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## **EUROPEAN COMMITTEE ON DEMOCRACY AND GOVERNANCE (CDDG)**

### **DRAFT GUIDELINES ON PUBLIC ETHICS**

**Draft text prepared by the working group and reviewed by the  
CDDG Bureau at its meeting on 15 November 2019**

**For adoption**

Secretariat Memorandum  
prepared by the  
Directorate General of Democracy  
Democratic Governance Department

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## Introduction

The terms of reference of the European Committee on Democracy and Governance (CDDG) for 2018-2019 include the specific task iii:

*"As a follow-up to the findings of the good governance section of the Secretary General's Reports on the State of Democracy, Human Rights and the Rule of Law with regard to public ethics:*

- *develop Guidelines on public ethics at all levels of government, taking into account the findings of GRECO and Committee of Ministers' Recommendation Rec(2000)10 on Codes of Conduct for Public Officials;*
- *update the 2004 Handbook of good practice on public ethics at local level, taking into account experience with the implementation of the revised Public Ethics Benchmark Toolkit of the Centre of expertise on local government reform, and extend it to cover all levels of government – local, regional and national;*
- *carry out a feasibility study on the preparation of a Council of Europe indicator framework to identify trends with regard to public ethics and to allow member States to assess their performance."*

At its meeting on 4-5 December 2017, the CDDG decided to set up a working group on public ethics. This group met four times (7-8 June 2018, 4-5 October 2018, 18-19 March 2019, 16-17 September 2019 respectively).

The present document sets out the draft Guidelines on public ethics, as finalised on the basis of the draft text prepared by the working group and reviewed by the Bureau. The *draft Guide (updated 2004 Handbook of good practice on public ethics at local level)* and the *Feasibility study on the preparation of a Council of Europe indicator framework to identify trends with regard to public ethics and to allow member States to assess their performance* appear in separate documents (respectively CDDG(2019)9 and CDDG(2019)10).

The text of the draft Guidelines on public ethics was discussed by the working group at its meetings on 18-19 March 2019 and 16-17 September 2019. In accordance with Resolution CM/Res(2011)24 of the Committee of Ministers on intergovernmental committees and subordinate bodies, their terms of reference and working methods, the working group held online consultations on the text in between meetings.

The text of the draft Guidelines on public ethics was reviewed by the Bureau at its meetings on 23-24 May 2019, 24-25 October 2019 and 15 November 2019.

At its meeting of 15 November 2019, the Bureau instructed the Secretariat to submit the draft Guidelines on public ethics as they appear in the present document to the CDDG for adoption at its meeting of 9-11 December 2019.

**Action required**

The CDDG is invited to examine the draft Guidelines on public ethics and formulate final comments, if any. It is further invited to approve the text for transmission to the Committee of Ministers for adoption.

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<b>Guidelines on public ethics</b>
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The Committee of Ministers,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that public ethics is one of the fundamental elements of a properly functioning and effective democracy which is an objective common to all Council of Europe member states;

Considering that further strengthening public ethics is a key means for building and restoring citizens' trust in public institutions;

Considering that the requirements and expectations of citizens in relation to the exercise of public ethics are legitimate, more pronounced than in the past, and relating to all officials holding public responsibilities across the board, including members of both the executive and national parliaments, holders of a judicial office, local and regional elected representatives and public officials at national, regional and local level;

Considering that the integrity, legality, objectivity, transparency, honesty, leadership and accountability of persons exercising public responsibilities, as well as their compliance with the law and legal standards in their own behaviour, are decisive in guaranteeing good governance and the respect for the rule of law;

Having regard to the need to complement Recommendation R(2000)10 of the Committee of Ministers to member states on codes of conduct for public officials and considering that the developments that have occurred since its adoption justify these guidelines covering a wider personal and material scope;

Having regard to:

- The Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (ETS No. 005);
- The Criminal Law Convention on Corruption (1999) (ETS No. 173);
- The Civil Law Convention on Corruption (1999) (ETS No. 174);
- Recommendation CM/Rec(2017)2 of the Committee of Ministers to member states on the legal regulation of lobbying activities in the context of public decision making;
- Recommendation CM/Rec (2014)7 of the Committee of Ministers to member states on the protection of whistle-blowers;
- Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on Judges: independence, efficiency and responsibilities;
- The Valencia Declaration and the Strategy for Innovation and Good Governance at local level, including the 12 Principles of Good Democratic Governance;
- Recommendation CM/Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns
- Committee of Ministers Resolution (97) 24 on the twenty guiding principles for the fight against corruption;

Considering the activities of the Parliamentary Assembly of the Council of Europe relating to integrity and corruption, including:

- Parliamentary Assembly Resolution 2170 and Recommendation 2105 (2017) on Promoting integrity in governance to tackle political corruption;
- Parliamentary Assembly Resolution 2300 and Recommendation 2162 (2019) on Improving the protection of whistleblowers all over Europe, , as well as Resolutions 2060(2015) on Improving the protection of whistle blowers and 1729 (2010) on Protection of whistle blowers;

Considering also the activities of the Congress of Local and Regional authorities of the Council of Europe in relation to safeguarding integrity, tackling conflicts of interest, and promoting openness and transparency, including:

- Resolution 435 (2018) and Recommendation 424(2018) on Transparency and open government;
- Resolution 433 (2018) on European Code of Conduct for all Persons Involved in Local and Regional Governance;
- Resolution 434 (2018) and Recommendation 423 (2018) on Conflicts of interest at local and regional level;

Considering the work carried out by the Group of States against Corruption (GRECO), namely its report on "Corruption prevention: Members of Parliament, Judges and Prosecutors (fourth evaluation round). Conclusions and trends", as well as its findings and recommendations relating to the fifth evaluation round concerning "Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies";

Considering also the work of the Commission for Democracy through Law (Venice Commission), including its "Guidelines on preventing and responding to the misuse of administrative resources during electoral processes" (CDL-AD(2016)004), adopted by the Venice Commission at its 106<sup>th</sup> session, Venice, 11-12 March 2016, and "The Code of Good Practice in the field of Political Parties, adopted at its 77<sup>th</sup> plenary session (Venice, 12-13 December 2008);

Having regard to some texts adopted by Council of Europe organs and bodies which, although not specifically related to public ethics, include provisions and recommendations relating to the conduct of public officials, including:

- Recommendation CM/Rec (2019)1 on preventing and combating sexism and its Guidelines;
- Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities' activities;
- Parliamentary Assembly Resolution 2275 (2019) on Role and responsibilities of political leaders in combating hate speech and intolerance;
- ECRI General Policy recommendation No. 15 on combating Hate Speech;

Taking note of the Reports by the Secretary General on the "State of Democracy, Human Rights and the Rule of Law;

Taking note also of the OECD Recommendation of the Council on Public Integrity adopted in 2017 which refers to the consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector;

Adopts the following guidelines, inviting member states to make the widest possible use of them, and to ensure their dissemination, translated into their official languages, to public organisations in their respective countries, and/or to entrust these tasks to the competent public authorities, in compliance with their applicable constitutional and other legislative provisions.

## **A. Scope and purpose**

These Guidelines aim to help Council of Europe member states to establish a comprehensive and effective Public Ethics Framework. A Public Ethics Framework should be founded on the Principles of Public Ethics and should comprise, as appropriate, strategies, institutions, legislation, regulations, codes of conduct, and guidance which, in their entirety, work together to enable and embed ethical practice throughout the activities of public organisations and in the decision making and activities of individual public officials.

Member states are encouraged, through the establishment of their Public Ethics Framework, to develop and maintain a culture of the highest standards of conduct by public officials and/ or to entrust these tasks to the competent public authorities in compliance with their applicable constitutional or other legislative provisions. This will both support an ethical culture in public organisations and sustain the confidence and trust of citizens in those who represent them, take decisions affecting their lives and the places in which they live and work, or are responsible for delivery of public services.

## **B. Conditions**

Conditions for an effective Public Ethics Framework include:

- respect for human rights and fundamental freedoms
- respect for the rule of law
- respect for democratic norms, including adherence to the Council of Europe's 12 Principles of Good Democratic Governance, whereby an effective political democracy is guaranteed; and
- the creation and maintenance by the member state of a political, legal and practical enabling environment to promote, facilitate and sustain such respect.

## **C. Definitions**

For the purposes of these guidelines, the following definitions shall apply:

- a. Public ethics:** is the practical implementation of ethical conduct by public officials whereby the public good is placed before private interests in accordance with the law so that public resources are used for the public good and confidence and trust of citizens in the action and decisions of public officials and public organisations is maintained and strengthened.
- b. Public official** includes:
  - i. Persons who are elected or appointed to a public mandate or function, such as members of national and regional governments, members of national and regional legislatures, local executives and local elected representatives, and holders of a judicial office;
  - ii. Persons who are employed by a public organisation as defined below;
  - iii. Persons who act on behalf of a public organisation without having been elected, appointed to a public mandate or function, or employed by a public organisation.
- c. Public organisation:** is a national, regional or local institution or administration; a company or similar entity managed or financed by such an institution or administration, or by the state; or a private-sector entity, including non-profit entities, providing public services.

- d. Conflict of interest:** is a situation in which the public official has a private interest, which is such as to influence, or appear to influence, the impartial and objective performance of his or her duties. The public official's private interests include any actual, potential or perceived advantage to themselves, or to any connected persons, including advantages arising from assets, income and liabilities whether financial or civil. Connected persons include a spouse or civil partner, any other person with whom the public official lives in a family relationship, children or step-children, parents, friends and persons or organisations and institutions with whom they have or have had business, political, or social connections.

#### **D. The Principles of Public Ethics**

The following principles apply to all public officials:

- a. **LEGALITY:** public officials must act and take decisions in accordance with the law;
- b. **INTEGRITY:** public officials must put the obligations of public service above private interests when carrying out of their mandate or functions;
- c. **OBJECTIVITY:** public officials must, in carrying out their mandate or functions, act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias;
- d. **ACCOUNTABILITY:** public officials are, in carrying out their mandate or functions, accountable for their actions and must submit themselves to the scrutiny necessary for this;
- e. **TRANSPARENCY:** public officials should, in carrying out their mandate or functions, act and take decisions in an open and transparent manner, ensure access to information, and facilitate understanding of how public affairs are conducted;
- f. **HONESTY:** public officials should be truthful;
- g. **RESPECT:** public officials should behave with courtesy and consideration toward others;
- h. **LEADERSHIP:** public officials should exhibit the principles of public ethics in their own behaviour, supporting and promoting those principles, and challenging poor ethical behaviour.

#### **E. A Public Ethics Framework - Standards of conduct**

1. Founded on the Principles of Public Ethics, a Public Ethics Framework should provide standards and obligations for public officials and public organisations. These should include standards and obligations on the following matters:

- a. Public officials' individual interests and those of connected persons – the declaration of such interests and the handling of conflicts of interests;
  - b. Public officials' activities which are outside their function or mandate – the declaration of these outside activities; the classification of permissible and prohibited outside activities for different categories of public officials; the arrangements and conditions for their undertaking outside activities;
  - c. Activities undertaken by public officials post their employment or the end of their mandate;
  - d. Gifts, favours and hospitality, offered or received by public officials and public organisations;
  - e. The use of public resources, equipment and property by public officials and public organisations;
  - f. Public organisations' internal control and accountability measures in public procurement, contracts, and the payment of grants;
  - g. The requirements of professional bodies which are relevant to categories of public officials;
  - h. The protection of whistle blowers, in line with Recommendation (2014)7 of the Committee of Ministers to member states on the protection of whistle blowers;
  - i. Lobbying activities, in line with Recommendation (2017)2 of the Committee of Ministers to member states on the legal regulation of lobbying activities in the context of public decision making;
  - j. Transparent delegated decision-making and clear reporting requirements;
  - k. Citizens' access to information, including a presumption in favour of disclosure;
  - l. Access to documents and the re-use of documents by public officials;
  - m. Public officials' handling of information and confidentiality;
  - n. Public officials' use of the internet including social media;
  - o. Bullying and harassment;
  - p. The promotion of equality and diversity along with the prohibition of discrimination and hate speech;
  - q. Reporting breaches of a code of conduct applicable to public officials.
2. A Public Ethics Framework will thus provide clarity as to the standards of conduct citizens should be able to expect of all public officials and public organisations.
- a. in the conduct of their duties, all public officials should:
    - i. avoid any situation where there could be for them a conflict of interests and, if the situation arises, removing themselves immediately from it and complying with relevant rules for handling conflicts of interest including rules of disclosure;
    - ii. refrain from using public resources for private purposes or in any other way which is contrary to the law;
    - iii. not accept for themselves, or any connected persons, gifts, invitations and hospitality, advantages and favours, donations and other benefits, which might be, or might reasonably be perceived to, place them under an improper obligation; not demanding or soliciting for themselves or any connected person gifts and benefits;

- iv. make all declarations in compliance with the relevant rules of their assets, income, liabilities and other interests, and those of connected persons;
  - v. avoid participation in any prohibited outside activities during their period of employment or mandate, and post that period in compliance with relevant rules, avoiding activities through which they would gain a personal or professional advantage due to their having been a public official;
  - vi. avoid any perception of prejudice, favouritism, including nepotism;
  - vii. avoid discrimination, refraining from hate speech, harassing or bullying, showing respect for equality and diversity, and working actively towards a culture of fairness and tolerance that appreciates diversity;
  - viii. avoid producing or using information and evidence in a misleading or inaccurate manner;
  - ix. exercise discretion when dealing with information of a confidential or private nature.
- b. In the conduct of their duties, public officials who are members of national governments or members of government of regions with legislative powers, should:
- i. make themselves accountable to their respective legislature for their actions and decisions and for the actions and decisions taken by their ministries and entities for which they are responsible;
  - ii. give accurate and truthful information to their legislature, and being open and transparent both to that legislature and to the general public, subject to any limitations that are necessary in accordance with the law;
  - iii. attach importance to complying with the rules and obligations relating to contact with lobbyists and other third parties promoting issues or supporting particular interests;
  - iv. after their term in office, only take positions which are consistent with the law on taking up employment after having held a position as a member of a national or regional government.
- c. In the conduct of their duties, public officials who are members of national parliaments or members of regional assemblies with legislative powers, should:
- i. ensure their actions and decisions are open, transparent and accountable to their electorate;
  - ii. attach importance to acting in conformity with the rules and obligations on their declarations of assets, income, liabilities and other interests;
  - iii. attach importance to complying with the rules and obligations relating to contact with lobbyists and other third parties promoting issues or supporting particular interests;
  - iv. after their mandate, only take positions which are consistent with the law on taking up employment after having held a position as a member of a national or regional legislature.

- d. In the conduct of their duties public officials who are executives and/or elected representatives at the local level, or executives and/or elected representatives of regions without legislative powers should also include, as appropriately modified, those aspects of conduct identified above for members of national governments and legislatures.
- e. In the conduct of their duties, public officials who are holders of a judicial office should:
  - i. administer justice impartially in accordance with the law, with competence, diligence and propriety, thereby preserving and strengthening public confidence in the integrity, impartiality and independence of the judiciary;
  - ii. act at all times, including in their private life, in a manner that upholds and is consistent with the independence of their judicial function;
  - iii. respect the confidentiality of their deliberations and act in a way consistent with the role and status of their office, including in relation to exercising discretion in public statements, by whatever means these might be made, and limit their participation in public debates and their engagement with the media.
- f. in the conduct of their duties, public officials who are either employed by a public organisation, or who are acting on behalf of a public organisation without having been elected, appointed to a public mandate or function or employed by a public organisation, should:
  - i. act when carrying out their functions in a manner that is neutral as regards political parties, and take care not to allow their activities to be used for partisan political purposes;
  - ii. demonstrate professionalism in serving citizens with competence and act in a manner which shows respect and courtesy towards everyone;
  - iii. exercise discretion in the public communication of their private views, by whatever means such communication might be made;
  - iv. ensure that public resources are not used for a political party, or other political, activity or campaigning, other than for what is provided for in legislation;
  - v. refrain from any political or other activities which hinder the discharge of their function or could impair the confidence of the public and their employers in their ability to undertake their duties impartially and loyally; and
  - vi. comply with rules, regulations and legislation in connection with their political activities and views, membership or activity in a political party, and/or about taking up political activity.

## F. The Public Ethics Framework – Components

1. The components of a framework should be adequately resourced with a view to ensuring its effective implementation and should include the following:

### *Strategies*

2. There should be a national strategy for public ethics which can be adapted as appropriate to the regional and local level. The judiciary and the legislature will maintain the necessary independence from plans which are put in place by the government.

### *Institutions*

3. There should be an independent authority or authorities to provide independent scrutiny and promote transparency in public life. Such authorities should have an appropriate level of oversight on matters including but not limited to:
  - a. collecting and publishing declarations of interest;
  - b. gifts and hospitality rules and register;
  - c. providing advice and examples of good practice and preparing and publishing guidance on ethical matters;
  - d. a role in giving permission in certain circumstances relating to post-employment and outside activities.

### *Legislation and Regulations*

4. There should be legislation and/or regulations which provide for:
  - a. requirements for codes of conduct for all public officials, providing for different codes for different categories of public officials;
  - b. requirements for all public organisations to ensure that there are robust risk management processes in place to assess and identify current and emerging ethical risks to activities, for example when developing new models for the delivery of public services.
  - c. requirements in relation to public officials who are employed by a public organisation, or who are acting on behalf of a public organisation without having been elected, appointed to a public mandate or function covering the following matters:
    - i. an open and fair recruitment and selection process which will contribute to the advancement of equal opportunities; the processes for the selection of staff should address the core values required of candidates to work in public service;
    - ii. the mobility of employees recognising that requirements or guidance about mobility can help prevent and reduce the risk of corruption;

- d. requirements in relation to public officials who are elected covering the following matters:
- i. the conduct of elections and election campaigns, including campaign information;
  - ii. the exercise of their mandate;
  - iii. the obligation for public authorities to guarantee elected representatives the allocation of adequate resources to fulfil their mandates in a transparent manner.

#### *Codes of Conduct*

- 5. Codes of conduct play a special role in ensuring the effectiveness of the public ethics framework with an emphasis on the individual's responsibility for their behaviour rather than relying on an external body and parties to supervise and regulate behaviour.
- 6. The standards of conduct for different categories of public officials should be expressed in specific codes. These codes should:
  - a. address the key issues and risks relating to maintaining ethical standards in line with societal changes;
  - b. be complementary to professional standards;
  - c. where relevant the rules should be included in the statutes of public officials;
  - d. drafted in a clear and concise manner, published and accessible to public officials and to citizens;
  - e. regularly reviewed and updated as appropriate;
  - f. all codes of conduct should reflect the Principles of Public Ethics and the standards of conduct described in these guidelines as well as reflecting Council of Europe standards including on lobbying, whistle blowers' protection and prevention of hate speech and discrimination;
  - g. codes of conduct for public officials who are employed by a public organisation, or who are acting on behalf of a public organisation without having been elected, appointed to a public mandate or function, should also reflect the model code set out by the *Committee of Ministers in its Recommendation R(2000)10 to member states on codes of conduct*
  - h. codes of conduct applicable to elected representatives and holders of judicial office should reflect their necessary independence from government

### Guidance

7. There should be guidance which may amplify the requirements of legislation and regulations and the provisions of codes of conduct. In addition, guidance may cover:
  - a. the adoption by public organisations of mission and values statements which set out the expectations for the behaviour and conduct of their public officials;
  - b. the management of staff, in particular ethical conduct being included as an important element of performance assessment;
  - c. the role of all leaders in a public organisation to visibly role model ethical behaviour in their decision making and behaviour;
  - d. the provision of induction and continuous training and development for all public officials, to ensure the highest standards of conduct in the exercise of their public functions/mandates;
  - e. issues of conduct for elected representatives and holders of judicial office who are independent of government, the preparation and adoption of any such guidance being undertaken in a way that is consistent with this independence.

<b>G. Public Ethics Framework – addressing shortcomings</b>
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8. There should be clear mechanisms and procedures to investigate and address possible breaches of ethical standards or other issues of concern about public ethics. These should include:
  - a. clear procedures for handling complaints and grievances from service users and from public officials where a breach of ethical standards is suspected;
  - b. protective measures for whistle blowers to prevent direct or indirect retaliation by the public organisation to which they belong or belonged and by public officials of that public organisation. Such forms of retaliation might include dismissal, suspension, demotion, loss of promotion opportunities, punitive transfers, reductions in or deductions from wages, harassment or any other punitive or discriminatory treatment;
  - c. formal mechanisms for the independent investigation of alleged breaches of the code of conduct for elected public officials;
  - d. formal mechanisms for the independent investigation of alleged breaches of the code of conduct for the judiciary, provided for in statute;
  - e. a formal mechanism for the independent investigation of alleged breaches of the code of conduct for members of the national or regional legislature, both that mechanism and the code to be determined by the legislature concerned;
  - f. appropriate and proportionate disciplinary and criminal sanctions to be established for each category of public official, with those having responsibility for imposing sanctions having adequate powers to do so.