one for all PACE members whenever they accept such gifts and benefits, and one specifically for election observers before they undertake such tasks - calls for special attention. The declaration system under the “Guidelines on the observation of elections” is quite unique in that it captures also the situation of new PACE members and of gifts which may have been offered at an earlier stage, also in connection with domestic parliamentary functions.

40. That said, the current system is completely silent on publicity, retention periods, and who collects the information. Moreover, the declaration duty can easily be circumvented if a PACE member has accepted even substantial benefits from the country undergoing observation and s/he has not (yet) declared those to PACE: none of the two boxes would have to be ticked. It would also be desirable to ensure that the expression “from the authorities of the country concerned, either directly or indirectly” covers those benefits emanating from intermediaries such as parliamentarians themselves, lobby organisations and organisations promoting bilateral relationships sometimes headed by former MPs. This sort of practical guidance and examples would deserve to appear in accompanying written guidance.

41. Last but not least, the procedures for declaring gifts and similar benefits under the general regime of January 2013 and under the “Guidelines on the observation of elections” exclude from the declaration requirement any benefits the costs of which are

¹⁸ This is particularly the case for “inappropriate payments”, “inappropriate gifts”, “fees”, “rewards”, “favours” “compensation”.

¹⁹ These forms reflect different situations with different rules.

borne by national authorities, “on condition that these benefits are expressly mentioned in the official programme”²⁰. This exclusion, which appears only in footnotes and could easily be overseen, raises questions: it is indeed doubtful that in practice the programme of an event, official journey, election monitoring mission or longer fact-finding assignment, would provide a satisfactory alternative to a declaration system (e.g., certain items of hospitality may not appear or be described in a way that makes it possible to assess all values above EUR 200, the publicity/availability of programmes would have to be ensured in the same way as a declaration of gifts and benefits – indicating the names of donors and beneficiaries, retention period of five years, etc.).

42. A coherent and robust set of rules relating to gifts and other benefits need to be developed, based on a clear prohibition in principle, with a few exceptions where certain (mainly protocol-related) gifts or benefits can be accepted²¹. Since the establishment in 2013 of a register for gifts in excess of EUR 200, the system has been rather ineffective in practice (see Section VII). In addition, if the information on acceptable expenses borne by third parties was published on-line in the future, it would contribute to increasing the overall transparency and the level of public control, and thus the effectiveness of declaratory obligations. Cross-checking data would also be easier for all those interested.

Improvement recommended:

(i) as a matter of priority, to introduce a consistent and stricter set of rules, based on a clear prohibition in principle, and adequate definitions, concerning the acceptance of gifts, travel, hospitality and other benefits, as well as honorary distinctions and other rewards and (ii) to develop robust procedures for the reporting and valuation of gifts, and the return of those which cannot be accepted.

Incompatibility and accessory activities ; post-employment restrictions

43. In accordance with article 25 (a) of the Council of Europe’s Statute, a PACE member shall not at the same time be a member of the Committee of Ministers. This is the only general incompatibility imposed. PACE also has the possibility to ask a national parliament to recall one of its members, and to ask a parliamentarian to resign in other circumstances²². Since PACE is composed of members of national parliaments, it is understood that they are also subject to rules on incompatibility and accessory activities established in domestic rules, which may vary from country to country. Moreover, the Code of conduct of 2012 for PACE members (principle 10) provides that they may not “act as paid advocate [in French: *promoteur rémunéré*] in any work of the Assembly”. This restriction – which appears at times also in the rules of national parliaments – is a crucial measure to counter the risks of lobbying “from within”. However, the Code does not spell out how such a situation would be dealt with.

²⁰ This text appears in footnote 3 on page 8 of the compendium and in footnote 2 of the form appended to the Guidelines.

²¹ GRECO’s Fourth Evaluation Round reports have addressed a number of recommendations for countries to introduce rules on gifts or to improve those already in place, as regards for instance the types of benefits covered, the clarity and consistency of regulations and concepts, procedures for declaration/valuation/disposal etc. See for instance the reports on Armenia (§226, recommendation xvi), Austria (§33, recommendation iv), Cyprus (§60, recommendation iv), Czech Republic (§49, recommendation iii), Finland (§45, recommendation iii), France (§39, recommendation iv), Greece (§35, recommendation iv), Italy (§55, recommendation iii), Romania (§32, recommendation iv), Slovak Republic (§39, recommendation iii), Sweden (§55, recommendation iii), “the former Yugoslav Republic of Macedonia” (§48, recommendation ii).

²² It is accepted that a mandate in PACE is compatible with functions such as a minister (or even Prime Minister) in his/her country except for the one responsible for foreign affairs. In practice, PACE has also called for members to resign where they have accepted specific Council of Europe posts, for instance where they have been elected members of the European Committee for the Prevention of Torture; mentioned in Report 9718 on Immunities of Members of the Parliamentary Assembly (25 March 2003), para.58.

44. The various provisions appearing in the compendium of 2015 do not impose strict “post-employment” restrictions, for instance in the form of so-called “cooling-off” periods which would limit – *inter alia* – the vulnerability of PACE members to improper offers or even bribes in the form of professional prospects. PACE members are thus free to take up any professional or other activity after their term. The Code of conduct of 2012 for members of the Parliamentary Assembly (paragraph 16) only establishes a (minor) restriction on the use of certain privileges as honorary members: “Former members of the Parliamentary Assembly involved in representing and fostering another person’s or entity’s interests in the Parliamentary Assembly shall not, throughout the period of such activity, benefit from the prerogatives of the honorary associates or the Honorary President of the Parliamentary Assembly as far as the distribution of documents and access to the buildings and meeting rooms are concerned.”

45. Publicly available information²³ alleges that it is not uncommon for PACE members themselves to exercise - in parallel or after the mandate - some sort of consultancy or lobbying activity, as part of a business activity or a non-profit organisation. It would appear that the privileged access to the Council of Europe premises and PACE documents enjoyed by honorary (former) PACE members is sometimes a source of concerns owing to the risk of misuse and difficulties in implementing restrictions. GRECO has repeatedly insisted on the importance of a consistent and effective framework to deal with incompatibilities, accessory activities and post-employment restrictions, depending on the overall objectives pursued by the rules and laws in place and on specific risks or problems reported in practice²⁴.

Improvement recommended:

(i) to ensure the effectiveness of the prohibition on PACE members engaging themselves in remunerated advocacy and lobbying activities and (ii) to introduce post-mandate employment restrictions, including a “cooling-off period” after a member of parliament ceases to be a PACE member and – in parallel – to abolish the automatic free access to premises and documents enjoyed by honorary PACE members.

Financial interests; contracts with State authorities

46. Throughout the Fourth Evaluation Round, GRECO has examined any possible measure in place which would prohibit or restrict the possibility for members of parliament to hold financial interests in certain business entities and sectors, or to enter - either directly or through a business interest - into contracts with public bodies. These can be additional safeguards against parliamentarians using their influence or position as PACE members or when further roles are associated with a parliamentary mandate (for instance when a parliamentarian sits on the board of a publicly owned company or a mixed public-private partnership).

47. Because PACE is composed of representatives of the national parliaments, its members need to comply with possible restrictions applicable domestically. Owing to the specificities and the nature of its activities, PACE is probably less exposed to risks connected with domestic interests (a PACE member would not deal with a report concerning his/her own country). That said, problematic situations could arise with regard to a PACE member involved, for instance, in a fact-finding mission in a country with which s/he – or his/her close relative – has financial interests and contractual

²³ See, in footnote 6, the reports published by ESI, for instance those of May 2012 and November 2013.

²⁴ See the Fourth Evaluation Round reports on Armenia (§59, recommendation iii), Azerbaijan (§34, recommendation iii), Estonia (§53, recommendation v), Greece (§41, recommendation v), Italy (§66, recommendation iv), Romania (§39, recommendation v), Turkey §65, recommendation iv), United States of America (§83, recommendation iv).

relations. Such matters would normally be taken care of by the declaratory obligations and rules on conflicts of interest recommended in Sections IV and V above.

Third party contacts and lobbying

48. PACE itself has played a key role in promoting the need to regulate and increase the transparency of lobbying activities.²⁵ It is noteworthy that, to date, it has not itself established a comprehensive set of rules and arrangements in this area. Most of the interlocutors met emphasised the need to review the current situation. It was pointed out that, for instance, the premises of PACE are accessible to persons from the outside who have been sponsored by a parliamentary delegation, a permanent representation or other persons and bodies linked to the Council of Europe. There is thus a broader variety of persons and organisations than just International NGOs enjoying participatory status with the Council of Europe, holding contacts and organising events in the premises of the Council of Europe during PACE sessions. PACE members and the Secretariat do not always have the means to properly identify who these outside interlocutors are when they meet them on Council of Europe premises.

49. On 22 March 2017, the Committee of Ministers adopted Recommendation Rec(2017)2 to member States on the legal regulation of lobbying activities in the context of public decision making²⁶. Whilst reiterating the principle of freedom of expression, political activities and participation in public life, this recommendation provides guidance for the design of a register and rules of conduct concerning lobbying activities²⁷, which could be easily adapted to PACE. A suggestion could be to link automatically the delivery of access badges to the registry and/or to the webpage of the parliamentarian(s) (to be) met.

50. As for the conduct of PACE members themselves, the only arrangement applicable to all of them concerns situations where they themselves engage in some form of lobbying²⁸. Other than that, in the compendium of 2015, there are no generally applicable rules on how PACE members engage with lobbyists and other third parties who seek to influence the work of PACE. There is one exception in respect of those acting as rapporteurs who may “not (...) seek or accept instructions from any government or governmental or non-governmental organisation, or pressure group or individual” (item 1.1.2 of the “Code of conduct for rapporteurs of the Parliamentary Assembly”). Besides pointing to this example of inconsistency in PACE’s rules, it is clear that more detailed provisions applicable to all PACE members need to be introduced on third party contacts. GRECO’s Fourth Round Evaluation reports have largely insisted on the need for parliaments to provide for proper rules on how parliamentarians engage with lobbyists and other persons seeking to influence their work²⁹. These may include giving PACE

²⁵ See Recommendation 1908 (2010) of the Parliamentary Assembly – reiterated by Resolution 1744 (2010) and Recommendation 2019 (2013); through which the Assembly recommends that the Committee of Ministers of the Council of Europe elaborate a European code of good conduct on lobbying.

²⁶ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680700a40

²⁷ - A register of lobbyists should be held;

- information held should include as a minimum: the name and contact details of the lobbyist; the subject matter of the lobbying activities; the identity of the client or employer, where applicable; other relevant information

- lobbyists should be expected to provide accurate and correct information on their lobbying assignment to the public official concerned, act honestly and in good faith in relation to the lobbying assignment and in all contact with public officials, refrain from undue and improper influence over public officials and the public decision-making process, avoid conflicts of interest.

²⁸ See the prohibition on acting “as paid advocate in any work of the Assembly” discussed above, under accessory activities.

²⁹ This subject matter, which has led GRECO to address recommendations to nearly all GRECO members, is discussed in the context of the adoption of codes of conduct, or as a specific subject-matter. See for instance the reports on Albania (§32, recommendation ii), Azerbaijan (§32, recommendation ii), Belgium §41, recommendation ii), Croatia §36, recommendation i), Denmark (§40, recommendation i), Germany (§33, recommendation i), Ireland (§50, recommendation i), Latvia (§34, recommendation ii), Lithuania (§64, recommendation iii), Netherlands (§36, recommendation i), Norway (§44, recommendation i), Poland (§40,

members the possibility – or provide for the obligation - to identify and understand the interests represented by such persons (diligence), to refuse certain offers which are reprehensible (e.g. accepting remunerated interventions and certain benefits), to register contacts with lobbyists, organisations, and businesses, or to describe on their respective websites contacts they have with lobbyists or, finally, to provide for a comprehensive disclosure scheme. The recent above-mentioned Recommendation Rec(2017)2 refers to a similar list of guidelines for officials³⁰.

51. Moreover, the composition of committees and the designation of rapporteurs by the committees is reportedly a matter of political negotiation among political groups. As indicated above, rapporteurs may not seek or accept instructions, including from any government or governmental or non-governmental organisation. This safeguard needs, however, to be broadened and apply also to PACE members other than rapporteurs whose responsibilities are equally relevant such as, chairpersons of committees and subcommittees, leaders of political groups, members of the Bureau and the President of the Assembly.

Improvement recommended:

to introduce a robust and consistent set of rules for PACE members on how to engage in relations with lobbyists and other third parties seeking to influence the parliamentary process, and in that context to extend to a broader range of PACE members the prohibition on instructions.

Misuse of confidential information

52. Rules are in place to guard against the misuse of confidential information. In particular, paragraph 13 of the general code of conduct of 2012 provides that “Members shall use information with discretion, and in particular shall not make personal use of information acquired confidentially in the course of their duties”. A similar requirement exists specifically for rapporteurs (Code of conduct for rapporteurs of 2011, item 1.2) who have an “obligation of discretion, in particular the undertaking not to make personal use of information acquired in the course of their duties”. There is always room for improvement³¹, but overall, these rules do provide adequate safeguards provided their implementation is effective and properly supervised (see also Section VII).

Misuse of public resources

53. Contrary to a national assembly or to the European Parliament, PACE does not pay out indemnities or other benefits to its members. Nor does it provide funding for the hiring of assistants. Material support consists mainly in office facilities and Secretariat support. PACE covers the costs (per diems) inherent to PACE members’ missions in member countries, with the exception of long term assignments, the costs of which are covered by the national parliament of the PACE member concerned. In accordance with the general code of conduct of 2012, members must use expense claims, allowances, facilities and services strictly in accordance with the relevant applicable regulations.

54. PACE supports financially the political groups. An annual budget of 740 000 euros is thus available to, and shared among the five political groups proportionally to their size.

recommendation ii), (Romania §42, recommendation vi), Serbia (§66, recommendation iii), Slovak Republic §25, recommendation i), Slovenia (§44, recommendation i), United Kingdom (§53, recommendation iv).

³⁰In particular:

- refusing or disclosing the receipt of gifts and hospitality offered by a lobbyist;
- how to respond to communications from lobbyists;
- reporting violations of the regulations or rules of conduct on lobbying activities;
- disclosing conflicts of interest;
- preserving the confidentiality of data.

³¹ It could be spelled out more precisely that the concept of “personal use” must not be understood narrowly but that it extends also to relatives and other closely related persons.

According to the rules on the auditing of accounts in respect of political groups' allocations adopted in 2012 by the Bureau of the Assembly, each group submits an annual financial statement on the use of those funds, which must be certified by two internal auditors. Usually, the Assembly Rapporteur General on the budget, appointed by the Rules Committee, prepares an analysis of the accounts presented in a very simplified balance sheet format³² and reports to the Bureau. These statements and the resulting PACE documents remain confidential and the groups are not required to report on further financial and other support (and their use) that they may possibly receive from sources other than PACE³³. Such additional sources of income are not regulated in any manner and this gap needs to be filled, notably to ensure greater financial transparency of the political groups³⁴.

Improvement recommended:

to review the accounting standards for political groups so that (i) they are required to report on permissible support from sources other than PACE's, including the use of such support, and to make the financial statements publicly available; (ii) the annual accounts of all political groups are submitted to the External Audit.

VII. Effectiveness, supervision and enforcement

Statistics

55. The following table sums up the information available (situation as of February 2017) which can contribute to a better understanding of the effectiveness (or otherwise) of the rules currently in place and the supervision / enforcement of those rules. It is based on data already made available to Mr. Liddell-Grainger for his report, complemented with additional references to the various texts and information gathered during discussions with various interlocutors:

| | Data on implementation | Data on supervision and enforcement in practice |
|---|---|---|
| Under the Code of conduct for members of the Parliamentary Assembly (2012) | | 1 member deprived temporarily of speaking rights (for aggressive conduct) |
| Article 4: seeking guidance | (not documented until now) | 0 case for all other requirements of the Code |
| Paragraph 9: oral disclosure of a conflict of interest by any member | 1 occurrence | |
| Under paragraph 14 of the Code of 2012: register of gifts in place since 2013 | 2 gifts declared 0 declarations on other forms of benefits (incl. travel, accommodation, subsistence, meals, entertainment etc.) | (not documented until now) |

³² It comprises 5 items of income.

³³ For instance, coming from the European Parliament whose own political groups on an ad hoc basis participate in the (co-) funding of activities of its PACE counterparts.

³⁴ In its Third Evaluation Round (2007-2011) which dealt *inter alia* with the transparency of party funding, GRECO has repeatedly highlighted the importance of consolidating the accounts (and public financial statements) of political parties so as to include all party-related entities including political groups. The transparency of political groups was sometimes addressed specifically; see the reports on Andorra (§80, recommendation i), France (§109, Recommendation ii), Germany (§108, recommendation v), Italy (§135, recommendation iii), Liechtenstein (§53, recommendation iv), Netherlands (§77, recommendation i).

| | | |
|---|--|---|
| Provisions on Transparency and members' Declarations of interest under Resolution 1554 (2007) | | |
| Article 1 : systematic for candidate rapporteurs | It is assumed that declarations are made systematically. No established routines and wording for registration in verbatim record often leads to information which is reportedly useless, seldom specific etc. (*) | No enforcement / sanction recorded to date |
| Article 2: ad hoc declaration by any member | Reportedly very rare (one example available) (*) | Idem |
| Article 3: removal of a rapporteur | 1 request | Rapporteur was confirmed |
| Under the Code of conduct for rapporteurs | (not documented until now) | (not documented until now) |
| Under the Guidelines for the observation of elections | (not documented until now) | (not documented until now) |
| Under the Code of conduct for co-rapporteurs of the Monitoring Committee (2001) | (not documented until now) As regards preliminary declarations of interests, all candidates systematically state that they have no interests (*) | One case known where it subsequently turned out that a rapporteur had significant interests in the country monitored No action initiated |
| Notifications of possible infringements received / handled by the President Notifications subsequently handled by the Rules Committee, advice provided to the President etc. | (not documented until now) | (not documented until now) |

(*) Information gathered during discussions with various interlocutors

56. The above data need to be read in conjunction with the allegations that hospitality and gifts have reportedly been quite common in relation to certain activities or countries with which PACE interacted. Overall, the available data raise questions about the effectiveness of the rules currently in place.

Supervision

57. The President of the Assembly has overall responsibility for maintaining order and decorum and the proper conduct of debates (Rule 22 of the Rules of procedure).

58. The Code of conduct for members of the Parliamentary Assembly of 2012 contains, under paragraphs 17 to 21, a general mechanism to ensure compliance with its various requirements. The overall responsibility for deciding on a breach of duty lies with the President of the Assembly, assisted as necessary by the Rules Committee. The President appears to have broad discretion with respect to assessing whether the Rules Committee

must be consulted and whether a member “is believed” to have infringed the Code (the Bureau is apparently not involved). The rules are silent as to who can initiate a case and bring a matter to the President’s attention, as well as to the extent of the inquiry/investigation and the timelines for examining a case or making a decision.

59. In accordance with paragraph 21, a PACE member concerned by an investigation shall cooperate at all stages. The same procedure is explicitly applicable in the case of a breach of the Guidelines on the observation of elections (paragraph 26) but, for some reason, the cross reference is limited to paragraphs 17 to 20 (excluding paragraph 21) which raises yet further issues as to consistency which can bear important consequences for the effectiveness of the control system in place.

60. Each committee is also responsible for ensuring that a) candidate rapporteurs comply with their duty to declare interests which might be in conflict with work on a report, and for monitoring the truthfulness of such declarations and b) ensuring compliance with the Code of conduct for rapporteurs (2011) (article 3). The verification procedure is not detailed any further. One might ask whether a working committee is properly equipped to deal with disciplinary matters and to verify the professional, economic and other interests of a rapporteur. It would certainly be preferable for the same oversight bodies to deal with both rapporteurs and other PACE members.

61. The Code of conduct for co-rapporteurs of the Monitoring Committee (2001) is silent on the matter of checks and supervision, as well as on the possible consequences if declarations turn out to be false or inaccurate. It only provides for the replacement of a rapporteur if his/her absences could jeopardise the monitoring process. It was pointed out that the Code of conduct for rapporteurs (2011) would normally be applicable if such situations arise. If this is the case, it should be made explicit so that adequate measures can be taken if a monitoring co-rapporteur has not disclosed all pertinent information concerning interests held in, or special relations entertained with the country undergoing monitoring.

62. Overall, while the existence of a number of supervisory mechanisms to ensure compliance with most of the texts is welcome, the rules are not consistent in their approach and fail to spell out precisely the modalities and procedural steps of controls. Moreover, the information available and summarised in the above table shows that the current arrangements are not consistently and fully applied in practice and that the various supervisory mechanisms are ineffective. The absence of robust supervisory arrangements could contribute to explain this. The current supervisory arrangements thus need to be reviewed in depth. This is indeed also specified in the letter from Ms. Maury Pasquier to GRECO’s President.

63. It is of course for PACE itself to find the right way to design an effective supervision system. There is no “one-size-fits-all” solution³⁵. One possible, effective supervisory

³⁵ In its Fourth Evaluation Round, GRECO has pointed to the need to have appropriate, properly equipped and effective supervisory bodies both in respect of the general rules of conduct, and specifically as regards the periodic disclosure obligations. As to the latter, several countries have opted for a special body or agency specifically responsible for dealing with declarations submitted by a variety of public officials. For further reference, see for instance the reports on Armenia (§80, recommendation iv), Austria (§26, recommendation ii and §62, recommendation vii), Bosnia and Herzegovina (§38, recommendation ii), Bulgaria (§34, recommendation i and §62, recommendation iii), Croatia (§67, recommendation ii), Cyprus §95, recommendation vii), Czech Republic (§79, recommendation v), Denmark (§59, recommendation iv), Estonia (§38, recommendation ii and §65, recommendation vi), Germany (§96, recommendation iv), Greece (§31, recommendation ii), Hungary (§83, recommendation vi), Iceland (§44, recommendation i and §53, recommendation iv), Ireland (§102, recommendation iv), Lithuania §92, recommendation iv), Malta (§46, recommendation ii), Republic of Moldova (§32, recommendation ii and §77, recommendation iv), Montenegro (§58, recommendation iii), Norway (§80, recommendation iv), Portugal (§52, recommendation iii), Romania (§25, recommendation ii), Switzerland (§75, recommendation v), United States of America (§123, recommendation vii). The supervision over declarations of assets and interests in France was examined in relation to political financing supervision in the Third Evaluation Round (see report on theme II, § 124, recommendation x).

mechanism could consist in a collegial body composed not only of PACE members but also of persons from outside parliament with a high moral authority and a sufficient level of independence, on a parity basis or at least so that “outsiders” represent a meaningful proportion of members. Through such a body, a number of standards of conduct and any allegation of wrongdoing could be looked at and supervised by PACE itself. Other supervisory activities, for instance for the control of the periodic declarations (which this report recommends to set up), could be outsourced (as is the case of parts of the audit functions for the Council of Europe as a whole). Support staff could be hired on a part-time basis, as needed.

64. This enforcement mechanism should apply to all PACE members, irrespective of their position in the Assembly. In addition, in line with the practice existing in some national Parliaments³⁶, consideration should be given to developing a special procedure for dismissing a President, if need be. As in almost all national cases³⁷, the Assembly itself would be responsible for such a procedure. The grounds for doing so are usually linked to a loss of confidence on the part of the parliament. It is a question of political confidence and not a punishment. Conditions (both substantive and procedural) for dismissal of the President should be spelled out in the Rules of Procedure³⁸.

65. It is important that, ultimately, decisions are not left to the discretion of a single person in each committee or the Assembly who could him/herself become suspected of improper conduct. It is also important that bodies involved in the decision and investigation processes are appropriately equipped. In some countries, special ethics or integrity committees have been established. Such bodies are often entrusted with the additional task of reviewing and improving at regular intervals the requirements and guidance documents in place, in light of practical experience.

Improvement recommended:

to ensure that a coherent mechanism is in place for the effective and consistent supervision of compliance by PACE members with the rules of conduct – whether they are rapporteurs, election monitorers, bureau members, chairpersons and heads of delegation or ordinary members, in particular by providing the oversight body/ies with adequate guarantees of operational independence and impartiality, with the necessary procedural tools, and the legal, information-gathering and other means, to perform their functions effectively. Consideration should be given to developing specific grounds and a detailed procedure for dismissing a President, if need be.

Sanctions

66. The sanctions provided for by the various texts are as follows. As a rule, in case of failure to comply with the Code of 2012 (paragraphs 19 and 20), the President of the Assembly may prepare a reasoned statement to be read out in the Assembly “if need be” and/or inform the speaker of the national parliament concerned. In case of serious or repeated breaches, the President may take one or several measures among the following: temporary deprivation of the right to speak and to be enrolled on the list of speakers, temporary deprivation of the right to sign an amendment, a motion or a written declaration. Additionally, in accordance with article 3 of the Provisions on Transparency and members’ Declarations of interest – Resolution 1554 (2007), a committee can remove and replace a rapporteur who has not complied with the duty to

³⁶ For instance, in Armenia, Bulgaria, Croatia, Estonia, Greece, Iceland, the Netherlands, Norway, Poland, Romania, Russian Federation, Slovak Republic, Slovenia, United States of America, according to a study of 1997 produced by the Inter-Parliamentary Union (IPU): “Presiding officers of national parliamentary assemblies – an overview”, pp. 33-35. See http://www.ipu.org/PDF/publications/PRESIDING_E.pdf.

³⁷ Exceptions exist. For instance, in Estonia, the Supreme Court can adopt a decision depriving the Speaker of his powers.

³⁸ See the above IPU study for more details about procedures existing in various countries.

declare interests or who makes a false declaration. More generally, by virtue of the Code of conduct for rapporteurs (2011), a committee can also deprive a rapporteur of his/her rapporteurship where s/he is found in breach of one or more obligations. As pointed out earlier in respect of supervision, breaches of the Guidelines on the observation of elections are sanctionable along the lines of the Code of conduct of 2012, which are mentioned above.

67. It is clear that in the absence of a financial remuneration of PACE members – which would allow to devise sanctions affecting that remuneration as in certain national parliaments and in the European Parliament – the range of measures applicable, such as the temporary deprivation of rights and responsibilities, are mostly of a political nature. That said, such measures could be used more effectively to design a deterrent and credible sanctions system.

68. While the potential enforceability of standards is welcomed, the existing sanctions suffer from a series of weaknesses. To begin with, sanctions should be available to enforce the various texts in a consistent manner, which is currently not the case. For instance, the Code of conduct for co-rapporteurs of the Monitoring Committee (2001), as noted above, contains no sanctions at all, nor was it updated / amended to make a cross-reference to the enforcement and sanction mechanisms contained in the Code of 2012, when it was adopted.

69. At the same time, sanctions should be applicable in a more flexible way, and not just in case of “serious or repetitive” breaches as under the Code of 2012. At the bottom end of the scale of sanctions, warnings and/or reprimands are missing to deal with minor infringements and with situations before they become problematic. As for the upper part of the scale of applicable measures, the various texts on integrity do not mention for how long a member can be deprived of speaking or voting rights. PACE can also ask a member to resign or his/her parliament to withdraw the credentials of the said PACE member, but PACE has no authority to impose such a measure. It is recalled that PACE members are designated by their national parliaments and not directly elected to PACE.

70. Moreover, there is excessive discretion left to the President to decide on an infringement and on the type and length of sanctions. In particular, it is left to him/her to decide on a case by case basis what is and what is not a serious breach. In a political context such as the one of a parliamentary assembly, this exposes the President to criticism of bias, whether real or perceived. Moreover, the Rules Committee (competent to advise the President of the Assembly on disciplinary matters) is not always consulted.

71. GRECO has consistently insisted in the Fourth Evaluation Round on the need for any enforcement mechanism applicable to parliamentarians to provide for effective, proportionate and dissuasive sanctions³⁹. The lack of clear provisions and flexibility as regards the choice of sanctions can dissuade supervisory body(ies) from applying sanctions in practice. It is also obvious that sanctions which are not commensurate enough to the most serious breaches will have no dissuasive effect.

72. Such a (graduated) set of sanctions may include, but not be limited to: warning and reprimands (for minor breaches of the Code), censure, requirement of a public apology, clearly specified durations for the deprivation of speaking or voting rights, suspension from Parliamentary work, exclusion from certain parliamentary

³⁹ See for instance the reports on Armenia (§231, recommendation xviii), Austria (§63, recommendation viii), Azerbaijan (§40, recommendation iv), Belgium (§67, recommendation vi), Bulgaria (§43, recommendation ii), Czech Republic (§79, recommendation v), Estonia (§38, recommendation ii), France (§64, recommendation vi), Hungary (§83, recommendation vi), Iceland (§53, recommendation iv), Ireland (§102, recommendation iv), Luxembourg (§57, recommendation v), Malta (§46, recommendation ii), Republic of Moldova (§80, recommendation v), Portugal (§52, recommendation iii and §66, recommendation iv), Serbia (§215, recommendation xii), Slovak Republic (§32, recommendation ii), Slovenia (§44, recommendation i), “the former Yugoslav Republic of Macedonia” (§80, recommendation iv), Turkey (§77, recommendation v), United Kingdom (§73, recommendation v).

responsibilities, no reimbursement or restitution of expenses (with interest) where borne by the Council of Europe budget, the ability by PACE to impose on national Parliaments to withdraw the credentials of a given member, refusal to ratify credentials of the whole delegation when the next occasion arises, etc. Furthermore, as any other international organisation, the Council of Europe relies on the criminal justice bodies of a given country (e.g. the host country, the country of the offender) to deal with acts which constitute a criminal offence. It is thus important that, if a criminal offence is suspected, including bribery, trading in influence, abuse of office and other similar offences, PACE bodies refer the case to the relevant authorities (permanent representation, criminal justice bodies, etc.); this could be clearly stated in the rules.

Improvement recommended:

to ensure an effective, proportionate and dissuasive range of sanctions is in place for breaches of the various rules of conduct for PACE members, including those concerning the – yet to be established – system of declaration.

Immunities

73. The subject of parliamentary immunities is closely linked to the integrity of parliamentarians and, as such, cannot be excluded from this expertise. PACE members enjoy specific immunities in accordance with the 1949 Statute of the Council of Europe (article 40), the General Agreement on Privileges and Immunities (GAPI) of 1949 (articles 3, 5 and 6) and the Protocol of 1952 to the GAPI (articles 13 to 15)⁴⁰. These texts must be read together with Rule 67 of the Assembly's RoPs⁴¹, as amended in 2003, and with the explanatory comments made in 2003 and 2006⁴². PACE members enjoy these immunities in relation to attendance of PACE sessions and committee, sub-committee or commission meetings and to any involvement in official duties discharged in a member state with the consent of the appropriate national authorities⁴³. In all other circumstances not related to the exercise of their functions as PACE members, the national immunity regime applies (since PACE members are parliamentarians in their respective countries).

74. Similarly to most domestic immunity regimes of Council of Europe member States, the GAPI of 1949 makes a distinction between non-liability (article 14) and inviolability (article 15). The former prevents all official interrogation, arrest and all legal proceedings in respect of words spoken or votes cast in the exercise of their functions as PACE members. It is absolute, permanent and perpetual in nature and it can accordingly not be waived. As for inviolability, PACE members are exempted from arrest and prosecution. The Assembly can, however, waive the latter immunity. Rule 67 of the RoP provide that a request from a competent national authority must be addressed to the President of the Assembly and subsequently announced in a plenary sitting. It is then referred to the Rules Committee for an opinion, in light of which the Assembly then decides on whether to waive the immunity. So far, PACE has only dealt with a handful of such cases⁴⁴.

⁴⁰ These texts can be found at <http://www.coe.int/en/web/conventions/full-list>

⁴¹ http://website-pace.net/en_GB/web/apce/procedure

⁴² See Resolution 1325 and Report n°9718 on "Immunities of Members of the Parliamentary Assembly" <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=17103&lang=en> and Resolution 1490 (2006) and Report n°10840 on "Interpretation of Article 15.a of the General Agreement on Privileges and Immunities of the Council of Europe": <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=17415&lang=EN>

⁴³ The PACE immunity also applies during their journey to and from the place of meetings.

⁴⁴ So far only two cases have been examined by the Parliamentary Assembly under Rule 67 of the Rules of Procedure (waiver of immunity), according to the report of 6 June 2016 on "Parliamentary immunity: challenges to the scope of the privileges and immunities enjoyed by members of the Parliamentary Assembly" (Doc. 14076, Rapporteur: Ms Liliana PALIHOVICI), see <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=22801&lang=EN>

75. The inviolability regime, which applies to “arrest and prosecution”, does not explicitly prevent further measures such as hearings, investigations and searches concerning a suspect. Gathering of information in the context of a preliminary investigation, especially to examine whether a suspicion is founded and to decide whether or not a formal judicial proceeding should be started, is thus allowed by the rules in place. Moreover, when discussing on the waiver of immunities, PACE bodies shall not examine the merits of the case or the guilt of the member; rather, the debate shall be confined to arguments for or against the waiver of the immunity.

76. It should be emphasised that in accordance with article 5 of the Protocol to the GAPI, “*Privileges, immunities and facilities are accorded to the representatives of members not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions in connection with the Council of Europe. Consequently, a member has not only the right but the duty to waive the immunity of its representative in any case where, in the opinion of the member, the immunity would impede the course of justice and it can be waived without prejudice to the purpose for which the immunity is accorded*”.⁴⁵ This provision pursues the same objectives as Council of Europe Resolution (97)24 on the twenty guiding principles (GP) for the fight against corruption⁴⁶ which requires under GP 6 “*to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society*”. Immunities should therefore not be an obstacle to the effective enforcement of integrity policies and to the prosecution of corruption-related offences⁴⁷. The European Court of Human Rights largely bases its own judgements on similar – if not the same – considerations and refers to the same anti-corruption standards⁴⁸.

77. It should also be recalled that in accordance with the 1999 Criminal Law Convention on Corruption (which has been ratified by all Council of Europe member States), countries have to criminalise active and passive bribery and trading in influence, including (explicitly) in respect of domestic, foreign and international assembly members⁴⁹. These members are thus treated in the same way as any other public official despite the specificities of their function and work. GRECO’s steady practice has also confirmed that bribery offences as defined in the Criminal Law Convention on Corruption apply to a broad range of actions (or inaction) of a parliamentarian, including the buying of a vote.

78. In line with the Council of Europe standards and GRECO’s practice, it is thus clear that corruption-related offences cannot be considered as related to a parliamentarian’s tasks and thus covered by immunity. As PACE has already pointed out in 2003 in the report on “Immunities of Members of the Parliamentary Assembly” (Doc 9718 revised),

⁴⁵ Rule 67 of the RoP contains a footnote which makes a cross reference to this article 5 of the Protocol.

⁴⁶ Adopted by the Committee of Ministers on 6 November 1997.

⁴⁷ Immunity systems were examined in the first Evaluation Round in connection with the institutional capacities to investigate and prosecute corruption-related offences and in the Fourth Evaluation Round which dealt i.a. with the prevention of corruption of parliamentarians.

⁴⁸ See case of *Karácsony and Others v. Hungary* (para. 138): “*the guarantees offered by both types of parliamentary immunity (non-liability and inviolability) serve to ensure the independence of Parliament in the performance of its task. Inviolability helps to achieve the full independence of Parliament by preventing any possibility of politically motivated criminal proceedings (fumus persecutionis) and thereby protecting the opposition from pressure or abuse on the part of the majority (...). The protection afforded to free speech in Parliament serves to protect the interests of Parliament as a whole and should not be understood as protection afforded solely to individual MPs (...). In its judgement of 20 March 2017, rendered in the case of *Uspaskich v. Lithuania* (para. 198), the Court reiterated that “the guarantees offered by the different forms of parliamentary immunity serve to ensure the independence of Parliament in the performance of its tasks (...) and that “when persecuting corruption offences, the States are encouraged to limit immunity to the degree necessary in a democratic society (see principle 6 [of Resolution (97)24]”.*

⁴⁹ It should be noted that as a result of the Third Evaluation Round, which monitored the implementation of this Convention, the vast majority of Council of Europe member States have now implemented the substantive requirements of the Convention, but also those concerning the (extended) jurisdiction rules of article 17 para.1 subpara. a), b) and c) of the Convention. The few reservations still applicable concern the offence of trading in influence and the dual criminality requirement for the prosecution of offences committed abroad.

"knowledge of the system of immunity for Assembly members is lacking and, on the other hand, certain notions of the system are subject to narrow interpretations in states." It stems from the above that PACE needs to deliver clearer messages to national criminal justice bodies about the actual scope of immunities enjoyed by its members.

79. The introduction of a set of objective criteria in the Rules of Procedure or any other appropriate and publicly accessible PACE document which could be used for future reference – would contribute to bringing clarity in this respect. Such criteria would also help ensure a proper balance between, on the one hand, the needs of the fight against corruption and, on the other hand, the protection of PACE's activities and members against ill-motivated accusations by countries or national authorities. Some criteria have already been compiled by the Venice Commission and GRECO in 2014, for instance the need for a request to be sincere, fair and based on serious grounds⁵⁰; this work could be helpful to PACE in that context.

Improvement recommended:

to complement the existing rules on immunity with a set of clear and objective criteria (i) which would specify that immunities enjoyed as a PACE member shall not (be used to) shield PACE members from corruption-related offences and (ii) which would ensure the fair and objective treatment of requests for the lifting of immunities whilst guarding against the consequences of ill-motivated proceedings.

VIII. Advice, training and awareness

80. The Members' Handbook⁵¹ which is available to all new PACE members refers to the existence of the integrity rules contained in the Compendium of 2015 and provides a brief summary of these rules. Also, the Code of conduct for rapporteurs of 2011 requires (under paragraph 4) that a copy of that specific code be given to any appointed rapporteur. Other than that, the code of conduct for members of the Parliamentary Assembly of 2012, and the Guidelines on the observation of elections are silent on this matter. The compendium of 2015 itself, which contains a Foreword by the President of PACE, contains no specific arrangements for its dissemination and promotion.

81. It is to be welcomed that "guidance on all matters covered by the Code of conduct of 2012 and situations which may arise from its application may be sought from the Secretary General of the Parliamentary Assembly" (paragraph 4 of the Code). It would be preferable to state clearly that guidance can also be provided to all those concerned with the application of the other existing texts. Moreover, the rules in place do not contain any additional awareness-raising arrangements, for instance the organisation by a PACE body of regular training on integrity issues and to present and explain the content of the compendium in light of "real life" experiences or situations.

82. In practice, there is no systematic action taken to raise awareness of PACE members of their integrity-related obligations, although seminars for "newcomers" organised by the Secretariat at the request of delegations include a presentation on the

⁵⁰ Report on the scope and lifting of parliamentary immunities, done at the request of the Council of Europe's Secretary General (see p.30 et seq.)

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)011-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)011-e)

Immunities were examined by GRECO in the First Evaluation Round (2000-2002). And more recently again in the context of the Fourth Evaluation Round; improvements were recommended to the legal scope or with regard to the practice followed – see the reports concerning: Belgium (§69, recommendation vii), Greece (§68, recommendation x), Hungary (§76, recommendation v), Latvia (§68, recommendation vi), Republic of Moldova (§83, recommendation vi), Montenegro (§60, recommendation iv), Romania (§61, recommendation viii), Turkey (§85, recommendation vi).

⁵¹ http://website-pace.net/documents/10643/375483/APCE_MembersHandbookE.pdf/6d6b5b04-2c64-4e5c-9ce6-e62ab1e1e24a

integrity framework. In April 2014, PACE established an Anti-Corruption Platform⁵² to create a space for dialogue on the threat of corruption to European values, and to help “to promote transparency and honesty in public life”. As its website further indicates, “it brings together elected representatives from the parliaments of the 47 member States of the Council of Europe and of non-member states, with experts and other stakeholders to share information, spread good practices and debate how to deal with new forms of corruption.” In light of the activities conducted so far, it would appear that the Platform has not been used as a framework to promote systematically within PACE a conduct in line with the rules discussed in the present report.

83. GRECO has consistently stressed the need to provide adequate information and guidance on integrity standards for parliamentarians both when they are newly appointed and during their terms of office⁵³. It is important that rules of conduct are properly explained and illustrated through concrete practical examples from daily work, including of problematic situations and best practices on how to deal with such situations. Certain subjects, such as the handling of third party contacts, reactions to certain forms of gifts and hospitality/benefits, and the handling of conflicts of interests, can be particularly complex in practice. Newly appointed members, who are not necessarily familiar with the specificities of PACE’s work and the international context in which it operates, appear to be particularly exposed to problematic situations and questionable practices⁵⁴.

Improvement recommended:

(i) to ensure that all PACE members are properly informed and trained on the conduct expected from them and (ii) to provide explicitly and in respect of all PACE members for the possibility of individual confidential counselling on potentially problematic situations

IX. Other considerations

84. During the interviews, it was mentioned that one of the political groups is currently drafting rules of conduct for its members, which would draw lessons from the ongoing allegations of improper conduct of PACE members. This initiative is most welcome and it could inspire further similar initiatives in other political groups.

85. PACE’s work mainly involves three categories of persons: (i) representatives of the member States’ parliaments, (ii) the Secretariat of the Parliamentary Assembly and (iii) secretaries of political groups (employed on a contractual basis). As regards the members of the PACE Secretariat, they are Council of Europe employees organised hierarchically under the delegated authority of the Secretary General of the Parliamentary Assembly and, ultimately, of the Secretary General of the Council of Europe. They are subject to the general rights and obligations applicable to the Organisation’s employees, which include various regulations on integrity and codes of conduct, including a “whistleblowing-type” mechanism concerning fraud and corruption set-up by Rule 1327 of 10 January 2011 on awareness and prevention of fraud and corruption⁵⁵. In accordance with the latter, all staff members are required to report suspicions of corruption and fraud to the Council of Europe’s Directorate of Internal

⁵² http://website-pace.net/en_GB/web/apce/anti-corruption-platform

⁵³ This should include possibilities for personal counselling. See for instance the Fourth Evaluation Round reports on Austria (§176, recommendation xix), Belgium (§73, recommendation viii), Bosnia and Herzegovina (§76, recommendation vii), Croatia (§73, recommendation iii), Cyprus (§98, recommendation viii), Estonia (§75, recommendation vii), Greece (§69, recommendation xi), Hungary (§87, recommendation vii), Ireland (§110, recommendation v), Italy (§81, recommendation v), Lithuania (§96, recommendation v), Malta (§49, recommendation iii), Netherlands (§64, recommendation iv), Poland (§84, recommendation vi), Romania (§62, recommendation ix), Slovenia (§105, recommendation iii).

⁵⁴ For instance, if they are invited shortly after their appointment to events in member countries not related to the official activities of the Council of Europe or PACE.

⁵⁵ <http://www.coe.int/en/web/internal-oversight/fraud-reporting-investigation>

Oversight (DIO)⁵⁶ and persons who report a suspicion in good faith shall be protected against retaliation.

86. This mechanism is also applicable to other persons who are not members of staff. Article 2 paragraph 2 of the above Rule refers explicitly to PACE members and other categories of persons. These are “encouraged to report any reasonable suspicion of the misconduct they deem to be fraud or corruption directly to the Secretary General of the Council of Europe”. The text is silent as to how such a report concerning persons other than Council of Europe staff members would subsequently be handled by the Secretary General of the Council of Europe. No practical arrangements appear to have been designed, together with PACE, in this respect.

87. Whistleblowing can contribute significantly to both the deterrence and the uncovering of corrupt practices. GRECO has dealt with the reporting of suspicions of corruption in its Second Evaluation Round (2003-2006)⁵⁷. The procedures applicable at the level of the Council of Europe (beyond the one already in place for Council of Europe staff) need to be adequately designed to deal with allegations related to persons other than Council of Europe employees (such as PACE members). This would need to be led by the Secretary General of the Council of Europe, in consultation with the various sectors and bodies of the Organisation.

Improvement recommended:

(i) to initiate consultations with a view to establishing a procedure for the Secretary General to handle allegations of corruption and fraud submitted to him/her under Rule 1327 in relation to PACE’s work and persons other than staff members (for whom a procedure already exists under the existing Rule 1327) and (ii) to ensure that such persons are made aware of these mechanisms and have easy access to on-line information.

X. Recommendations

88. In view of the findings of the present expertise, GRECO addresses the following recommendations to the Parliamentary Assembly:

- i. to consolidate and harmonise the various codes and guidelines on the conduct of PACE members in a single enforceable set of rules, so as to clarify the requirements and facilitate their effective implementation, and to provide for the regular review and update of these rules (paragraph 25);
- ii. to review the rules on conflicts of interest to (i) increase their consistency and spell out clearly the consequences of disclosure and false statements and (ii) ensure that all PACE members (irrespective of their role) are required to make ad hoc disclosures as and when conflicts of interest arise (paragraph 30);
- iii. (i) to establish a common system applicable to all PACE members for the declaration of financial interests, income, gifts and outside activities that is adequate to reflect the information required by PACE's integrity framework; and (ii) to consider widening the scope of disclosure to include information on spouses and dependent family

⁵⁶ <http://www.coe.int/en/web/internal-oversight/dio>

⁵⁷ One of the findings was that more than half of the member States did not have appropriate arrangements for the reporting of suspicions of corruption-related offences. Recommendations for improvement were issued accordingly and many countries subsequently filled the legal gaps. More recently, in 2014, the Committee of Ministers issued a Recommendation on the protection of whistleblowers: http://www.coe.int/t/dghl/standardsetting/cdcj/whistleblowers/protecting_whistleblowers_EN.asp?

members (it being understood that such information would not need to be made public) (paragraph 34);

- iv. (i) as a matter of priority, to introduce a consistent and stricter set of rules, based on a clear prohibition in principle, and adequate definitions, concerning the acceptance of gifts, travel, hospitality and other benefits, as well as honorary distinctions and other rewards and (ii) to develop robust procedures for the reporting and valuation of gifts, and the return of those which cannot be accepted (paragraph 42);
- v. (i) to ensure the effectiveness of the prohibition on PACE members engaging themselves in remunerated advocacy and lobbying activities and (ii) to introduce post-mandate employment restrictions, including a "cooling-off period" after a member of parliament ceases to be a PACE member and – in parallel – to abolish the automatic free access to premises and documents enjoyed by honorary PACE members (paragraph 45);
- vi. to introduce a robust and consistent set of rules for PACE members on how to engage in relations with lobbyists and other third parties seeking to influence the parliamentary process, and in that context to extend to a broader range of PACE members the prohibition on instructions ((paragraph 51);
- vii. to review the accounting standards for political groups so that i) they are required to report on permissible support from sources other than PACE's, including the use of such support, and to make the financial statements publicly available; ii) the annual accounts of all political groups are submitted to the External Audit (paragraph 54);
- viii. to ensure that a coherent mechanism is in place for the effective and consistent supervision of compliance by PACE members with the rules of conduct – whether they are rapporteurs, election monitors, bureau members, chairpersons and heads of delegation or ordinary members, in particular by providing the oversight body/ies with adequate guarantees of operational independence and impartiality, with the necessary procedural tools, and the legal, information-gathering and other means, to perform their functions effectively. Consideration should be given to developing specific grounds and a detailed procedure for dismissing a President, if need be (paragraph 65);
- ix. to ensure an effective, proportionate and dissuasive range of sanctions is in place for breaches of the various rules of conduct for PACE members, including those concerning the – yet to be established – system of declaration (paragraph 72);
- x. to complement the existing rules on immunity with a set of clear and objective criteria (i) which would specify that immunities enjoyed as a PACE member shall not (be used to) shield PACE members from corruption-related offences and (ii) which would ensure the fair and objective treatment of requests for the lifting of immunities whilst guarding against the consequences of ill-motivated proceedings (paragraph 79);
- xi. (i) to ensure that all PACE members are properly informed and trained on the conduct expected from them and (ii) to provide explicitly and in respect of all PACE members for the possibility of individual

confidential counselling on potentially problematic situations (paragraph 83);

- xii. (i) to initiate consultations with a view to establishing a procedure for the Secretary General to handle allegations of corruption and fraud submitted to him/her under Rule 1327 in relation to PACE's work and persons other than staff members (for whom a procedure already exists under the existing Rule 1327) and (ii) to ensure that such persons are made aware of these mechanisms and have easy access to on-line information (paragraph 87).