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TOOLKIT FOR DRAFTING CODES OF CONDUCT FOR MEMBERS OF PARLIAMENT

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1 INTRODUCTION

This toolkit for drafting codes of conduct for members of parliaments was developed within the Council of Europe/European Union Partnership for Good Governance II, Regional Project on "Strengthening measures to prevent and combat economic crime." Originally the document was developed for the purpose of assisting parliaments in the Eastern Partnership by outlining a brief toolkit which these countries could adapt to their specific circumstances.

It takes the European Code of Conduct for all Persons Involved in Local and Regional Governance (European Code) of 2018 as a basic framework to provide guidance on drafting a code.[1] The European Code is structured according to headings that designate themes/issues to be regulated. The Code is designed for "all persons involved and local and regional governance", and an adapted version of the headings is used in Section 3 in order to tailor this toolkit to elected representatives.

1.1 International standards

Codes of conduct are an established component of international standards on governance and corruption prevention. Of particular relevance are the following:

- The Council of Europe's European Code of Conduct for all Persons Involved in Local and Regional Governance, 2018 (see above).
- Recommendations provided by the Group of States against Corruption (GRECO) with regards to anti-corruption agencies, in particular during its Fourth Round Evaluations, focusing inter alia on Members of Parliament, their codes of conduct, conflicts of interest, and lobbying.[2]
- The Council of Europe Recommendation CM/Rec(2017)2 on the legal regulation of lobbying activities in the context of public decision making and explanatory memorandum.[3]
- The Council of Europe Resolution 97(24) On the Twenty Guiding Principles for the Fight against Corruption, no. 15, calls for "the adoption, by elected representatives, of codes of conduct".[4]
- The United Nations Convention against Corruption (UNCAC), in its article 8 it stipulates that *"each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions."* In the same article the UNCAC refers countries to consider other standards and initiatives of international, regional and intraregional organisations as well as the UN approved an International Code of Conduct for Public Officials (1996)

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[1] Congress of Local and Regional Authorities (2018) *European Code of Conduct for all Persons Involved in Local and Regional Governance*. Accessed 30 October 2019.

[2] See GRECO *Fourth Evaluation Round: Evaluation and Compliance Reports*. Accessed 30 October 2019.

[3] Council of Europe (2017) *Recommendation CM/Rec(2017)2 on the legal regulation of lobbying activities in the context of public decision making and explanatory memorandum*, available at www.coe.int. Accessed 12 October 2019.

[4] Council of Europe (1997) *Twenty Guiding Principles for the Fight against Corruption*, available at www.coe.int. Accessed 30 October 2019.

as a model, albeit it is a general one and not focusing specifically on elected representatives.

- The Parliamentary Assembly of the Council of Europe Resolution 1214 (2000) on "The Role of Parliament in Fighting Corruption", which stresses "the notion that parliamentarians have a duty not only to obey the letter of the law, but to set an example of incorruptibility to society as a whole by implementing and enforcing their own codes of conduct".[5]
- The Brussels Declaration (2006) of the Parliamentary Assembly of the OSCE in 2006 in its "Resolution on limiting immunity for parliamentarians in order to strengthen good governance, public integrity and the rule of law in OSCE region" in paragraph 12 encourages all parliaments of the OSCE participating States to "(a) develop and publish rigorous standards of ethics and official conduct for parliamentarians and their staff; (b) establish efficient mechanisms for public disclosure of financial information and potential conflicts of interests by parliamentarians and their staff; (c) establish an office of public standards to which complaints about violations of standards by parliamentarians and their staff may be made; (d) establish effective and timely procedures for investigating such complaints and for taking disciplinary action against parliamentarians and their staff when complaints are upheld".[6]

Other international guidance and comparative studies:

- The Global Organisation of Parliamentarians Against Corruption (GOPAC) has devoted considerable resources to the providing guidance on parliamentary ethics frameworks, notably in its *Handbook on Parliamentary Ethics and Conduct*, 2009.[7]
- Inter-Parliamentary Union (IPU), The Parliamentary Mandate – A Global Comparative Study, 2000.[8]
- Office for Promotion of Parliamentary Democracy (OPPD)/European Parliament, Parliamentary Ethics – A Question of Trust, 2011.[9]
- Organization for Security and Co-operation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR), Background Study: Professional and Ethical Standards for Parliamentarians, 2012 (English, Georgian, Russian).[10]

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[5] PACE (2000) *Resolution 1214 (2000) on The Role of Parliament in Fighting Corruption*, available at www.coe.int. Accessed 28 October 2019.

[6] Parliamentary Assembly of the OSCE (2006) *Brussels Declaration*, available at www.osce.org. Accessed 28 October 2019.

[7] G. Power (2009) *Handbook on Parliamentary Ethics and Conduct: A Guide for Parliamentarians*, GOPAC Global Task Force on Parliamentary Ethics, GOPAC/Westminster Foundation for Democracy. Available at www.gopacnetwork.org. Accessed 29 October 2019.

[8] IPU (2000) *The Parliamentary Mandate – A Global Comparative Study*, available at www.ipu.org. Accessed 30 October 2019.

[9] OPPD (2011) *Parliamentary Ethics – A Question of Trust*, available at www.agora-parl.org. Accessed 30 October 2019.

[10] OSCE/ODIHR (2012) *Background Study: Professional and Ethical Standards for Parliamentarians*, available at www.osce.org. Accessed 30 October 2019.

- OSCE Office for Democratic Institutions and Human Rights (ODIHR)/Leone, Codes of conduct for national parliaments and their role in promoting integrity: an assessment, 2017.[11]
- United Nations Development Programme (UNDP), Codes of Conduct for Parliamentarians, A Comparative Study, 2008.[12]
- Council of Europe Eastern Partnership Project, Legislative Toolkit on Lobbying, 2016 (English, Russian)[13].
- Council of Europe Eastern Partnership Project, Legislative Toolkit on Conflicts of Interest, 2015 (English, Russian)[14].
- Organisation for Economic Cooperation and Development (OECD), Managing Conflict of Interest in the Public Sector: A Toolkit, 2005.[15]

1.2 What is a Code of Conduct for?

In order for a parliament to perform its functions effectively, it and its members must enjoy a reasonable degree of **legitimacy** and **trust** in society. Unfortunately, often Parliaments – including those in Eastern Partnership countries – enjoy high perceptions of corruption. In the 2017 Transparency International Global Corruption Barometer, in Europe and Central Asia elected representatives were seen as corrupt by more respondents (31%) than any other group.[16] Measures to increase the legitimacy of Parliaments can therefore be of key importance in underpinning democratic development. GRECO has "consistently underlined throughout its reports on this theme that the process of preparation and adoption of a code of conduct can be greatly beneficial to the work and **public image** of MPs and Parliament."[17]

The purpose of a Code is to establish standards of conduct to which MPs should aspire and which can be expected of them. While a Code may be a more-or-less pure reiteration/collection of existing legal provisions on conduct, ideally it will go further in establishing positive principles of **integrity**. These can enable elected representatives to determine the right course of action in situations where the law does not do so unambiguously.

For the same reason, a code of conduct is not just an anti-corruption instrument. Although a code should reiterate prohibitions on corruption behaviour and regulate issues such as conflict of interest, gifts and lobbying, its purpose is to **encourage** good conduct in a wider positive sense. Aspects of conduct that might be regulated include work ethics and discipline, conduct during proceedings of the legislature as well as in private life, impartiality and objectivity in the performance of public office, conflict of interest, gifts etc. As noted by the

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[11] OSCE/ODIHR (2017) *Codes of conduct for national parliaments and their role in promoting integrity: an assessment*, available at www.oecd.org. Accessed 30 October 2019.

[12] King Prajadhipok's Institute for UNDP Regional Center Bangkok (2008) *Codes of Conduct for Parliamentarians, A Comparative Study*, available at www.knjiznica.sabor.hr. Accessed 30 October 2019.

[13] Document can be accessed by request made to econcrime@coe.int

[14] Ibid

[15] OECD, *Managing Conflict of Interest in the Public Sector: A Toolkit*, 2005. Accessed 12 November 2019.

[16] Transparency International (2017) *Global Corruption Barometer*, available at www.transparency.org. Accessed 22 July 2019.

[17] Moldova, GRECO Fourth Evaluation Round, § 32.

GOPAC publication, in countries where parliamentary democracy has only recently been established (or renewed), a code of conduct may also play a role in establishing the authority of parliamentary rules of procedure.[18]

While it is essential for a Code to address certain key issues of conduct, the issues that are of most importance may vary between countries. For example, poor work ethic (such as low attendance at parliamentary proceedings) may be the most important problem in one country, while illicit influence of private interests on the voting of MPs might be the key issue in another. In other words, Codes should address core issues (as reflected in international standards and recommendations) but should also be tailored to specific national circumstances.

1.3 Regulatory nature of a Code of Conduct

Codes of Conduct occupy a specific niche in the regulatory spectrum. Although a code must be binding, it will typically be less enforced than for example anti-corruption provisions in a criminal code. There are two main reasons for this. First, the fact that a code is a form of self-regulation implies by definition that it will be enforced not by an external entity (such as an enforcement agency) but by the MPs to whom it applies. Second, Codes often establish positive obligations as well as prohibitions, with the ultimate aim being to underpin a culture of integrity that rules out corruption or other misconduct in advance. Positive obligations can of course be enforced as well (in principle they are a different way of expressing prohibitions), and a Code should undoubtedly have enforcement mechanisms for this purpose (see Section 2.5.4). The overall aim however should be to achieve **voluntary compliance**. This has important implications for the development of a Code and its implementation (see below). Furthermore, as GRECO noted, "codes are often less static than legislation and may need to evolve over time."[19]

1.4 Interaction with other regulations

Rules of good conduct in parliaments are often found in a variety of regulations:

- House rules (e.g. dress code);
- Rules of procedure (e.g. rules against ghost voting);
- Integrity and anti-corruption laws (e.g. rules on asset declarations);
- Laws on the status of MPs (e.g. rules on conflicts of interest and incompatibilities).

Therefore, in some legal systems the term "Code" could be interpreted broadly. A code may consist of specific provisions of various laws, while in others it may be a unified document. For this reason, rather than using the term "code of conduct", the GOPAC Handbook presents its guidance on an "ethical regime" or "system of ethics and conduct".[20]

However, GRECO has sometimes criticised such an approach of scattered regulations, for example in Croatia: "Rather, the conduct provisions included in the Standing Orders of the Sabor relate to rules on decorum and debate (e.g. behaving appropriately during official

[18] GOPAC Handbook, pp. 13-14.

[19] Turkey, GRECO Fourth Evaluation Round, § 57.

[20] GOPAC Handbook, p. 9.

proceedings). Moreover, the LCI [the Law on Prevention of Conflict of Interest] applies to MPs and includes important requirements concerning gifts and conflicts of interest, but these requirements are not always adequately tailored to the parliamentary function."[21] GRECO sees the added value of a code of conduct also in combining all integrity rules in **one document**: ["T]he added value of bringing together the legal and regulatory obligations of MPs in a single document is obvious";[22] "MPs' behaviour is to be framed by bringing together in a single text – whether a code of conduct or a regulation –the principles that are to underpin the performance of parliamentary duties, the whole set of MP's obligations and the standards of conduct befitting their status as elected representatives."[23]

1.5 Specificities for MPs

As mentioned in Section 1.1, international model codes of conduct exist for public officials in general. It should be noted that the exact content of a code should be tailored to the category of official whose conduct it is intended to guide/regulate. In particular, the requirements that should (or may) be imposed on elected representatives will not be exactly the same as for permanent civil servants. The main two differences are the following:

- In the case of civil servants, it is legitimate to require officials to make decisions objectively and to be impartial in all respects. In the case of elected representatives, who make **political decisions** that are or may be legitimately based on competing visions of the public good, complete objectivity or impartiality cannot be required. For example, different politicians and parties will have different stances on how a welfare benefit system should look; for one side, the approach of the other might seem to violate principles of fairness and impartiality. A party that represents the working class will not legislate with impartiality, any more than will one that represents business. It is important that a Code does not overreach into areas that are the natural ground of political debate and disagreement.
- Provisions regulating **conflicts of interest** of elected representatives are usually different to those regulating civil servants (permanent officials). For example, it is normal to require civil servants to withdraw from decisions that affect or may affect a personal interest to which the official is subject; requiring this of elected representatives is controversial and may even be unconstitutional. Restrictions on the holding of external interests (such as positions in the private sector) are generally less stringent for elected representatives than executive branch ones, since their mandate is by nature an amateur one with a limited time span.

However, it should be noted that in some cases the same codes of conduct apply not only for Members for Parliaments, but also for **Members of Government**, as is the case in Lithuania: "'State politicians' shall mean persons who are elected, in accordance with the procedure set forth by laws, as Member of the Seimas, President of the Republic, Member of the European

[21] Croatia, GRECO Fourth Evaluation Round, § 34.

[22] Albania, GRECO Fourth Evaluation Round, § 32.

[23] Portugal, GRECO Fourth Evaluation Round, § 47.

Parliament, member of a municipal council or mayor of a municipality or appointed as Member of the Government or a deputy mayor of a municipality."[24]

1.6 Drafting and adoption process

The content of a Code of Conduct will be irrelevant unless there is broad consensus on its purpose and content. For this reason, it is important for there to be an inclusive process for developing the Code. For example, a Parliamentary Committee might be formed, with sufficient representation from all political factions. In such a scenario, the Committee would develop a draft; the draft would be circulated to all MPs for consultation and would be debated in the plenary. The GOPAC Handbook underlines this point strongly: "Parliamentarians must be engaged in the process of developing the system at each stage. This can be done in different ways, but the early stages of development should involve as wide a range of MPs as possible - through general debate and discussion. At the later stages it will be more effective to delegate the task of writing rules to a committee, but again it must be accompanied by consultation, discussion and deliberation within the parliament."[25]

In **practice**, this can be difficult, though. As GRECO noted in one case: It was explained to GRECO "by a number of opposition MPs that the work on a code of ethics had failed in the Reconciliation Committee as, according to them, the draft proposal was not sufficiently far-reaching. They all agreed to the need for a code of ethics/conduct for MPs. […] The GET [GRECO Evaluation Team] was puzzled by the fact that although all interlocutors met on-site emphasised the need for a comprehensive set of ethical guidelines/code of conduct of members of parliament, this position had not resulted in the adoption of such a text, despite efforts to do so."[26] However, "[e]xperience shows that the mere process of developing such standards would raise MPs' awareness of integrity issues, assist them to be proactive in difficult ethical situations and – not least – to demonstrate their commitment vis-à-vis the general public. The elaboration of ethical standards therefore requires strong involvement by the MPs themselves.[27]

GRECO commended a particular mechanism of **ownership** in North Macedonia: "[T]he Code requires that all parliamentarians shall explicitly commit themselves, by signature, to complying with the code. Such a 'best practice' could inspire other GRECO members seeking to complement their own promotional mechanisms and efforts concerning rules of conduct for parliamentarians and other categories of officials."[28]

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[24] Lithuania, Art. 2 no. 1 *Law X-816 on the Code of Conduct For State Politicians*, available at www.e-seimas.lrs.lt. Accessed 30 October 2019

[25] GOPAC Handbook, p. 10.

[26] Turkey, GRECO Fourth Evaluation Round, § 55 and 57.

[27] Tukey, GRECO Fourth Evaluation Round, § 57.

[28] North Macedonia, Second Compliance Report, GRECO Fourth Evaluation Round, § 10.

2 Toolkit for Drafting

This section provides guidance on how to draft specific provisions of a Code. It is grouped under a set of headings derived partly from the European Code. While the European Code focuses only on locally and regionally elected councillors or parliamentarians, it is still a valid reference point for national parliaments as well: In essence, requirements for good conduct are the same, whether in the Federal Parliament of Germany or Italy, or in one of its regional parliaments. This toolkit adds some additional headings (especially on Conflict of Interest) where the European Code does not go into a level of detail that would be needed for a drafting toolkit. The additional headings are inspired by other international documents such as the UN International Code of Conduct or comparative guidance documents, such as the GOPAC Study. Taken together, the headings can be used as the basic structure for a specific Code of Conduct for Elected Officials. The headings are grouped into three main parts: general provisions and principles/values, detailed provisions, and provisions on implementation and enforcement. The placement of headings does not correspond exactly to their location in the European Code – for example certain general categories there (again, Conflict of Interest especially) are placed under detailed obligations in this Toolkit.

2.1 General structure

The GOPAC study defines an "ethics and conduct regime" as comprising three components[29]:

i) **Principles:** The general ethical principles which all members of the parliamentary institution should seek to uphold.

ii) **Rules:** The detailed provisions which identify acceptable and unacceptable conduct and behaviour for MPs.

iii) **Regulatory framework:** The mechanisms for enforcing the rules and applying sanctions.

The **European Code** essentially follows this approach. It is therefore the **basic model** of this toolkit. However, it is modified here for two reasons: The European Code is drafted for both appointed and elected officials. Provisions that are appropriate for appointed officials may not be tailored correctly for elected officials; moreover, elected official may include not only members of elected assemblies but also mayors or other directly-elected positions. Furthermore, the explanatory memorandum to the European Code does often or not always provide explanations pertinent to the specific **context of parliaments**. This toolkit therefore tailors the European Code more closely to the specific needs of MPs.

[29] G. Power, *Handbook on Parliamentary Ethics and Conduct: A Guide for Parliamentarians*, GOPAC Global Task Force on Parliamentary Ethics, GOPAC/Westminster Foundation for Democracy, 2009. Available at www.gopacnetwork.org, p. 10. Accessed 29 October 2019.

2.2 Aim and scope of the Code

European Code:

Article 1 – Purpose of the Code

The purpose of this Code is to promote integrity of public governance, by specifying the principles and standards of conduct expected of all actors.

Article 2 – Scope of the Code

This Code applies to all actors involved in local and regional public governance.

This section of the Code should specify what the aim/objective of the Code is, and to whom it applies. This is fairly straightforward. However, a Code for MPs will need to define **the scope of the Code as covering only MPs**. The purpose of the Code may be elaborated as in the European Code, but could also be more detailed. For example, the Code of Conduct for MPs in the UK states its purpose as follows:

> *"1. The purpose of this Code of Conduct is to assist all Members in the discharge of their obligations to the House, their constituents and the public at large by:*
>
> a) *establishing the standards and principles of conduct expected of all Members in undertaking their duties;*
>
> b) *setting the rules of conduct which underpin these standards and principles and to which all Members must adhere; and in so doing*
>
> c) *ensuring public confidence in the standards expected of all Members and in the commitment of the House to upholding these rules."*[30]

2.3 General Principles of Conduct (Values)

The purpose of this Section is to set down the core principles or values underpinning the Code, and on which the later provisions of the Code rest. Ideally, the exact list of principles should reflect a national consensus, or an agreed list that has emerged from a domestic process. For example, in the UK almost all codes of conduct for public officials start with the Seven Principles of Public Life, elaborated by the Committee for Standards in Public Life[31], which are: Selflessness; Integrity; Objectivity; Openness and transparency; Accountability; Leadership. The Lithuanian Code of Conduct for State Politicians (Article 4) lays down the following principles of conduct: respect for an individual person and the state; justice; honesty; transparency and publicity; decency; exemplariness; selflessness; impartiality; and responsibility.[32]

[30] UK (2019) *The Code of Conduct for Members of Parliament*, available at www.publications.parliament.uk. Accessed 29 October 2019.

[31] UK (1995) *Guidance: The 7 Principles of public life*, available at www.gov.uk. Accessed 29 October 2019.

[32] Lithuania, *Law on the Approval, Entry into Force and Implementation of the Code of Conduct for State Politicians*, available at www.e-seimas.lrs.lt. Accessed 30 October 2019.

2.3.1 Primacy of law

European Code:

Article 3 – Primacy of law

All actors must at all times act in accordance with the law…..

Most Codes of Conduct reiterate the obligation of officials to obey and respect the law. For MPs this means primarily compliance with rules regulating Parliament. Thus, Article 2 of the Code of Official Conduct of the US House of Representatives states that

> *"A Member, Delegate, Resident Commissioner, officer, or employee of the House shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof."*[33]

An interesting aspect of this rule is the obligation to observe not only the letter but also the spirit of the rules. This is a rule that could never be included in a normal law, and illustrates the "value-added" that a Code of Conduct can bring to a regulatory regime by exhorting elected officials to conduct themselves well (and helping them to do so) even in situations where the law does not necessarily determine the right course of action.

2.3.2 Integrity

Integrity may be defined as being honest and adhering to strong ethical principles and values. While the principle of integrity is not explicitly included in the European Code, in international standards and documents it is often cited as a key general principle of conduct, for example in Article 8 of the Legislative Guide to Implementation of UNCAC. It is also found as a key principle in a number of countries – the UK being an obvious example. Again, positing integrity as a central value underlines the fact that ethics regulation is not just about legality. The European Code of Good Administrative Behaviour elaborates the principle of **integrity** as follows**:**

> *"Civil servants should be guided by a sense of propriety and conduct themselves at all times in a manner that would bear the closest public scrutiny. This obligation is not fully discharged merely by acting within the law."*[34]

There is no reason why this rationale should not apply to MPs as well.

[33] US House of Representatives, *Code of Official Conduct of House of Representatives*, available at www.ethics.house.gov. Accessed 1 November 2019.

[34] EU Ombudsman (2001), *European Code of Good Administrative Behaviour*, p. 8, available at www.statewatch.org. Accessed 24 October 2019.

2.3.3 Impartiality

European Code:

Article 8 – Impartiality

All actors shall show impartiality when taking decisions and actions, and avoid any form of prejudice and favouritism, including nepotism.

Article 6 – [Respect and] Non-Discrimination

All actors […] shall actively work towards a non-discriminatory culture of fairness and tolerance that appreciates diversity. [for "Respect" see below at 2.3.5]

The principle of impartiality (essentially, not discrimination) is in fact a component of objectivity (making decisions based on evidence and facts), and objectivity may be used instead as the core value/principle stated in a code. This is the case for example in the UK (see above). As mentioned previously, it is important to interpret objectivity and impartiality carefully in the case of elected officials. Elected officials make political decisions, which are usually or often by their nature partial: often there is no one right answer, and the decision that is made reflects the outcome of political (not scientific) debate. That said, it may be legitimate to establish a general obligation - or rather exhortation, i.e. not enforceable - to justify important decisions with arguments.

The same goes for the principle of non-discrimination, which is more or less the same as impartiality. Once again, it is in a sense in the nature of politics to take sides: Parties and their representatives support and defend different interests. Nominations to positions within an assembly will be often or even primarily based on political affiliation and only secondarily on other criteria such as expertise, for example. "Discrimination" is understood in this toolkit not as political partiality but as discriminatory behaviour such as unfair treatment of members of a certain gender, sexual orientation or ethnic origin.

Examples of provisions on non-discrimination include the following.

In Georgia, Article 3.M) of the parliamentary Code of Ethics states that

> *"The member of Parliament while communicating with colleagues shall not discriminate/distinguish them according to their race, ethnicity, sex, religion, or other grounds; as well as he/she shall not task the employees of the Parliament to engage in such activities, which are beyond their job description."*[35]

In Montenegro Article 4 of the Code of Ethics for MPs states:

> *"In undertaking their duties as well as in reaching decisions, MPs are obliged to perform their duties without prejudices and discrimination on the basis of race, religion, sex, nationality, age, marital status, sexual orientation, social and financial status or any other diversity...".*

A similar provision is found in Latvia:

[35] Georgia, *Parliamentary Code of Ethics*, available at www.parliament.ge. Accessed 13 November 2019.

"An MP observes the principles of human rights and does not appeal to race, gender, skin colour, nationality, language, religious beliefs, social origin or state of health to justify his/her argumentation" (Saeima Code of Conduct, no. 8).

Article 8 of the Rules of Ethical Conduct of the Azerbaijan Milli Majlis (Parliament) states that

"A deputy shall be impartial in exercising his/her duties, and shall refrain from giving advantage to any individual or group of individuals based on their race, ethnic origin, language, sex, social origin, property or service position, attitude to religion or shall not create conditions for such advantage."

2.3.4 Accountability

European Code:

Article 4 – Accountability

All actors are accountable for their decisions and actions and should be willing to give detailed grounds for these.

The provision "All actors are accountable for their decisions and actions and should be willing to give detailed grounds for these" needs to be modified or interpreted carefully to ensure it does not impose excessive requirements on elected officials. Elected officials are ultimately accountable for their decisions to the electorate, although they may be directly accountable to internal control mechanisms for issues such as expenses, office use, insults in plenary debates, absenteeism, etc.

It is not possible for MPs to give detailed grounds for all their decisions – there are sometimes dozens if not hundreds decisions taken on any given day by an MP on various levels (MP's parliament office, constituency office, parliamentary groups, committees, plenary, political party meetings, etc.). However, MPs should be ready to provide grounds (justification based on argumentation) for important decisions, such as proposed laws or amendments submitted by them, or other key inputs if requested by the media, their constituents, and similar interested parties. While existing codes of conduct for elected officials do not contain such a provision explicitly, it is a principle that is usually supposed to underpin parliamentary proceedings – hence for example requirements for draft laws to include explanatory memoranda justifying the proposal. Note that argumentation may be political, and does not have to be of an entirely objective nature: following the comments on impartiality in Section 1.4, the arguments that would be used by an elected official from a party representing workers will be different from the arguments of one representing a party of business. Section 2.4.6 provides more information on measures to ensure the transparency of the legislative process.

2.3.5 Respect

European Code:

Article 6 – Respect [and Non-Discrimination]

All actors shall respect each other […] [for "Non-Discrimination" see above at 2.3.3 "Impartiality"]

The principle of respect is present in some form in virtually every code of conduct. In the Parliamentary context, "Respect" is perhaps best dealt with under a heading such as "Conduct in Parliament", with an emphasis on treating fellow elected officials with respect and courtesy, refraining from vulgar, aggressive or violent behaviour etc. It is important not to over-regulate: for example, plenary debates need some freedom of expression, and are by nature "tougher" (and less respectful) than debates should be between for example a civil registry official and a citizen. Nevertheless, the establishment of respect as a guiding principle for parliamentary behaviour is of value as a building block of a healthy political and civic culture, and to set boundaries for plenary debates. For example, racist slurs or showing a complete lack of respect for the dignity of fellow parliamentarians can and should lead to consequences. Therefore, despite indemnity provisions protecting them from criminal sanctions, MPs are usually not exempt from sanctions handed down by Parliament for conduct violations. An example is Article 46 of the German Constitution: "At no time may a Member be subjected to court proceedings or disciplinary action or otherwise called to account **outside the Bundestag** for a vote cast or for any speech or debate in the Bundestag or in any of its committees. This provision shall not apply to defamatory insults" (emphasis added).

It is important to ensure that a provision on respect applies not only to how MPs treat each other, but to how they treat all relevant actors, including parliamentary staff and citizens in general.

Article 6 of the Code of Ethics of MPs in Montenegro states:

> *"In mutual communication, as well as in communication with other persons and public, MPs are obliged to act in all situations with respect and courtesy, avoiding terms which might insult or disparage another person or a group […]".*

Article 7 adds that

> *"MPs are obliged, in any occasion, not to damage the reputation of other MPs and reputation of the Parliament, through conduct, written and spoken word […]".*

In Latvia, no. 7 of the Saeima (Parliament) Code of Conduct is worded similarly:

> *"An MP avoids using words, gestures and other actions that can be insulting and does not use offensive or otherwise inappropriate statements that may dishonour the Saeima."*

Respect extends to respect for the **dignity** and **authority** of the **Parliament** as such. This principle or value explains rules of conduct such as the following included in the Saeima (Parliament) Code of Conduct:

> *"A Member of Parliament refrains from showing off on the rostrum " (no. 19).*

> *"A Member of Parliament does not frequent public places if he/she is under the influence of alcohol or psychoactive substances or presents a grossly indecorous appearance" (no. 14).*

"In the buildings of the Saeima, a Member of Parliament is properly attired and groomed" (no. 14).

A local particularity is the following rule in the regional Parliament of Mecklenburg Western Pomerania (North-Eastern Germany):

"Wearing the fashion brands 'Thor Steinar', 'Consdaple' […] as well as other fashion brands with customer orientation in the extremist environment is not allowed in the state parliament" (Annex 3 to § 13 House Rules).

2.3.6 Merit

European Code:

Article 7 – Merit

Human resource management should be guided by the principles of merit and professionalism.

This principle is of limited relevance to MPs, as they are not part of the executive hierarchy. However, it is important for the administration of Parliament. Due to its proximity to parliamentarians, hiring procedures in parliamentary administrations are at high risk of being based on political affiliations, rather than on merits. Parliamentarians should abstain from any interference with hiring procedures or even only creating the perception of taking such influence.

In this context, one can note the proscription contained in the former Constitution of Thailand, under which members of the House of Representatives and senators were forbidden to interfere or intervene in the recruitment, appointment, reshuffle, transfer, promotion and elevation of the salary scale of a government official holding a permanent position or receiving a permanent salary.[36]

2.4 Detailed obligations

2.4.1 Corruption and fraud

European Code:

Article 10 – Corruption and fraud

All actors shall refrain from misusing public function for private gain, and from misappropriating public funds.

A general prohibition on corruption is a standard component of most codes of conduct. For example, the UK Code states

"The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or

[36] Constitution of the Kingdom of Thailand, B.E. 2540 [1997], Articles 111 and 128, quoted after *UNDP Study*, page 78. Accessed 30 October 2019.

> *opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament."*[37]

More specific provisions might concern more subtle forms of corruption or related misconduct, such as hiring relatives as parliamentary staff. In Austria, it is forbidden for MPs in the lower house to employ close relatives as personal assistants whose salaries are paid from public funds.[38] In the United Kingdom, family members can be employed by MPs, but this must be declared.[39] Following a notorious scandal, the Bavarian Parliament passed an amendment in 2013, prohibiting the employment of family members up to the fourth degree of kinship. Even employment of relatives of other deputies is no longer permitted, until the third degree of kinship.[40] Following a scandal of "fake jobs", France banned the employment of "immediate family members" and made it punishable by fines of €45,000 and up to three years in prison. More distant family members, such as cousins or a spouse's non-immediate family, can be employed, but MPs will be under obligation to report this. The prohibition for employment and the reporting obligation apply also in case of "cross-employment", or politicians hiring the family members of another MP or minister.[41]

2.4.2 Public procurement and contracting

European Code:

Article 11 – Public procurement and contracting

In all stages of the procurement cycle, decisions and actions shall be guided by fair, clear, and open procedures as well as the right to review any decision by the procurement commission. Bidders shall behave responsibly and fairly and refrain from inappropriately influencing the bidding process.

This principle is of limited relevance to MPs, as they are not part of the executive hierarchy. However, it is important for the administration of Parliament, which procures services for publications, office supplies, travel services, etc. Again, procurement procedures in parliamentary administrations are at risk of being based on political criteria/affiliations rather than on the quality of the bid. Parliamentarians should abstain from any interference with procurement procedures or even only creating the perception of taking such influence (a similar rationale applies to human resource management at parliaments, see above at 2.3.6). Article 11 of the Latvian Saeima (Parliament) Code of Conduct for example states that

> *"A Member of Parliament does not use his/her influence to illegally achieve a favourable decision by a public administrative institution."*

[37] UK (2019) *The Code of Conduct for Members of Parliament*, Article 13, available at www.publications.parliament.uk. Accessed 29 October 2019.

[38] OSCE Background Study, page 50.

[39] OSCE Background Study, page 50.

[40] Bavarian State Parliament, *Bill amending the Bavarian delegates law* (German), available at www.bayern.landtag.de. Accessed 30 October 2019.

[41] The Local (2017) *France bans MPs from hiring family members*, available at www.thelocal.fr. Accessed 30 October 2019.

2.4.3 Conflict of Interest

European Code:

Article 9 – Conflicts of interest

All actors shall avoid any conflict or appearance of conflict between their private affairs and public duties.

Conflicts of interest policies should be guided by the principles of transparency and accountability.

All actors shall comply with any measure under the regulations in force requiring their direct or indirect personal interests, their other mandates, functions or occupations, or changes in their assets and liabilities to be made public and monitored.

Article 12 – Revolving door policy

In performing their functions, actors shall not take any measure to grant themselves a personal and/or professional advantage once they have relinquished their functions.

Provisions on conflict of interest are usually a core component of a Code of Conduct. As with all public officials, mechanisms for regulating conflicts of interest can be divided into three main categories:

General provisions. **First**, it is useful to provide a general definition of conflict of interest: such as

> *"Conflict of interest arises from 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 official duties."*[42]

It is worth stressing that conflict of interest is not corruption, but a situation which creates incentives for corruption.

Second, a general obligation of MPs to avoid conflicts of interest should be included. For example, in the Latvian Saeima, the Code of Conduct foresees in its no. 9:

> *"A Member of Parliament does not allow a conflict of personal or national interests and tries to avoid situations that may create the appearance that such a conflict exists. A Member of Parliament refuses an invitation, does not participate in an event and tries to avoid any other situations that may give grounds for suspecting the presence of a conflict of interest or that may impair the prestige of the Saeima."*

In France, Article 2 of the Code of Conduct of the National Assembly frames this as a general obligation of independence:

[42] Council of Europe (2000) *Appendix to Recommendation No. R (2000) 10 Model code of conduct for public officials*, Article 13.1. Accessed 30 October 2019.

> *"Under no circumstances must members of the National Assembly find themselves in a situation of dependence upon a natural or legal person who could divert them from complying with their duties as set out in this Code."*[43]

Obligations to declare outside interests. These include entrepreneurial activity, outside employment, membership of statutory organs of companies, significant ownership stakes, etc. Good examples of detailed requirements can be found in the codes of conduct of the German Federal Parliament (Bundestag)[44] or UK House of Commons[45]. In some countries – for example in Armenia (from January 2020), Albania or Ukraine, declarations of interests are included.

Incompatibility provisions. These are prohibitions on the holding of certain other interests at the same time as being an MP, such as employment or management functions in private companies. An important point to note is that incompatibility provisions should be and are in most countries less strict for elected officials than for permanent officials, although practice varies considerably. In Western Europe (for example in the UK), restrictions on outside engagements or holdings tend to be very limited, with the exception of certain other official positions (judge, civil servant, etc.) and interests. Some countries in Central and Eastern Europe, the Balkans and EaP region have much stricter prohibitions (e.g. Albania, Armenia, Montenegro). However, provided there is an international consensus, it may be sensible to have a combination of **limited restrictions** on outside activities with **obligations** to **declare** such interests, on an annual basis and/or in specific proceedings as appropriate**.**

Rules for situational "case-by-case" conflicts of interest. These are provisions determining how an MP should deal with a "situational" conflict of interest, i.e. one that emerges during the performance of one's function. Examples would be where the legislature votes on an appointment and one of the candidates is a family member, or where there is a vote on subsidies to a specific company in which and MP holds a significant ownership stake. Permanent officials in such situations would in most countries be required to declare the interest and to withdraw from the proceeding or matter in which they have an interest.

Again, the situation is not as clear for elected officials. Most European countries would require MPs to declare the conflict of interest. In France,

> *"Members of the National Assembly have a duty to disclose any personal interest that could interfere with their public activity and take all steps to resolve any such conflict of interest for the sole benefit of the general interest."*[46]

Article 11.3 of the Azerbaijan Code states:

> *"[A] deputy shall disclose his/her interest which may emerge on an issue to be discussed prior to his/her speech in session of Milli Majlis, its committee and commission or public discussions and shall inform the chairman of the meeting verbally. The Deputy's disclosure*

[43] France, GRECO Fourth Round Evaluation Report, p. 14-15.

[44] Germany, *Code of Conduct for Members of the German Bundestag*, available at www.bundestag.de. Rule 1.1-2. Accessed 30 October 2019.

[45] House of Commons, *Guide to the Rules relating to the conduct of Members*, part 1, available at www.publications.parliament.uk. Accessed 20 October 2019.

[46] France, GRECO Fourth Round Evaluation Report, p. 14-15.

on conflict of interests is included in the transcript of sessions of Milli Majlis and published in its webpage."

Rule 6 of the German Code has a specific rule only for members of committees:

"Every Member of the Bundestag in receipt of remuneration for his or her activities in connection with a subject to be debated in a committee of the Bundestag shall, prior to the deliberations, disclose as a member of that committee any link between these interests and the subject to be debated where this is not evident from the information published pursuant to Rule 3."

The absence of rules for case-by-case notification of conflicts of interest, has been a recurring concern for GRECO. It therefore often "recommended that a mechanism for the 'case by case' notification of conflicts of interest by members of parliament be established within the National Assembly and that the operation of this mechanism be subject to monitoring",[47] or "to introduce a requirement of ad hoc disclosure when a conflict between specific private interests of individual MPs may emerge in relation to a matter under consideration in parliamentary proceedings – in the plenary or its committees – or in other work related to their mandate."[48]

However, very few countries require MPs to withdraw from a parliamentary vote in which they have an interest (Canada is such an exception). MPs routinely vote on issues that affect their interests,for example tax changes.. More importantly it would usually conflict with the constitutionally established role of an MP (to represent). Some codes therefore narrow the definition of conflict of interest to ensure that it includes only clear and direct interests that are particular to the official. For example, Article 4.i of the Code of Conduct of the Irish Seanad Éireann (lower house) states that

"A conflict of interest does not exist where the Member or other person benefits only as a member of the general public or a broad class of persons."[49]

However, there may be cases where it is *appropriate* for an MP to refrain from participating in a vote or proceeding. The example of a subsidy to his/her company is an obvious one. A Committee proceeding on a matter in which an MP who is a member of the Committee has a direct financial interest is another (such a proceeding could be discredited if s/he participated). In the Australian House of Representatives for example, the standing order 231 states that:

"No Member may sit on a committee if he or she has a ***particular direct pecuniary interest*** *in a matter under inquiry by the committee."*[50]

In this respect a Code of Conduct can also be a useful tool, as it can establish rules of behaviour that are not legally binding. For example, the Prague City Assembly Code of Ethics requires members of the Assembly to declare any instance where a matter under discussion of the Assembly that affects in any way him/her, his/her family member or close person or

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[47] Albania, GRECO Fourth Evaluation Round, § 35.

[48] Austria, GRECO Fourth Evaluation Round, § 27.

[49] Ireland, *Code of Conduct of the Irish Seanad Éireann*, available at www.data.oireachtas.ie. Accessed 31 October 2010.

[50] Council of Europe (2015) Legislative Toolkit on Conflicts of Interest (English, Russian), p. 61 (emphasis added).

individuals or legal entities with whom s/he has had business relations, and states that the member "*should* not take part in the discussion or vote" (emphasis added).

For both binding and exhortatory provisions on exclusion, it is important that such provisions only apply to situations where the interest of the MP is direct and narrow. Further guidance on this can be found in the CoE Legislative Toolkit on Conflict of Interest.

A particular conflict of interest arises, where **MPs** hold functions in **government**. Their actions in government could favour their own constituency and thus ensure their re-election. The Code of Conduct of the Malta Parliament (Art. 27) is an example in this regard**:**

> *"When a Minister needs to take decisions which may have a strong impact on his constituency, he must take all necessary precautions to avoid all possible conflicts of interest"*

Post-mandate restrictions. For public officials in general, it is common to have restrictions on accepting engagements with external entities (e.g. a company) with which the official had official dealings – for example a company over which s/he exercised regulatory oversight. For elected officials, it is not practical or fair to prohibit MPs from engagement with entities that benefited from any action they took in Parliament. However, as with recusal obligations, where an MP participated directly in a matter that concerns a specific entity – for example as a member of an Committee of Inquiry into a banking scandal – it would be appropriate for him/her to refrain from accepting engagements with the relevant entities involved (banks in this case) for some period following termination of office. While such provisions for elected officials are rare in practice, a code of conduct could be an appropriate means for establishing such a voluntary provision.

2.4.4 Gifts

Regulation of gifts is a standard component of any integrity framework, and is a tool to prevent conflict of interest and corruption. If MPs are subject to other legislation or rules on gifts, the code of conduct should reiterate these provisions. If they are not, then a code of conduct should establish such provisions. The Council of Europe Toolkit on Conflicts of Interest contains a model regulation on gifts (Art. 5):

> *"(1) [General rule] The public official and his/her family members are prohibited from demanding or accepting gifts, favours, hospitality or any other benefit for themselves, their family, or persons or organisations with whom they have or have had close personal, business or political relations which may influence or appear to influence the impartiality with which the public official carries out his or her duties or which may be or appear to be a reward relating to his or her duties. This does not include conventional hospitality or minor gifts.*
>
> *(2) [Advice] Where the public official is in doubt as to whether he or she can accept a gift or hospitality, he or she has to seek the advice of the conflict of interest manager.*
>
> *(3) [Refusing] If the public official is offered an undue advantage, he or she should refuse the undue advantage and report the attempt as soon as possible to his or her supervisor, or directly to the appropriate law enforcement authority.*

(4) [Protocol gifts] A public official, upon fulfilling the duties of office, is permitted to accept diplomatic and similar gifts which are presented:

(a) within the framework of State, official and working visits in-country or abroad;

(b) by officials of foreign states or international organisations to the public officials working in diplomatic and consular missions;

(c) to a public official as a representative of the State or local government authority on public holidays and on days of commemoration and celebration.

(5) [Public property] Gifts under paragraph (4) are the property of the relevant public organisation.

(6) [Register and disposal] The procedures by which the gifts referred to in paragraph (4) shall be registered, evaluated, used and redeemed, are subject to a decree."

Explanatory notes for each of the above paragraphs can be found in the Council of Europe Conflicts of Interest toolkit (under Art. 5). National regulations of gifts will usually consist of provisions in the following categories:

Definition of gift. A gift should be defined as a benefit of any kind provided to an MP. For example, the OECD Toolkit on Managing Conflict of Interest in the Public Sector defines a gift as including "a gift of entertainment, hospitality, travel or other form of benefit of significant value; and… a gift of any item of property of significant value, whether of a consumable nature or otherwise, including, for example, display item, watch, clocks, book, furniture, figurine, work of art, jewellery, equipment, clothing, wine/spirits, or personal item containing precious metal or stones."[51]

Definition of impermissible gifts. Many countries prohibit the acceptance of gifts provided in connection with the performance of **public function** – i.e. to an MP as an MP, rather to him/her as a private person. For example, the Rules of Ethical Conduct of the Milli Majlis in Azerbaijan state that:

> *"An MP shall not accept or demand gifts for him/herself or other people which can affect impartial execution of his/her duties or imply such impression, or gifts which are provided in return of execution of duties or imply such impression. Provided this rule does not affect the impartial exercise of official duties, this provision shall not be applied to gifts related to genuine hospitality or gifts the value of which does not exceed the limit defined in Article 10.1.1 of this Law."*

It is advisable to provide guidance on what it means for a gift to be provided **in connection with** the performance of **public function**. The OECD Toolkit provides a checklist for gifts and gratuities, of which the following (paraphrased here to fit the specific situation of an MP) may be taken as appropriate criteria[52]:

[51] OECD, *Managing Conflict of Interest in the Public Sector: A Toolkit*, 2005. Accessed 12 November 2019, p. 45.

[52] Ibid, p. 43.

- If the MP accepted the gift, would a reasonable person have any doubt that s/he would be independent in performing his/her function in the future.
- If the MP accepted the gift, would s/he feel free of any obligation to do something in return for the person providing the gift or for his family or friends/associates.
- Would the MP be prepared to declare the gift and its source to Parliament and the public in general.

Second, many countries **prohibit** the acceptance of any gifts at all that exceed a **certain value** – for example in the USA any gift exceeding $100 in value, or in Moldova MDL 1000 (c. 50 Euro).

Obligation to declare gifts. Frameworks for the regulation of gifts should include an obligation to declare gifts, or certain gifts ("reportable gifts"). The standard recommended in the OECD Toolkit is that a reportable gift is any gift made to an official by an organisation, agency or private sector entity, or private individual, where the current market value of the gift exceeds a "reportable gift threshold" (i.e. value)."[53]

Exceptions. It is necessary to also define the types of gifts/benefits which should not be regarded as gifts for the purpose of regulation – or put another way, are not reportable. The most important of these typically include the following:

- Gifts from family or close friends/associates.
- Gifts that are provided to a broader class of persons – for example discounts offered to all the population.
- "Protocol" gifts - i.e. gifts provided by representatives of foreign countries or institutions in the context of an official visit or event.
- Gifts that cannot be refused, for example because they were provided in the MPs absence, or in a situation where it would be culturally insensitive to refuse at the moment of giving.

In Armenia, the Public Service Law establishes that the following gifts may be accepted:[54]

> *"Gifts that may be received in connection with the performance of their official duties by persons holding public positions and public servants shall be as follows:*
>
> - *Gifts given or hospitality organised during state or official visits or events, as well as work visits;*
> - *Gifts usually given during public events;*
> - *Hospitality usually organised;*
> - *Materials provided free of charge for official use;*

[53] Ibid, p. 45.

[54] Public Service Law, Article 29.3.

- *Scholarships, grants or benefits awarded in a public competition on the same conditions and criteria as those which apply to the other applicants, or as a result of another transparent process;*
- *Ceremonial gifts given by foreign states and international organisations."*

The rules on gifts of the US House of Representatives provide an extensive list of exceptions, i.e. gifts for the purpose of regulation ("reportable gifts").[55] The list comprises of more than 1,000 words and might probably be considered in many jurisdictions as being almost overly detailed:

> *"(A) Anything for which the Member, Delegate, Resident Commissioner, officer, or employee of the House pays the market value, or does not use and promptly returns to the donor.*
>
> *(B) A contribution, as defined in section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) that is lawfully made under that Act, a lawful contribution for election to a State or local government office, or attendance at a fundraising event sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986.*
>
> *(C) A gift from a relative as described in section 109(16) of title I of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(16)).*
>
> *(D)(i) Anything provided by an individual on the basis of a personal friendship unless the Member, Delegate, Resident Commissioner, officer, or employee of the House has reason to believe that, under the circumstances, the gift was provided because of the official position of such individual and not because of the personal friendship.*
>
> *(ii) In determining whether a gift is provided on the basis of personal friendship, the Member, Delegate, Resident Commissioner, officer, or employee of the House shall consider the circumstances under which the gift was offered, such as:*
>
> *(I) The history of the relationship of such individual with the individual giving the gift, including any previous exchange of gifts between them.*
>
> *(II) Whether to the actual knowledge of such individual the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift.*
>
> *(III) Whether to the actual knowledge of such individual the individual who gave the gift also gave the same or similar gifts to other Members, Delegates, the Resident Commissioners, officers, or employees of the House. (E) Except as provided in paragraph (e)(3), a contribution or other payment to a legal expense fund established for the benefit of a Member, Delegate, Resident Commissioner, officer, or employee of the House that is otherwise lawfully made in accordance with the restrictions and disclosure requirements of the Committee on Ethics.*

[55] *Rules of the House of Representatives* (2015). Accessed 13 November 2019.

(F) A gift from another Member, Delegate, Resident Commissioner, officer, or employee of the House or Senate.

(G) Food, refreshments, lodging, transportation, and other benefits— (i) resulting from the outside business or employment activities of the Member, Delegate, Resident Commissioner, officer, or employee of the House (or other outside activities that are not connected to the duties of such individual as an officeholder), or of the spouse of such individual, if such benefits have not been offered or enhanced because of the official position of such individual and are customarily provided to others in similar circumstances; (ii) customarily provided by a prospective employer in connection with bona fide employment discussions; or (iii) provided by a political organization described in section 527(e) of the Internal Revenue Code of 1986 in connection with a fundraising or campaign event sponsored by such organization.

(H) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

(I) Informational materials that are sent to the office of the Member, Delegate, Resident Commissioner, officer, or employee of the House in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.

(J) Awards or prizes that are given to competitors in contests or events open to the public, including random drawings.

(K) Honorary degrees (and associated travel, food, refreshments, and entertainment) and other bona fide, nonmonetary awards presented in recognition of public service (and associated food, refreshments, and entertainment provided in the presentation of such degrees and awards).

(L) Training (including food and refreshments furnished to all attendees as an integral part of the training) if such training is in the interest of the House.

(M) Bequests, inheritances, and other transfers at death.

(N) An item, the receipt of which is authorized by the Foreign Gifts and Decorations Act, the Mutual Educational and Cultural Exchange Act, or any other statute.

(O) Anything that is paid for by the Federal Government, by a State or local government, or secured by the Government under a Government contract.

(P) A gift of personal hospitality (as defined in section 109(14) of the Ethics in Government Act) of an individual other than a registered lobbyist or agent of a foreign principal. (Q) Free attendance at an event permitted under subparagraph (4).

(R) Opportunities and benefits that are— (i) available to the public or to a class consisting of all Federal employees, whether or not restricted on the basis of geographic consideration; (ii) offered to members of a group or class in which membership is unrelated to congressional employment; (iii) offered to members of an organization, such as an employees' association or congressional credit union, in which membership is related to congressional employment and similar opportunities are available to large segments of the public through organizations of similar size; (iv) offered to a group or

class that is not defined in a manner that specifically discriminates among Government employees on the basis of branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay; (v) in the form of loans from banks and other financial institutions on terms generally available to the public; or (vi) in the form of reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

(S) A plaque, trophy, or other item that is substantially commemorative in nature and that is intended for presentation.

(T) Anything for which, in an unusual case, a waiver is granted by the Committee on Ethics.

(U) Food or refreshments of a nominal value offered other than as a part of a meal.

(V) Donations of products from the district or State that the Member, Delegate, or Resident Commissioner represents that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any single recipient.

(W) An item of nominal value such as a greeting card, baseball cap, or a T-shirt."

Obligation to surrender gifts. Commonly, public officials are required to surrender gifts that are not permitted to the relevant oversight body. Such gifts would generally mean those that exceed the threshold value where there is one, or which it was impossible to refuse for certain reasons (e.g. they were sent by post, left in an office when the MP was not there, or provided in a context where it would be inappropriate to refuse at the moment of giving). For example, in Montenegro the Code of Ethics for MPs reiterated the obligation to comply with legal provisions on corruption prevention. These include the obligation to hand over any gift that could not be refused or returned, or has a value higher than 50 Euro to the authority in which s/he exercises his/her function – in the case of Parliament, the Service of Parliament.[56] In Azerbaijan, the Milli Majlis Rules of Ethical Conduct states in Article 10.3:

> *"If a Deputy is granted with pecuniary and non-pecuniary benefits and privileges in circumstances beyond his/her control, the Deputy shall inform the Disciplinary Commission of the Milli Majlis about it and submit them as, well as gifts the value of which exceeds the amount defined in Article 10.1.1 of this Law to the Administration of the Milli Majlis."*

Further guidance on gifts can also be found in the OECD Toolkit.

2.4.5 Declarations of assets and/or income

Many countries have in place frameworks for the declaration of assets and income (and sometimes other interests) by MPs. Where such a framework is in place, a Code of Conduct could refer to it and underline the need for MPs to be aware of and comply with its requirements. Where such frameworks are not established by a more general law, it is unusual

[56] Code of Ethics of MPs; Law on Prevention of Corruption, Articles 17-18.

for them to be established independently by a Code of Conduct, with the exception of declarations of interests (see above chapter 2.4.3).

2.4.6 Transparency

Codes of Conduct normally contain a provision or provisions on obligations in the area of openness and transparency.

> **European Code**:
>
> **Article 5 – Transparency**
>
> All actors shall foster the transparency, openness, and visibility of their activities, including policy and decision making, communication, and participation.
>
> All actors shall respond diligently, honestly, and fully to any request for information from the public. They shall defend the right of everyone to hold, receive and impart such information without interference.
>
> The exercise of these freedoms may be subject to conditions, restrictions or penalties. Wherever this is the case, the reasons for such shall be explained and backed by law.

For MPs, such obligations or standards can usefully focus on two main areas: transparency of the parliamentary decision-making process and elected officials' input to it, and the transparency of contacts with third parties and in particular those who engage in lobbying.

In the context of parliamentary transparency, one can mention the Lithuanian Code of Conduct for State Politicians (Art. 4 para. 4 "transparency and publicity"):

> *"[A state politician] when taking decisions, shall not raise doubts as to honesty, reveal the motives of his conduct and decisions to the society, always upkeep to the principles of openness and publicity, except for the cases specified by laws restricting the disclosure of information, and declare his private interests"*

Legislative footprints are also a recurring theme. The OECD defines the term as follows: "The legislative footprint is a document that details who lawmakers consulted, when and why, on what matter, and how the decision was reached."[57] The Council of Europe's **Parliamentary Assembly** acknowledged the need for legislative footprints in June 2016, in the context of European Institutions and recommended to "publish legislative footprints in order to track any input received from third parties aimed at influencing European Union legislation and policies".[58] As a result of the Fourth Round Evaluation of Germany, **GRECO** "is of the opinion that transparency could be significantly enhanced by providing a 'legislative footprint' i.e. a written trace of comments made by stakeholders that are taken into account in the drafting process. In this connection, the GET [GRECO evaluation team] was interested to hear from representatives of the Bundestag Administration that academics and other experts were

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[57] OECD (2014), "Lobbyists, Government and Public Trust", Volume 3 "*Implementing the OECD Principles for Transparency and Integrity in Lobbying*", p.68, available at www.oecd.org. Accessed 30 October 2019.

[58] Resolution 2125 (2016), *Transparency and openness in European institutions*, at 10.2., available at www.assembly.coe.int. Accessed 30 October 2019.

discussing how such concerns could possibly be addressed. They were in favour of exploring technical possibilities to better map changes made during the legislative process. GRECO strongly encourages the authorities to take inspiration from such reflections and to seek ways to ensure timely disclosure of the involvement of third parties in the preparation and finalisation of draft legislation."[59]

In 2011, the **European Parliament** endorsed a proposal for a "legislative footprint annex" to reports drafted by Members of the Parliament. This annex would list all the lobbyists whom lead MEPs met while a legislative report was being drafted.[60] However, so far the Parliament has not implemented this proposal. A Policy Paper by the EU Office of Transparency International has recently defined some standards of what the legislative "EU Legislative Footprint" should look like.[61] The **OECD's** 10 Principles for Transparency and Integrity in Lobbying call on governments to "consider facilitating public scrutiny by indicating who has sought to influence legislative or policy-making processes, for example by disclosing a 'legislative footprint' that indicates the lobbyists consulted in the development of legislative initiatives." (at Principle 6). In the sense of the OECD Principles, paragraph 3 does not only focus on legislative decisions, but decisions in a wider sense.

However, until today, there is little **national practice** one can refer to as examples. National laws contain obligations to list organisations or experts (formally) heard in the legislative process. In Finland, for example, a government bill incorporates a description of why it has been proposed, an account of the consultation process, and a brief summary of stakeholders' comments. However, as far as can be seen, no national legislation exists[62] that would go as far as the "legislative footprint" proposed by the Council of Europe's Parliamentary Assembly or by the European Parliament. Some parliamentarians have **voluntarily** provided "legislative footprints" concerning their own individual contacts.[63] In addition, some NGOs are trying to establish a legislative footprint *ex post* by combining information from various sources into one database.[64] It remains to be seen whether the scarcity of practical examples on a national level is because there are limits to technically implement this idea, or because this idea needs more time and political will to materialise in practice. It seems as if the technical limits are at list in the next foreseeable future the main obstacle in this regard.

[59] GRECO, *Eval IV Rep (2014) 1E*, Germany, at para. 30, available at www.coe.int. Accessed 30 October 2019.

[60] European Parliament, Press release (2011), *MEPs back joint Parliament-Commission register of lobbyists*, available at www.europarl.europa.eu. Accessed 30 October 2019.

[61] Transparency international EU Office (2015), *EU Legislative Footprint. What´s the real influence of lobbying?*, available at www.transparencyinternational.eu. Accessed 30 October 2019.

[62] TI Helpdesk answer (1 February 2013), *What are international experiences with the introduction of a "legislative footprint"?*, p. 2, available at www.transparency.org. Accessed 30 October 2019: "[…] [L]egislative footprints have not, to the best of our knowledge, been implemented in any country […]."

[63] See for example the UK MEP Diana Wallis, *webpage*, available at http://dianawallis.org.uk. Accessed 30 October 2019.

[64] See for example the platform being developed by Transparency International Slovenia and others, which has the purpose "to show the complete 'legislative path'", Presentation by TI Slovenia (1 October 2015), *Legislative monitor – Legislative footprint and use of legislation*, available at www.mju.gov.si; Project *website*, available at www.transparency.si. Accessed 30 October 2019.

2.4.7 Contacts with lobbying

While lobbying laws and registers exist, GRECO has underlined the role of codes of conduct in this regard, for example in Lithuania: "A Law on Lobbying Activities was adopted in 2000, but it focuses on lobbyists and the control of their activities. […] At the same time, in part taking into account the current lack of rules and transparency on MPs' contacts with third parties in connection with on-going legislative work outside the meetings of the Seimas and its commissions, GRECO recommends introducing rules on how members of parliament engage with lobbyists and other third parties who seek to influence the legislative process."[65]

There are many ethical aspects to be considered from the side of lobbyists. From the side of MPs mainly the following four aspects should be considered for being addressed in a code of conduct:

- Transparency on lobbying;
- Equal treatment of all stakeholders;
- Prohibitions on accepting gifts;
- Prohibitions on discussing or accepting political financing or sponsoring in the context of lobbying;
- Conflicts of interest.

To the extent codes of conduct reference "**lobbying**" or "**lobbyists**", they should **define** what these terms mean. It is important that lobbyists are not limited to independent, professional lobbyists only, but include also in-house lobbyists working at corporations and other stakeholders. The Council of Europe Legislative Toolkit on Lobbying (2016, English, Russian) provides extensive advice in this regard (more than 18 pages with regulatory considerations only on the definition of lobbying).

As for **lobbying transparency**, it should be noted that recommendations by civil society organisations on lobbying transparency call for publication of agendas of meetings, documents shared between lobbyists and public officials, and other relevant information.[66] The **OECD's** 10 Principles for Transparency and Integrity in Lobbying note in this context: "The public has a right to know how public institutions and public officials made their decisions, including, where appropriate, who lobbied on relevant issues. Countries should consider using information and communication technologies, such as the Internet, to make information accessible to the public in a cost-effective manner." (Principle 6). Obviously, there are some constitutional limits (privacy, business secrets, confidentiality of communication between constituents and their deputies).

Some parliamentarians publish their **business schedule online** on a voluntary basis, accounting for each working hour and disclosing all their meetings.[67] A different approach by

[65] Lithuania, GRECO Fourth Evaluation Round, § 63 and 64.

[66] Sunlight Foundation, *International Lobbying Disclosure Guidelines*; Access Info Europe (2013) *Lobbying Transparency via Right to Information Laws*. Accessed 30 October 2019.

[67] See for example one German lawmaker publishing a "*crystalline calendar*", available at www.christian-stetten.de. Accessed 31 August 2019 (in German).

other parliamentarians is voluntarily to publish all contacts with and invitations by lobbyists.[68] However, there are limits to such transparency: Information is only meaningful if it goes beyond the mere name and address of the lobbyist. Not all MPs are able to publish all contacts they have during any day and draft a meaningful summary on each contact.

As for **equal treatment** of all stakeholders, MPs should not give unfair preferential treatment to lobbyists while neglecting other stakeholders who have a right to influence the legislative process as well. The Transparency International, International Standards for Lobbying Regulation (2015)[69] state in this regard under "Participation":

> *"Equal opportunity – there shall be an obligation on public authorities to provide an equal opportunity for participation to various interest groups and the public at large."*

The Serbian Lobbying Code of Conduct (2019), Art. 9 para. 2 points in this direction:

> *"Lobbied person should always bear in mind the public opinion and pay due attention to the reactions of civil society organizations and citizens."*

Regarding **gifts**, it seems to be appropriate to **prohibit** their acceptance **from lobbyists** in order to avoid quid pro quo. However, this will usually only be enforceable where there is a clear legal definition of lobbyist and a register of lobbyists exists. If these do not exist, such a provision could be formulated as an aspirational rule – for example that MPs should strive not to accept gifts in a context where stakeholders try to exercise influence on them. An example in this regard is the Serbian Lobbying Code of Conduct (2019), Art. 11 para. 3:

> *"A lobbyist […] must neither offer nor give to the lobbied person, and the lobbied person must neither claim nor receive any material or other benefit during the lobbying process."*

An example for a rule on political finance or sponsorships related to lobbying is again the Serbian Lobbying Code of Conduct (2019), Art. 12 para. 3:

> *"There must be no financial material dependency between the lobbied person, on the one hand, and a lobbyist, a legal entity engaged in lobbying or an unregistered lobbyist, on the other. All participants must refrain from soliciting donations (financial support, sponsorships, etc.) related to lobbying."*

In addition, regarding **conflict of interest**, the following provision in the Council of Europe Lobbying Regulation Toolkit (Art. 7) should be noted regarding any lobbying activity by an MP:

> *"(2) [Incompatibility] A public official cannot:*
>
> *(a) [Employment] Work as a lobbyist lobbying in the field of his work or lobbying the public entity he/she works for.*
>
> *(b) [Post-employment] Conduct lobbying [for a specified period of time] after leaving office where it relates directly to the functions held or supervised*

[68] *Website* "The Lobby-Ticker" of MP Martin, available at www.hpmartin.net. Accessed 30 October 2019.

[69] *Transparency International*, available at http://lobbyingtransparency.net. Accessed 31 October 2019.

by the public officials during their tenure, or otherwise constitutes a conflict of interest.

(3) [Pre-employment restriction] Anybody having worked as a lobbyist is prohibited to work as a public official in the field of his/her previous lobbying or at the public entity he/she lobbied until a specified period of time has elapsed."

The provisions are mainly worded for executive public officials. However, at least the incompatibility of being an MP and a (paid) professional lobbyist (para. 2 lit. a) seem to be a sensible restriction. Observations by GRECO document the practical relevance of incompatibility provisions: "The first [problematic area] concerns the use of parliamentary assistants and collaborators, an area in which there is considerable freedom, insufficient rules and a lack of statutes for the personnel concerned. [...] [I]t can happen that assistants are recruited from among lobbyists (who continue to carry out their normal activities part-time for instance)";[70] "Several interlocutors pointed out, however, that a significant number of former members of the House of Representatives and senators were employed by lobbies [sic] and that, as former parliamentarians, they still had free access to the premises of Parliament."[71] In this context, the notorious American **lobbyist** Abramoff claimed in an interview with the broadcaster CBS: "When we would become friendly with an office and they were important to us, and the chief of staff was a competent person, I would say or my staff would say to him or her at some point, 'You know, when you're done working on the Hill [Parliament], we'd very much like you to consider coming to work for us.' Now the moment I said that to them or any of our staff said that to 'em, that was it. We owned them."[72] In the **United States**, it is believed that about "5,400 former congressional staffers have left Capitol Hill to become federal lobbyists in the past 10 years" and about "400 former U.S. lawmakers" also became lobbyists.[73] The incompatibility of being a public official and a lobbyist is a regular component of national lobbying regulations, such as in Austria (Law on Lobbying, § 8), Macedonia (Law on Lobbying, Article 8.1), or Montenegro (Law on Lobbying, Article 14). For further explanations of above provisions, see the commentaries in the Council of Europe Lobbying Regulation Toolkit.

2.4.8 Protection of confidential information

Obligations to provide information that is legitimately public are – ideally – mirrored by provisions obliging officials not to disseminate or use for personal gain confidential information they acquire during the performance of their function. For example, an MP who serves on a commission of inquiry or similar may become acquainted with information that is rightly non-public. Article 12 of the Latvian Saeima Code states:

"A Member of Parliament refrains from using for personal benefit or the benefit of persons associated with him/her confidential information acquired by virtue of his/her office."

[70] France, GRECO Fourth Evaluation Round, § 23.

[71] Netherlands, GRECO Fourth Evaluation Round, § 49.

[72] CBS (30 May 2012), Jack Abramoff: *The lobbyist's playbook*, transcript, available at www.cbsnews.com. Accessed 31 August 2019.

[73] The Washington Post (13 September 2011), *Study shows revolving door of employment between Congress, lobbying firms*, available at www.washingtonpost.com. Accessed 31 August 2019.

Art. 12 of the Rules of Ethical Conduct of the Azerbaijan Milli Majlis (Parliament)

> *"A deputy shall not use the information obtained while exercising his/her duties for his/her private interests."*

Where such rules are missing, GRECO recommended their introduction through the code of conduct: "There is no specific rule for the deputies with respect to disclosure of confidential information. Instead, members of parliament are subject to the general rules set out in the Criminal Code, Articles 326-339 (State confidentiality, espionage, state security, etc.). However, at the same time they enjoy immunity from criminal proceedings, see paragraphs 78-82. For that reason, such rules would appear important to establish, for example in a code of ethics."[74]

2.4.9 Liability for staff

GRECO has lauded countries which make MPs responsible for the conduct of their staff:

> *"What appears to be missing from each of the Codes and/or the respective guidance is a clear statement that Members are responsible for the conduct of their personal staff when those individuals are carrying out official duties on behalf of the Member (in effect acting as the Member's agent). Since many of the staff are paid from public funds and supervised by the Member when carrying out official duties on his/her behalf, the GET believes that a clear and effective system of accountability for staff actions is also of key importance to the actual and perceived integrity of Parliament. In this context, the GET welcomes the fact that the Scottish Parliament Code of Conduct already sets out member's accountability for staff. GRECO recommends that, pending any introduction of an accountability system for staff conduct, it should be made clear that Members of the House of Commons and Members of the House of Lords can be responsible for the conduct of their staff when carrying out official duties on behalf of the Member and that, unless otherwise specified, the conduct of the staff should be judged against the standards expected of the Members. The devolved institutions of Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation."*[75]

The respective provision (7.6) in the Code of Conduct of Parliament of Scotland states:

> *"Members will be held responsible for the behaviour of their staff within the Parliamentary complex and in their dealings with other members, other members' staff, and Parliamentary staff. Members should be responsible for ensuring that their staff are fully aware of and understand such policies, rules and requirements that apply to the conduct of personnel on the SPCB's premises."*

2.5 Implementation and Enforcement

This section covers the material that might be included in a code of conduct concerning implementation of a code and its enforcement (from detection of violations to sanctioning).

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[74] Turkey, GRECO Fourth Evaluation Round, § 70.

[75] UK, GRECO Fourth Evaluation Round, § 33.

2.5.1 Implementation mechanisms

European Code:

Article 13 – Mechanisms for effective implementation

All organisations involved in local and regional governance should have an explicit integrity policy, consisting of procedures and institutions for supporting and safeguarding public integrity.

This policy should include appropriate educational programmes and training courses.

It should also foresee the provision of appropriate counselling and advice for everyone in order to deal with ethical dilemmas and integrity risks.

Article 16 – Dissemination of the Code

The Code should be disseminated to the public in order to raise awareness of the standards of behaviour they are entitled to expect from all actors involved in local and regional governance. The provisions of the Code should be actively integrated in the daily activities of the organisation and discussed on a regular basis.

For a code of conduct to have an impact in practice, the officials whose conduct it regulates must be aware of its existence, the obligations that it imposes upon them and the consequences of not adhering to those obligations. For this reason, the following elements of implementation are essential, and it is good practice to include them within the Code itself:

- Dissemination of the Code to elected officials and their obligation to be familiar with it and any legal regulations it reiterates or refers to. For example, Article 7 of the Irish Code of Conduct for Members of the Seanad Éireann (lower House of Parliament) states that

  "Members […] should familiarise themselves with the relevant legislation and guidelines published from time to time by the Select Committee on Members' Interests and the Standards in Public Office Commission as appropriate."

- The establishment of oversight mechanisms that provide proactive guidance as well as advice on request to elected officials. For example, in the UK the House of Commons established a Commissioner for Standards with the responsibility for administering the MPs Register of Interests and providing guidance on conduct. Such guidance can be found in the form of written guidelines as well as guidance to MPs on their request. The German Bundestag Code of Conduct specifies that

  "Any Member harbouring doubts about the scope of his or her obligations under the Code of Conduct is bound by Rule 7 of the Code to clarify the position by asking the President. The contacts for this purpose are the staff of the Code of Conduct section of Division PM 1."

In Azerbaijan the Rules of Ethical Conduct of the Milli Majlis (Parliament) mandate that

> *"If a deputy is uncertain about compliance of the actions s/he carried out or intends to carry out with the [Code] […] he/she shall seek guidance of the Disciplinary Commission of the Milli Majlis and refer to [i.e. comply with] its guidance."*
>
> The same provision is repeated specifically for situations where an MP is unsure whether a gift provided or offered to him/her is permitted or not.

In this context GRECO noted, "that ideally, a code of conduct (or ethics) should be a practical and **'living' document**, with examples of concrete situations, which can be updated as the regulatory framework and the context evolves."[76]

It is important in any case, that parliamentary mechanisms actually function and are **not** just **window-dressing**. As GRECO noted with regard to Portugal: *"As concerns standards of conduct, some MPs have asserted that the Ethics Committee had provided guidance on ethical dilemmas upon request but the Committee could not confirm this was the practice nor does it have competence in this area. Given the foregoing and that the notions of 'ethics' or 'ethical conduct' are not formally recognised within parliament, the reference to 'Ethics' in the Committee's title looks artificial and is misleading."*[77]

2.5.2 Reporting

European Code:

Article 14 – Reporting

Every organisation involved in local and regional governance should have a procedure on how suspicions of wrongdoing can be reported. This procedure should at least cover the following:

a. a description of a suspicion of wrongdoing;
b. the way the report is handled and recorded;
c. an established possibility for employees to consult a confidential advisor on the suspicions of wrongdoing;
d. the designation of official(s) or institution(s) to whom the suspicion of wrongdoing can be reported;
e. the obligation to treat the report confidentially, if so requested by the reporter;
f. the requirement to handle the report in a timely manner and provide feedback to the reporter.
Every organisation involved in local and regional governance is obliged to provide its employees with a written document on the procedure as mentioned above. The organisation also provides information on:
a. the circumstances under which a suspicion of wrongdoing can be reported outside the organisation;
b. the legal protection of employees when reporting suspicions of wrongdoing.

While voluntary compliance with a Code is the ideal, mechanisms need to be in place to enable citizens, officials and those who they serve to report wrongdoing. Concerning MPs and the content of the Code itself, the key issues are the following:

- Obligations of MPs themselves to report wrongdoing of which they become aware.
- Obligations of the institution (Parliament) itself to establish a proper reporting process.

Council of Europe Rule No. 1327 of 10 January 2011 "on awareness and prevention of fraud and corruption" calls on Members of the Parliamentary Assembly of the Council of Europe

[76] Austria, GRECO Fourth Evaluation Round, § 26.
[77] Portugal, GRECO Fourth Evaluation Round, § 46.

(PACE) "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" (Art. 4 no. 2). However, GRECO notices that the "text is silent as to how such a report concerning […] [Members of the Assembly] would subsequently be handled by the Secretary General […]. No practical arrangements appear to have been designed, together with PACE, in this respect."

In this context, one could also mention the example of Bosnia and Herzegovina, where Parliament adopted internal rules to protect whistleblowers in the Secretariat of the Parliament. As GRECO notes: "[T]his can be a positive measure if they are implemented effectively and do not merely remain words on paper."[78]

2.5.3 Enforcement

The Code of Conduct should describe or at least refer to the mechanisms and bodies that are in place for the oversight and enforcement of a Code. Where a Code reiterates existing legal provisions (for example on bribery, conflict of interest, gifts or asset declarations), these provisions will usually establish their own oversight and enforcement mechanisms, as well as sanctions. However, even for such provisions, an oversight body may play a role as the initial recipient of information on violations or alleged violations. The body will also be responsible for enforcement of provisions that are contained only in the Code or other provisions that are purely Parliament-related, for example on conduct on the floor of the house.

The OSCE/ODIHR Background Study[79] distinguishes three models of oversight over the conduct of parliamentarians: internal oversight, external oversight, and hybrid models.

Most parliaments have **internal monitoring** and enforcement mechanisms to enforce the code of conduct. Typically, this would be a special committee in charge of dealing with the reporting, investigations and sanctioning of members of parliament breaching the code. Alternatively, the president or speaker of the parliament oversees implementation of the code, as in the case of Germany, Finland, Iceland, Malta and Sweden.[80] The advantage of this model is the independence of parliament from the executive branch. Furthermore, internal mechanisms promote ownership of the code of conduct.[81] In Lithuania, the Seimas (Parliamentary) Commission for Ethics and Procedures is responsible for conducting investigations of suspected violation of the Code; the Code also sets out in some detail the procedure for such investigations – namely the admissible grounds for starting an investigation, timelines, and the powers of the Commission to collect evidence.[82]

An important issue regarding an internal enforcement body concerns its composition. In some countries with internal enforcement (for example Germany), the committee responsible reflects the composition of Parliament and therefore is composed with a majority from the ruling party or coalition. In some, special rules for the composition exist: for example, in

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[78] Bosnia, GRECO Fourth Evaluation Round, § 38.

[79] OSCE/ODIHR (2012) *Background Study: Professional and Ethical Standards for Parliamentarians*, available at www.osce.org. Accessed 30 October 2019

[80] ODIHR/Leone, page 15.

[81] For further pros and cons of the models, see ODIHR/Leone, page 15; see also OSCE Background study, pages 63 and following.

[82] Law on the Approval, *Entry into Force and Implementation of the Code of Conduct for State Politicians*, Articles 6-7, available www.e-seimas.lrs.lt. Accessed 30 October 2019.

Georgia the ruling majority may not constitute more than 50% of the Council of Ethics (essentially a Parliamentary committee), and the Council is jointly chaired by members of the ruling majority and opposition. In the UK, half of the Parliamentary Commission on Standards are MPs and half lay-persons.

In the United States of America, an **external** Office for Congressional Ethics is responsible for the implementation of the code. The United Kingdom and France follow a **hybrid model**: Parliaments oversee implementation through internal mechanisms (e.g. the Committee on Standards in UK[83]) complemented by a Parliamentary Commissioner for Standards (UK) and the High Authority for Transparency in Public Life (France).

GRECO expresses reservations about any model that fully outsources enforcement of a code. "[E]ducation and enforcement **cannot be fully outsourced**… Discipline and responsibility must come first from within the Assembly itself."[84] It is "essential to develop a member-driven culture of accountability rather than solely transferring accountability to an external monitoring authority.[85]

2.5.4 Sanctions

In any case, for enforcement, it is important that **sanctions** are applied in practice. As the South Africa Code of Conduct for Public Servants states,

> *"The primary purpose of the Code is a positive one, viz. to promote exemplary conduct. Notwithstanding this, an employee shall be guilty of misconduct […] and may be dealt with in accordance with the relevant sections of […] [law] […] if he or she contravenes any provision of the Code of Conduct or fails to comply with any provision thereof."*[86]

For breaches of a Code that are not subject to sanctions under other laws, sanctions should be designed to be proportional to the violation in question. In practice, sanctions vary and may include (in order of severity): censure/reprimand, fines, temporary suspension from the plenary, and – in extreme cases – exclusion from Parliament.

It is also important that sanctions are applied in practice. GRECO has noted regarding the Code of Conduct of the Parliament of the Brčko District of Bosnia-Hercegovina that "The Code itself establishes three types of sanctions depending on the seriousness of the wrongdoing (written warning, fine and public reprimand with publication in the media); but, as mentioned before, no single case has ever been brought to light."[87]

[83] Committee of Standards (2019) *How the Committee operates*, available at www.parliament.uk. Accessed 13 November 2019.

[84] North Macedonia, GRECO Fourth Evaluation Round, § 35.

[85] Ukraine, GRECO Fourth Evaluation Round, § 72; Croatia § 36.

[86] Public Service Commission, South Africa (1999) *Code of Conduct for Public Servants*, Article 2, available at www.psc.gov.za. Accessed 29 October 2019.

[87] Bosnia and Hercegovina, GRECO Fourth Evaluation Round, § 38.

ANNEX 1: PROPOSED GUIDANCE ON CONFLICT OF INTEREST FOR MPS

1 WHAT IS A CONFLICT OF INTEREST?

A conflict of interest is present where you have a personal interest that is of such a nature that it may affect the impartial performance of your public function.

Conflict of interest is not a conflict between individuals
Conflict of interest is a conflict between the public interest you are duty-bound to serve as an elected official, and a personal interest of yours or someone close to you. A public official is obliged to pursue the public interest when performing his/her duties. Where s/he has a personal interest that might affect whether s/he pursues the public interest or not, s/he is in a conflict of interest.
Conflict of interest is not the same thing as corruption
It describes a **situation** in which you find yourself, **not an action** taken by you. Whether it results in corruption depends on how you actually perform your function. However, this does not mean that the conflict of interest situation is "permissible as long as you do the right thing". Officials sometimes argue that a conflict of interest is not present unless you actually give priority to a personal interest in an official action or decision – or that conflicts are not a problem as long as you behave with integrity and give priority to the public interest when taking decisions or actions. **A conflict of interest does not necessarily mean that you are corrupt, but it is still a situation that you must either avoid or address, if public trust in the performance of your function is to be maintained.**
Example: You are a member of a Parliamentary committee interviewing candidates for the position of Auditor-General, a position appointed by Parliament. One of the candidates is your spouse. Conflict of interest?: Yes – the fact your spouse is a candidate for a position on which you are deciding means you are subject to a conflict of interest, however you actually voted. **Note:** *Even if you vote for a different candidate (who may or may not be the best one), the conflict of interest situation is exactly the same – it is the situation not your action that is important.* See Section 7 below for a continuation of this example. **Example**: You own shares in a wine-producing company, although the shares are administered by a trustee with whom you have no contact or influence concerning the administration of your share interests. Parliament is debating possible changes in consumption tax rates on alcoholic drinks. Conflict of interest?: Yes. The fact that you have no influence on the administration of your share portfolio is irrelevant in this case: changes in specific tax rates may affect the value of shares that are held by you.

Conflicts of interest may be divided into the following main types:

- **Actual conflict of interest**. This is a situation where you as an MP are deciding or influencing something specific (such as the passage of a law currently under debate, or a committee proceeding on a matter), where you have a personal interest that is such that it might influence the impartial performance of your duty in that matter. Typically situations of actual conflict of interest are ones that you must resolve immediately. **Note again that a situation of actual conflict does not mean that you are corrupt or that you have or will actually make a decision favouring the personal interest**. This would constitute abuse of office and possibly corruption.
- **Potential conflict of interest**. Where you have a personal interest that is of such a nature that it could or is likely to influence the impartial performance of your duty in the future. Examples include being employed by private companies or having external significant business holding. Potential conflicts may be prevented to some extent by prohibiting the holding of certain private interests; where this is not an appropriate solution, the danger presented by such interests will be reduced if you are obliged to submit regular declarations of personal interests.

2 WHAT ARE "PERSONAL INTERESTS"?

Having a personal interest in a matter is not the same thing as being interested in it. The **issue is whether you have an interest in a matter of public interest (e.g. the passage of a law), not whether you are interested in it**. A conflict of interest is a conflict between the public interest you are elected to serve and a personal interest you have. This obviously raises the question: which interests are personal ones. The legal framework already in place may define which interests count as personal interests (i.e. may give rise to a conflict of interest from a legal point of view).

In general, the following types of interests are the kinds of personal interests that may typically give rise to conflicts:

- Paid business engagements: employment in a private company or other organisation, consultancy contracts, or any other type of engagement that brings you material advantage.
- Ownership stakes.
- Other positions in private organisations - for example a position in the management structure of an interest group or NGO.
- Possible future positions or engagements.

Several key points should be underlined here and are elaborated below.

a) **Material and non-material interests**.

Interests that may give rise to a conflict of interest will generally be material – i.e. they are interests that bring you identifiable (and in theory calculable) material advantage. Sometimes, however a personal interest may appear to be non-material. Examples cited in recent guidelines on conflict of interest drafted for Moldova under the CoE/EU **Controlling Corruption through Law Enforcement and Prevention (CLEP)** project include political

popularity, university admission for your children or grandchidren, or revenge against someone who has sued you. The interests of close persons (see below) in general may often not translate directly into material benefit for you. For the purposes of these guidelines, the important point is: **An interest may be personal even if your direct benefit (or potential benefit) from it cannot be clearly or immediately calculated**.

b) Interests of close persons

Where a person who is closely associated with you has a personal interest that is or may be affected by decisions or actions you take as part of your duties as a public official, you are also in a conflict of interest situation. Close persons include close family members – at a minimum, spouse or partner, parents and children. However, the interests of other family members - for example, brothers or sisters, cousins, in-laws, may also give rise to conflicts.

An important rule of thumb for conduct here is the following. If the existing legal framework on conflict of interest defines relevant family members in a precise manner - and by implication limits the circle of family members to whom the law/code of conduct applies, this does not mean that the personal interests of other family members cannot give rise to a conflict of interest. You should be ready to acknowledge that a **conflict of interest situation might exist even when it is does not fall expressly under the definitions provided in law** (including codes of conduct), and to behave accordingly – for example declaring the personal interest of a family member even when you are not strictly required to do so.

Conflict of interest – borderline situations
Example: The law (including codes of conduct) in your country defines conflict of interest in a standard manner, and defines personal interests as including the interests of your spouse, parents and children and siblings (brother and sisters). You are an MP and member of the parliamentary committee responsible for processing applications from law enforcement authorities to lift the immunity of MPs. The committee is scheduled to discuss an application to lift immunity from a fellow MP who is married to your cousin. **What to do?**: The law does not define this clearly as a conflict of interest. However, given the seriousness of the matter under consideration and the fact that one may or may not have close relations with a cousin, from the perspective of an impartial observer the situation appears clearly to be a conflict of interest one. You should disclose the interest and recuse yourself from the committee proceedings.

c) Specificity of personal interests

For a personal interest to be such that it can give rise to a conflict of interest for you as an MP, it must be a specific one that concerns primarily you (or a close person). There may be matters in Parliament on which you decide or influence, which directly benefit you as one of a broader class of persons – for example tax cuts. Such interests should not be regarded as personal interests for the purpose of managing conflicts of interest. Examples to illustrate are provided

below, and guidance on this issue is also provided by the Council of Europe Eastern Partnership Project Legislative Toolkit on Conflicts of Interest.[88]

Example: Your party’s policy on social welfare includes a commitment to cut social benefits to those on low incomes. This policy is based on the argument that this will motivate them to find work. You and your family are rich. Conflict of interest? No. The policy may be wrong, or even inhumane, but this is a matter of political debate. The personal interest in question is also one that is shared among a broad group of persons, and is not specific to you personally.
Example: Your party’s programme includes tax cuts for the rich. You therefore vote for such tax cuts in Parliament. Your family is rich. Conflict of interest?: No. Politicians may also legitimately agree on whether the policy is desirable or not. Again, the interest in question is shared by a broad class of persons. If you were obliged to deduce a conflict of interest from every situation where a policy decision might benefit you or your family, you might find yourself in a “conflict of interest” most of the time.

d) Beneficial ownership

A personal interest may be ownership or control (or partial ownership or control) of assets, such as shares in a company. If you or a close person do not formally own such assets but are their beneficial owner, you must regard this as a personal interest in the same way as if you owned the assets directly and formally. You may be a beneficial owner without being the formal owner for example in the following cases:

- Where you own an intermediary (for example a legal entity) that in turn owns or controls the assets.
- Where you are the beneficiary of a trust or similar legal arrangement that owns or controls the assets.
- Where a close person holds assets in reality on your behalf, even where there is no formal link.

The Anti-money-laundering-legislation of your country usually contains a definition of beneficial ownership for your further orientation. This aside, international standards contain guidance and definitions in this regard.[89]

Beneficial ownership
Example: You are an MP. Parliament is debating changes to the Law on Mining which would ease environmental restrictions on the allocation of mining licenses. Your father is the beneficiary of a trust registered in the UK, which owns a substantial amount of shares in an investor in a local company looking for mining opportunities.

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[88] Council of Europe Eastern Partnership Project Legislative Toolkit on Conflicts of Interest, 2015 (English, Russian), not yet published online, pp. 58-60.

[89] FATF, *Transparency and Beneficial Ownership* (2014), page 8, available at http://www.fatf-gafi.org. Accessed 15 November 2019.

What to do?: Your father is the beneficial owner of an interest in mining in the country. Given the specificity of the mining business and the limited number of entities participating in it, you subject to a conflict of interest by participating in parliamentary debate or voting on the law. You should at least declare the interest. Whether you should recuse yourself from the debate depends on the significance of the interest and on whether the mining company has been actively seeking licenses recently, *etc*.

3 WHAT DO WE MEAN BY "THE PUBLIC INTEREST"?

As an elected representative, you are generally obliged to act in the public interest. For you as an elected official, and for the purposes of determining what is (and is not) a conflict of interest, what this means is that **your conduct is only guided by considerations of the public interest, and not by personal interests**.

This does **not mean that in any issue on which you vote or otherwise act as an MP there is only one right way to decide**. MPs are elected on their particular political platforms – or the platform/stance of the political party or entity for which they were elected. Clearly, these positions and stances may be different to those of other politicians/political entities.

4 PERCEPTIONS

To determine whether a personal interest gives rise to a conflict of interest or not, a good rule of thumb is to ask how the situation would be perceived by an impartial observer. In other words, would an **impartial observer –** in possession of the same facts as an average member of the public – **reasonably** assume a personal interest as affecting or having the potential to affect the impartial performance of your function?

It is important to be clear that this does not mean that a conflict of interest exists in any situation where any person perceives there to be one. Only where a reasonable observer would perceive a conflict of interest, the situation requires management of the situation.

Reasonable and unreasonable perceptions of conflict of interest
Example: You are a member of a Parliamentary Committee discussing the question of restitution to religious organisations (churches) of property confiscated under communist rule. Your brother is a senior official in the hierarchy of one church. You are non-religious and have poor relations with the brother anyway. Conflict of interest?: Yes. Whether you are religious or not has nothing to do with whether restitution materially benefits a member of your family. The fact that you have poor relations with the brother may mean that his personal interest does not motivate you, it also might not mean that, and an impartial observer (or the general public) cannot be expected to know this. **Example**: Parliament is voting on legislation that affects mining licenses and permissions. You used to work in a mining company as a senior executive, but you retired before becoming an MP and have no ownership stakes or family members with interests in the industry. Conflict of interest? No. Although you used to work in a company whose profitability may be affected by a vote you will participate in, on the information available there is no

evidence that you actually have a personal interest in the matter. Note the difference here between being interested in something (which in this case you definitely will be), and having a personal interest in it (which in this case you do not appear to).

5 AVOIDING CONFLICT OF INTEREST SITUATIONS

You have a general duty to avoid conflict of interest situations as far as possible. Rules prohibiting you from holding certain external positions and engagement contribute to such prevention. More generally however, and as stated in the proposed Toolkit (chapter 2.4.3), you should as far as possible avoid situations where you have any obligation to a person or organization that may try to influence the decisions or other actions you take in the performance of your function.

Example situations creating a risk of obligation
Example: Where you have accepted significant gifts from a person or organisation. Gifts are a problem precisely because they may place you into a conflict of interest situation, or at least into a situation that appears to be a conflict of interest. **What to do?**: Take extra care to abide by both the letter and spirit of existing obligations on the acceptance of gifts. See above Toolkit, chapter 2.4.4.
Example: The owner of a large private company tells you that s/he would be interested in employing you after your term of office ends. **What to do?**: It depends on the context. In all circumstances, explain to the owner that you have the duty not to get into situations where you are or appear to be obliged to an external individual or organisation, as well as any restrictions on engagements you may accept after leaving office (for example a "cooling off" period). If the company is one that is lobbying Parliament over a particular draft law, or has been subject to Parliamentary scrutiny or other actions, notify the relevant Parliamentary authority (which has responsibility for conduct and ethics issues) of the offer, and declare it if you participate in any proceeding (such as a vote on a law) that directly affects the company.
Example: An organisation has employed a close member of your family on preferential terms – for example without the usual competitive procedure. **What to do?**: There may not be much you can do. It would be advisable for the family member to avoid such engagements, but s/he is not obliged to do so. If the Parliament has a register of interests or you are obliged to declare private interests in any way, declare the employment, and if Parliament debates or takes other action on a matter that affects the interests of the organisation, declare the employment of the family member before participating.
Example: A law firm provides services on preferential terms to a company owned by your brother. **What to do?**: Although it is unlikely that you are obliged to declare the discount provided by the company (for example as a gift to a relative), you should declare it to the relevant Parliamentary authority. If Parliament debates or takes other action on a matter that affects

the interests of the law firm, you should also declare the service provision before participating.

6 INCOMPATIBILITIES

As an MP, you will be prohibited from holding certain other external positions or engagements. These are commonly known as incompatibility provisions. One of the purposes of these provisions is to reduce the probability that you will be subject to a conflict or conflicts of interest during the exercise of your mandate. You must adhere to the letter and spirit of these provisions. They are usually found in the law, not (only) in the code of conduct, since usually only a law can limit the professional freedoms of MPs.

7 ENGAGEMENTS AFTER LEAVING OFFICE

When your mandate ends, you will need to make a living. It is important that for an appropriate period you do not accept a job or other engagement with an organization over which you have exercised significant authority during the performance of your mandate.

Engagements after leaving office
Example: As an MP you voted for a law to liberalise the banking sector by lowering the capital reserve requirements for banks. After your term of office ends, a small bank offers you a management position. **What to do?**: Although your vote may have benefited the bank, all banks benefited. The legal change is of a sufficiently general nature that inferring a conflict of interest in this case could be counterproductive. All laws benefit/affect certain persons or entities in some way. A reasonable solution here would be to accept the position but ensure that it is publicly-known.
Example: As an MP you were a member of a Heath Committee that *inter alia* debated legal provisions that affected which medicines/medical items are funded from the (public) health budget. After you leave office a major pharmaceutical company offers you a generously-remunerated position as an external advisor. **What to do?**: Technically, this situation may not be a conflict of interest one, if you were unaware at the time of your engagement in the committee that the company may offer you a position after you leave office. However, accepting a paid engagement with the company immediately after leaving office would be reasonably perceived by an impartial observer as indicating a conflict of interest. At a minimum, you should observe a sufficient cooling-off period (for example one year) before accepting such an engagement. If in committee you voted for or advocated legal provisions that directly benefited the company, you should not accept an engagement with the company at all, even if doing so is not against the law.

I. Obligations in conflict of interest situations

During the period that you hold office, it is more than likely that you will at some point find yourself in a situation of conflict of interest. Conflicts of interest are normal and cannot always

be avoided. The important thing is how you address a conflict of interest situation when you find you are in one.

If you find yourself in a conflict of interest during the performance of your function you must disclose the conflict. If the conflict is a "blatant" one then technically you are allowed to participate in a vote – this is your constitutional right. However, it is appropriate to voluntarily refrain from participation in the matter if it is a plenary discussion or vote, if your participation would be likely to undermine the reputation of Parliament. The same applies to matters in committees or other bodies of Parliament. To determine whether the conflict is serious enough to require recusal (withdrawal from the matter), you should ask yourself: would your participation in the matter undermine trust in the performance of your function or in Parliament as an institution?

Conflict of interest

Disclose to relevant body in Parliament (and elsewhere if the law requires, e.g. to anti-corruption agency)

Consider withdrawing from participation in the matter

Conflict of interest situations: examples and resolutions
Example (continued from Section 1): You are a member of a Parliamentary committee interviewing candidates for the position of Auditor-General, a position appointed by Parliament. One of the candidates is your wife. There is one main governing party and one main opposition party in Parliament; you are an MP for the opposition party. The composition of the Committee is designed to reflect party representation in Parliament. **Resolution**: The conflict of interest is blatant. Declare to the Committee the fact that your wife is one of the candidates and do not participate in the interviewing process or any vote ranking the candidates. The Committee should have in place a process for such situations to ensure the maintenance of party representation – for example pairing, where if an opposition MP cannot vote then one governing MP also withdraws.
Example: Parliament is voting on legal amendments that would abolish limits on the bonuses banks may pay to executives. Your spouse is a senior manager in a major bank. **Resolution**: While the vote may have a direct impact on your spouse's personal interest, the impact is on a much wider population of people (all bank managers). As with Example 1 in Section 7, prohibiting participation in matters that affects a large class of people just because they also affect someone close to you carries risks, not least that in principle the

majority of laws may affect the interests of a broad population, and defining where the effect on the interests of someone is significant enough to give rise to a conflict of interest is very tricky. An appropriate solution in the case would be to declare to the relevant body in Parliament that there is a possible personal interest in the law, but not to withdraw from the vote. However, it would be much less acceptable if you proposed such amendments to the law yourself.
Example: The Parliamentary Budget Committee, of which you are a member, is voting on whether to approve the annual report of the Supreme Audit Institution (SAI). One of the most important and controversial audits carried out by the SAI in the reporting year was led by your spouse, who is an auditor at the SAI; the audit is likely to be one of the main subjects of discussion, with opinions on it divided across party lines. **Resolution?**: You are subject to a clear conflict of interest, albeit probably a non-material one (the reputation/standing of your spouse). You should declare the interest and withdraw from discussion on the audit in question, and from the vote to approve the report or not.

8 DECLARATIONS OF INTERESTS

In addition to your obligation to disclose ad hoc when you have a personal interest in a matter before Parliament or one of its bodies, you will usually be subject to obligations to declare private interests, assets and income on a regular basis (e.g. annually). You should comply with the spirit and letter of these requirements.