

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

Opinion 19 (2003)¹ on the Handbook of Good Practice in Public Ethics at Local Level, prepared by the Steering Committee on Local and Regional Democracy

The Congress, bearing in mind the proposal of the Chamber of Local Authorities,

1. Having regard to:

- a. Statutory Resolution (2000) 1 of the Committee of Ministers, relating to the Congress of Local and Regional Authorities of Europe (hereafter: the CLRAE or the Congress);
- b. The European Charter of Local Self-Government (hereafter: the Charter);
- c. The European Urban Charter;
- d. CLRAE Recommendation (20) 1996 on monitoring the implementation of the European Charter of Local Self-Government;
- e. CLRAE Opinion 9 (1998) on the preliminary draft recommendation of the Committee of Ministers to member states on the financial (civil and accounting) liability of local elected representatives for acts or omissions in the course of their duties;
- f. CLRAE Recommendation 60 (1999) on political integrity of local and regional elected representatives, which contains a model European code of conduct for the political integrity of local and regional elected representatives;
- g. CLRAE Recommendation 61 and Resolution 80 (1999) on the role of local and regional mediators/ombudsmen in defending citizens' rights, which sets out the principles governing these institutions;
- h. CLRAE Recommendation 86 (2000) on the financial transparency of political parties and their democratic functioning at regional level;
- i. CLRAE Opinion 15 (2001) on the draft recommendation of the Committee of Ministers to the member states of the Council of Europe on participation of citizens in local public life;
- j. CLRAE Recommendation 113 (2002) on relations between the public, the local assembly and the executive in local democracy (the institutional framework of local democracy);

k. CLRAE Recommendation 114 (2002) on local authorities and public utilities;

l. CLRAE Recommendation 124 (2003) on the Code of Good Practice in Electoral Matters.

2. Recalling its intention to organise a European Round Table in 2004 in co-operation with the city of Rome to promote the model European code of conduct for the political integrity of local and regional elected representatives,
3. Welcomes the initiative taken by the Steering Committee on Local and Regional Democracy to prepare and disseminate in member states the Handbook of Good Practice in Public Ethics at Local Level (see Appendix II);
4. Considers that compliance with ethical rules by local elected representatives helps to strengthen links between elected representatives and citizens, as well as public confidence in local institutions;
5. Notes that the model initiative package is a very comprehensive inventory of good practices;
6. Notes that the model initiative package can make a useful contribution to the Council of Europe's anti-corruption policies;
7. Approves the approach adopted in the Handbook, which endeavours to define as clearly and precisely as possible the roles and activities of the various levels of public authority;
8. Believes that adoption of the good practices laid down in the Handbook should always take account, above all, of the obligations accepted by member states when ratifying the Charter (particularly, but not only, those concerning supervision (Article 8) and the conditions of electoral office (Article 7));
9. Calls on the CDLR to take account of the specific comments in Appendix I to this opinion.

Appendix I

Preliminary remark

The Congress believes that it might be generally useful to refer in the Handbook to the relevant articles of the European Charter of Local Self-Government, concerning supervision (Article 8), the conditions of electoral office (Article 7) and the conditions of service of local government employees (Article 6.2).

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

1. General framework

a. Possible action by central authorities

The Congress makes the general point that Article 7.1 of the Charter requires ratifying states to ensure that local elected representatives can exercise their functions freely.

The Congress welcomes the CDLR's recommendation that the legal framework within which elected representatives operate be defined by the central authorities in consultation with their associations. Ideally, too, the section applying to local elected representatives in local authorities' model codes of conduct should, as CLRAE Recommendation 60 suggests, be drafted by the associations themselves in consultation with the central authorities. These codes could be prepared by national tripartite committees, comprising government and parliament on the one hand, and associations of local elected representatives on the other.

The Congress also points out that national authorities and associations of elected representatives can draw on the model European code of conduct for the political integrity of local and regional elected representatives, prepared by the CLRAE in 1999. This has already been done to good effect in several Council of Europe member states.

2. *Disqualification, suspension and termination of duties*

a. Possible action by central authorities

i. The concept of financial incapacity as a possible disqualifying factor might usefully be explained.

ii. Decisions on disqualification might best be taken by a judicial body (civil, administrative or electoral). The central or regional authorities or any registered voter could raise such questions with the court or body concerned. To avoid leaving too much room for interpretation, the concept of "serious misconduct" should be clarified.

3. *Rights and obligations of elected representatives*

c. Possible action by elected representatives

The Congress is pleased to see that some recommendations have been taken from the model European code of conduct for the political integrity of local and regional elected representatives.

4. *Liability of elected representatives*

a. Possible action by central authorities

The Congress welcomes the Handbook's statement that elected representatives must not be subject to automatic punishment by central authorities without prior adversarial proceedings or appeal with suspensive effect.

It points out that court decisions with suspensive effect are, in its view, the best approach to the suspension or dismissal of elected representatives.

The Congress suggests repeating the point made in its Recommendation 20 (1996) (paragraph 9.d) that "although dismissal, suspension and dissolution procedures are not incompatible with the Charter, they must be measures of last resort, only to be applied in the event of repeated and established violations of the constitution or other legislation...".

The Handbook might usefully refer to the Charter provisions in which the proportionality principle is invoked, for example Article 8.3. The Congress regards

application of this principle as one of the good practices which central authorities might follow.

5. *Remuneration, working conditions and careers of elected representatives*

a. Possible action by central authorities

The Congress points out that Article 7.2 of the Charter requires ratifying states to "allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection".

b. Possible action by local authorities

The Congress thinks that local elected representatives' salary scales can be negotiated at national level between government and national associations of elected representatives, taking account of regional particularities when necessary.

C. **Model initiatives relating to control and audit**

The Congress refers to Article 8 of the Charter, which specifically deals with administrative supervision of local authorities' activities.

1. *External control*

a. Possible action by central authorities

i. It would be useful to specify that local authorities are free to accept or reject the advice given them on management.

iii. To avoid inviting abuse by leaving too much room for interpretation, the concept of a "wide" management audit, going further than an accounting and financial audit, should be clarified.

It would also be useful to specify the conditions in which the external auditor comments on the groundwork done for local authority decisions, or their coherence (particularly their financial coherence).

iv. It is reasonable to ask why the main arrangements for control cannot be laid down in the law and not "as high up as possible in the hierarchy of legislation applying to local authorities".²

The same applies to section 5. *Information and transparency* (a. Possible action by central authorities).

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

3. *Rights and obligations of local public servants*

a. Possible action by central authorities

The concept of "suitable supervisory procedures" should usefully be clarified.

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

The Congress refers in this connection to the relevant provisions of Recommendation 114 (2002), and particularly paragraph 8, which stipulates that “the private sector cannot always ensure balance and social and territorial cohesion in the provision of utilities, is concerned with the utility value rather than the public interest value, is interested in maximising profits rather than optimising them and is not necessarily subject to democratic control”.

Appendix II

Handbook of Good Practice in Public Ethics at Local Level, prepared by the Steering Committee on Local and Regional Democracy (CDLR)

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

This thematic dossier presents the best practice on the status of local elected representatives identified by the Steering Committee on Local and Regional Democracy (CDLR). In order to be precise and concise, this best practice has been structured according to the authors of the measures which are, in the opinion of the CDLR, examples of good practice and are worded in a concise, short manner. However, they do not constitute a corpus of recommendations to be implemented, in full, by all countries. Central and local authorities should select the practices that are relevant to their specific situation.

This dossier was conceived so as to be possible to be used independently from the other parts of the model initiative package ; however, for better consistency, the situation in Europe (presented in the second part of the package) and the other thematic dossiers should also be consulted.

1. General framework

a. Possible action by central authorities³

Local elected representatives are given a simple and uniform legal framework governing their rights and obligations, accountability, guarantees and protection, remuneration and working conditions, supervision, disqualifications, termination of office and suspension. The framework is established by the central authorities, in consultation with associations of local elected representatives.

In addition to the legal framework itself, central authorities prepare model codes of conduct and make them available to local authorities. These model codes contain a list of compulsory provisions which local authorities must include in the codes of conduct adopted at local level and a list of model provisions that local authorities may, if appropriate, adapt and include in local codes of conduct. Compliance with the codes of conduct may be made compulsory by statute.

Central authorities grant citizens and local authorities access to information, by publication and analyse,

particularly through the use of new information technology, of data on:

- the various legal instruments governing local elected representatives' performance of their duties;
- the various codes of conduct adopted by local authorities, so that a comparative analysis of them can be carried out;
- statistics concerning cases of corruption and other breaches of public ethics and public confidence in local elected representatives and public servants.

b. Possible action by local authorities⁴

Local authorities:

- adopt codes of conduct for local elected representatives, if appropriate by adapting to the situation in the municipality concerned the model codes prepared by the central authorities and taking account of the suggestions made by different associations;
- ensure that the codes of conduct are distributed to elected representatives, the central authorities, other interested bodies and the public, using the available means, including information technology.

2. Disqualifications, termination of office and suspension

a. Possible action by central authorities

Central authorities provide a legal framework governing disqualifications, termination of office and the suspension of local elected representatives, which is tailored to the situation in each country (or region, in federal states) and based, as far as possible, on the following principles.

i. Disqualification as a candidate or also after election may arise from:

- legal, mental or financial incapacity when officially established according to law; in such cases the aim of disqualification is to avoid non-liability in the performance of duties;
- a final criminal conviction for serious misconduct or a breach of public ethics; the period of disqualification depends on the gravity of the situation and the courts have substantial freedom to determine the length of the period;
- a decision by court as an accessory penalty;
- the existence of a potential conflict of interest; for example, individuals shall not hold a position in which they would be supervising themselves or supervising a close relative;
- the simultaneous holding of another elective office which would prevent the elected representative from fulfilling his or her responsibilities properly, according to law.

ii. Early termination of office may be:

- decided – straightforward resignation – by the person concerned;

– decided by the courts, particularly in the case of serious misconduct in the performance of duties or a breach of public ethics;

– acknowledged by the local authority or the relevant election office in the event of disqualification; the elected representative in question may contest the termination acknowledgement in the courts, which shall issue a ruling under emergency procedures.

iii. Suspension of a local elected representative from office is not automatic if that person is under investigation but:

– may exceptionally be ordered by the central authorities or by the electoral authority in very grave and emergency situations, but this decision is subject to revision by the court;

– is ordered by the courts if continuation in elective office seriously threatens to hinder the judicial process or cause damage that is substantial or difficult to repair;

b. Possible action by local authorities

According to law, local authorities:

– inform the relevant body (court, election office, central authorities) of any incompatibility of which they become aware;

– give sanctions or request the body enabled by law to sanction the elected representative, according to law or local regulations adopted by the local authority according to law;

– in accordance with the law, suspend for a limited period – within a range established by law – a local elected representative who does not fulfil his or her obligations (repeated and unjustified absences, non-fulfilment of regulatory obligations, etc.); the decision may be contested in the courts by the elected representative; suspension by the collegial body may be for a limited period, or unlimited if the courts have been requested to order the termination of office of the elected representative;

– ask the courts to rule on the termination of office of an elected representative, particularly in the event of serious misconduct or a clear breach of standards of public ethics, and suspend the representative until the courts issue a ruling.

c. Possible action by local elected representatives⁵

Local elected representatives respect the rules and:

– avoid, as far as possible, any conflict of interest or incompatibility;

– make known any situation that may give rise to an incompatibility or conflict of interest as soon as it arises;

– do not hold other appointments which would hinder them from performing efficiently their functions as elected representatives;

– while respecting the choice of their voters and especially when elected on a list, avoid as far as possible changing their party membership and remaining in office.

3. Rights and obligations of elected representatives

a. Possible action by central authorities

Central authorities:

– establish the framework legislation setting the fundamental rights and obligations of local elected representatives;

– make known the rights and obligations of local elected representatives, using various means of circulating the available information;

– set up appropriate monitoring procedures.

b. Possible action by local authorities

Local authorities:

– take sanctions against the non-fulfilment of obligations by elected representatives in complete transparency and according to law and local statutory acts;

– survey the observance of the fundamental rights of local elected representatives by other elected -representatives, by local staff members and by citizens;

– within the limits of their legal powers, repair and punish any infringement of a local elected representative's rights.

c. Possible action by local elected representatives

Local elected representatives:

– fulfil all their obligations and exercise their rights with moderation and for the public good;

– declare their assets before and after their term of office;

– sign the municipal code of conduct and agree to observe it;

– encourage and promote any measure which fosters improvements in the operating performance of the services or departments coming under their responsibility and the motivation of the staff concerned;

– do not perform their functions or use the prerogatives of their office to further their own direct or indirect private personal interests or the private interests of individuals or groups of individuals, with the aim of deriving a direct or indirect personal benefit therefrom;

– declare any personal interest (property or family) in municipal matters and refrain from participating in any debates or from taking a stand on any matter in which they have a personal interest;

– observe budgetary and financial discipline, as defined by the national legislation and do nothing to misappropriate public funds and other public assets; they do not do anything that might lead to public funds or other public assets being used for direct or indirect personal purposes;

- refuse all personal gifts or favours from persons who make a request to the municipality;
- declare all gifts or favours received in their capacity as a representative of the local authority; any gift worth more than a certain value laid down in the municipal code of conduct legally belongs to the municipality;
- make public the grounds for all their decisions; if such grounds have to remain confidential, representatives explain why;
- promote all measures designed to increase transparency in the way they exercise their powers and the operation of the administrative departments for which they are responsible;
- oppose the appointment and promotion of local public servants and other employees on grounds other than merit and professional ability or for purposes other than departmental effectiveness;
- respect the independence, the powers and prerogatives of other political appointees and of local public servants and do not ask them to do anything which gives them direct or indirect personal gain or from which groups of people derive direct or indirect advantage (or to refrain from doing something in order to obtain such direct or indirect advantages); respect the decisions reserved by law or regulations to civil servants;
- reply openly to questions from citizens or the media about their exercise of office and do not reveal information that is confidential or concerns the private life of other persons;
- encourage and promote any measure which fosters openness concerning their powers, the exercise of those powers and the functioning of the services and departments under their responsibility.

4. Liability of elected representatives

a. Possible action by central authorities

Central authorities establish the general framework on liability of local elected representatives, individually or collectively as a body, for acts or omissions in the performance of their duties. The framework is based on the following principles:

- any natural or legal person who has suffered unjustified damage as a result of an act or omission on the part of a local elected representative shall be entitled to reparation;
- the personal liability of local elected representatives is limited to cases of serious or intentional misconduct;
- in collegiate bodies, elected representatives shall not be held liable for any decisions to which they have opposed;
- there shall be no automatic sanction of local elected representatives without prior adversarial proceedings or appeal before the court which suspends the decision ;
- there shall be some degree of specialisation by judges who deal with liability of elected representatives

(specialisation of courts or special training for judges) or there shall be independent specialised administrative bodies which can give an opinion, at the request of judges, on cases in which local elected representatives are involved.

b. Possible action by local authorities

Local authorities:

- quickly and fully compensate parties injured by an act or omission on the part of their elected representatives;
- take action to recover costs from elected representatives who cause them damage through serious or intentional misconduct;
- hold roll-call votes as much as possible, using modern techniques if possible, and make public the elected representatives' votes;
- organise effective internal legal supervision, which may also provide legal advice to elected representatives who request it;
- consider collaborating with other municipalities to set up a risk-pooling arrangement;
- through risk-pooling arrangements or insurance companies, ensure cover against financial risk from their own civil liability and, where applicable, partial cover against risk arising from the civil liability of their elected representatives;
- provide public access to full information about local authority liability and liability of elected representatives.

c. Possible action by local elected representatives

Local elected representatives:

- perform their responsibilities diligently and honestly;
- minimise the risk of substantial or irreversible damage to third parties resulting from an act or omission on their part;
- take out at least partial cover against civil liability, through risk-pooling organisations or private insurance;
- provide the authorised bodies with full information regarding cases in which they are liable.

5. Remuneration, working conditions and careers of local elected representatives

a. Possible action by central authorities

Central authorities establish a framework governing the remuneration, working conditions and careers of local elected representatives, based on the following principles:

- the majority of local elected representatives holds office without remuneration;
- however, local elected representatives shall not suffer material damage as a result of performing their duties: they shall be reimbursed for expenses incurred and loss of professional earnings;

- there shall be a general framework for the remuneration of elected representatives who work for municipalities full time, but the local authority shall have considerable freedom to set the level of remuneration;
- there shall be provision for adapting the work schedule of persons who become local elected representatives; this shall not penalise companies which employ elected representatives: in the event of damage, the local authority shall make it good, either itself or through a specially created fund;
- persons who have completed a full-time term of office shall be helped to resume employment: incentives shall be available to companies which keep an elected representative's post open for the period of his or her full-time elective office;
- allowances and remuneration paid to local elected representatives shall be taken into account in the calculation of taxes, contributions and social benefits;
- the amounts of allowances and remuneration received by local elected representatives shall be made public; the central authorities shall prepare national statistics on these allowances and make them available to the public, particularly by using new information technology;
- elected representatives, particularly those holding executive positions, are prohibited for a limited period from working for certain employers after their term of office has expired, according to law.

b. Possible action by local authorities

Local authorities:

- reimburse local elected representatives for expenses and loss of earnings incurred in the performance of their elective duties;
- establish, where necessary, the amounts of allowances and remuneration paid to elected representatives who work full time for the municipality, within the limits established by law;
- local elected representatives do not set their own remuneration; there are independent panels set up by municipalities with participation by independent experts, representatives of certain qualified NGOs and/or private audit firms;
- establish, as far as possible, working hours compatible with the work schedule of voluntary elected representatives;
- if necessary, take out insurance or subscribe to a special fund to cover damage to third parties caused by adaptation of local elected representatives' work schedule;
- pay at least part of any costs of vocational retraining or updating of skills for elected representatives who have held full-time elective office;

- provide the equipment and staff needed for the work of local elected representatives (premises, secretarial staff, computer equipment and, if necessary, transport);
- publish, particularly using new information technology, the amounts of allowances, remuneration and reimbursements received by local elected representatives.

c. Possible action by local elected representatives

Local elected representatives:

- declare honestly and provide proof of expenses, loss of earnings and material benefits resulting from performance of their duties;
- refrain from actions which gain them occupational advantage in public or private entities which they supervise, with which they enter into contractual relations or which were set up while they were in office and as a result of their exercise of official responsibilities, and avoid working for such companies when their term of office expires – at least during a reasonable time period after their terms of office or of their functions have expired.

6. Training, informing and co-operating with local elected representatives

a. Possible action by central authorities

Central authorities:

- ensure that there is a general framework for the training of elected representatives, by providing a training network or covering part of the cost of training;
- prepare legal and management manuals for new elected representatives;
- prepare training modules and distribute them to training centres which request them, using information technology;
- offer a legal advice service to local authorities which request it;
- encourage the sharing of experience among local elected representatives through seminars, conferences and online discussion forums;
- prepare information tools and make them available to local elected representatives, preferably using information technology: statistics on demography, finance and the standard of services in the country's local authorities; management and benchmarking tools for local public services;
- encourage and assist private or local authority initiatives regarding the training of local elected representatives;
- create a framework for, encourage and take part in the various forms of inter-municipal, inter-regional and international co-operation designed to identify best practices regarding the status of local elected representatives;
- using mainly the new information and communication technologies, they make available to the public the

national legislation and provisions of international treaties concerning the status of local elected representatives, as well as the best European practices and recommendations of international organisations in this field.

b. Possible action by local authorities

Local authorities:

- provide training for elected representatives;
- distribute information needed by elected representatives for the performance of their duties;
- collect and forward to the central authorities the information necessary for compiling statistics and creating comparative management tools for local authorities;
- adapt the training modules made available by the central authorities to the needs of their own elected representatives;
- produce and supply to elected representatives a selection of information resources best suited to the characteristics of the particular authority and the special needs of its representatives;
- take part in various experience-sharing activities at local, regional, national and international level regarding the status of local elected representatives.

c. Possible action by local elected representatives

Local elected representatives:

- take training courses after being elected for the first time;
- keep constantly abreast of legislative developments and new management tools;
- ask their authority for the information they need to perform their duties properly;
- play an active part in experience-sharing activities organised by central or local authorities.

B. Model initiatives relating to the funding of political parties, political associations⁶ and individual candidates at local level

This thematic dossier presents the best practice on the funding of political parties and associations at local level identified during the examination of issues related to the public ethics at local level which was performed by the Steering Committee on Local and Regional Democracy (CDLR). In order to be precise and concise, this best practice has been structured according to the author of the measures which are, in the opinion of the CDLR, examples of good practice and are worded in a concise, short manner. However, they do not constitute a corpus of recommendations to be implemented, in full, by all countries. Central and local authorities should select the practices that might be useful in their specific situation.

This dossier was conceived so as to be possible to be used independently from the other parts of the model initiative package ; however, for better consistency, the situation in

Europe (presented in the second part of the package) and the other thematic dossiers should also be consulted.

1. General framework

a. Possible action by central authorities

Central authorities establish, in consultation with associations of local elected representatives, a coherent, simple and clear legal framework governing the funding of political parties, political associations and election campaigns.

With regard to the funding of political parties and political associations, this legal framework:

- applies to all organisations whose purpose is to promote one or more persons, individually or collectively, including political parties and, where relevant, associations and interest, support and action groups that put forward, support or raise funds for candidates;
- applies to national, local or regional organisations and local or regional branches of national organisations, with the adjustments required by the actual situation (size, population, economic situation...) in each case.

With regard to election campaign funding, the legal framework:

- applies uniformly to all candidates and all political associations supporting them;
- applies in a co-ordinated manner to all elections, whether at central, regional or local level, with adjustments according to the different sizes of the authorities at various levels.

b. Possible action by local authorities

Local authorities help the specialised bodies to:

- organise local elections;
- ensure that the rules for these elections are kept to;
- distribute information about election arrangements to candidates and voters;
- publicise the legal framework for the funding of political parties and elections.

c. Possible action by candidates and elected representatives

Candidates and elected representatives:

- duly examine and obey all the rules on funding of political parties, political associations and election campaigns;
- refrain from any conduct which would or could lead them to favour private interests over the public interest, even if such conduct is not formally prohibited by law;
- help circulate information about the legal framework for party and election funding.

d. Possible action by political parties:

Political parties:

- duly examine and obey all the rules on funding of political parties, political associations and election campaigns;
- ensure that local party branches are fully aware of all relevant rules and take steps to make sure that rules are followed at branch level;
- provide information, advice and training in election rules for party members intending to stand as candidates at local elections.

2. Funding of local political parties and associations

a. Possible action by central authorities

Central authorities establish a legal framework governing the funding of local political parties and associations, based on the following principles:

- political parties and associations acting at local level, as vital components of democracy, may be granted public funding;
- public funding, where it exists, the conditions for granting it, the amount of funding and the arrangements for monitoring how it is used are to be laid down by law;
- political parties and associations may only be prevented from receiving private funding from individuals, companies or non-profit-making organisations if they have access public funding of a level which allows them to operate properly;
- private funding, where it exists, is regulated so as to ensure its entire transparency:
- donations made to political parties and associations may be deductible, at least partially and up to a certain ceiling, from income tax or tax on the donor's profits; donors make public the amount and beneficiaries of their donations;
- organisations, both public and private, which receive public funding shall not be entitled to fund political parties and associations; the law may lay down other categories of organisations not allowed to fund political parties or associations;
- political parties and associations publish their accounts and sources of funding;
- if a threshold is fixed below which the names of private donors need not be revealed so as to protect their privacy and personal convictions, this threshold is reasonable (e.g. the monthly average wage);
- in case of non-compliance with the rules on funding of political parties and associations, penalties should be essentially of an administrative and financial nature; they may entail the loss of elected office and/or some rights for a period to be determined by the courts; some penalties may be decided by the controlling body subject to a possible appeal before the court, other by the court

according to the gravity of the facts, within a fairly broad range of sanctions established by law.

b. Possible action by local authorities

Local authorities:

- refrain from intervening in the running of local political parties and associations;
- do not provide any funding for political parties or associations, either direct or through other organisations or companies which they supervise.

3. Election campaign funding

a. Possible action by central authorities

Central authorities establish a legal framework for local election campaign funding, based on the following principles:

- provisions regarding the funding of political parties or associations apply, *mutatis mutandis*, to election campaign funding;
- if private funding is allowed, ceilings are imposed on election campaign spending by parties and candidates;
- ceilings are applied to financial contributions from a single donor to a party's or candidate's election campaign, unless the donor is the candidate him- or herself;
- the funding of election campaigns through intermediaries⁷ is prohibited; establishing funding associations intended at gathering funds for one or several candidates is possible, but they should make public the sources of the funds gathered;
- local office is representative and non-binding: any contract placing obligations on an elected representative regarding his or her political decisions is invalid; the law imposes penalties for such contracts if fulfilment of the obligations is to be rewarded with a financial contribution to an election campaign;
- public radio and television stations, if they exist, grant all candidates a set amount of airtime which is equal or according to the current audience of the parties supporting them (previous results); independent candidates and those supported by organisations/parties whose audiences are below a certain threshold have a minimum amount of airtime.

b. Possible action by local authorities

Local authorities:

- in co-operation with the election monitoring body, use their infrastructure to make candidates' funding declarations publicly available;
- make the asset declarations of elected representatives available to controlling bodies entitled by law;

– have appropriate rules or regulations to ensure that municipal representatives do not use public office to finance or facilitate financing electoral campaigns.

c. Possible action by candidates and elected representatives

Candidates and elected representatives:

– scrupulously obey the laws governing election campaign funding;

– candidates declare the sources of their funding and a spending breakdown for their election campaigns, in accordance with the law;

– where there is no legal obligation to do so, candidates keep their election campaign spending within reasonable limits and make essential information about the campaign accounts (amounts, sources and categories of expenditure) available to the public;

– elected candidates declare their assets and financial interests; any declaration threshold set by law should be reasonable (e.g. it might correspond to the value of an average furnished residence and a car);

– elected representatives declare their assets immediately after election and at the end of their term of office; such declarations may only be made available to controlling bodies entitled by law; the court may decide to make them public in case they rule against an elected representative;

– candidates who are seeking public office do not attempt to obtain votes by offering or promising personal advantages to voters, denigrating the other candidates, using force or threats or making promises they know they cannot or do not want to hold.

4. Monitoring of compliance with standards for party and election funding

a. Possible action by central authorities

Central authorities:

– ensure there is a body to verify the compliance with the laws on the funding of political parties, political associations and election campaigns; this body could be whatever agency is responsible for organising and monitoring local elections or responsible for monitoring and auditing public spending;

– give the body responsible for monitoring party and election campaign funding the human, financial and logistical resources necessary for it to fulfil its role;

– ensure the independence of that body from political influence;

– give the body the power to impose fines, which may be contested in the courts.

b. Possible action by local authorities

Local authorities:

– co-operate, in the monitoring of local elections, with the body responsible for monitoring party and election campaign funding;

– use the means at their disposal to circulate that body's reports and findings;

– forward to the body all necessary information concerning local elections.

c. Possible action by candidates, elected representatives and political leaders

When required to do so, candidates supply to the body responsible for monitoring party and election funding whatever information is needed concerning their election campaign funding.

Elected representatives, as a matter of course, forward to the body responsible for monitoring political party funding the accounting documents relating to the funding of their election campaigns and, if so requested, any other information on the subject that may be necessary.

Political party leaders forward annually a summary and explanation of results or budget to the body responsible for monitoring political party funding and, on request, any further financial information which that body considers necessary.

5. Information and publicity

a. Possible action by central authorities

Central authorities use the means at their disposal, and particularly information technology, to:

– publicise the legal framework for the funding of political parties and political associations and the legal framework for election campaigns;

– publicise the decisions, reports and resolutions of the body responsible for monitoring party and election campaign funding;

– publicise court rulings relating to party and election campaign funding;

– collect, process and publish statistics concerning party and election campaign funding: amounts, expenditure, sources, monitoring operations, breaches, fines and other penalties, legal proceedings;

– make public the provisions of international legal instruments in the field of political funding as well as the best European practice and the recommendations of the international organisations in this field.

b. Possible action by local authorities

Local authorities use the means at their disposal, and particularly new information technology, to:

– publicise the legal framework governing party and local election funding;

- make known the local elected representatives and publicise their declarations on election campaign funding;
- publicise the various decisions, reports and resolutions of the body responsible for monitoring party and local election funding that are relevant to the municipality;
- publicise court decisions relevant to the municipality relating to party and election campaign funding.

c. Possible action by candidates, elected representatives and political leaders

Candidates, elected representatives and political leaders:

- use the means at their disposal (including the new information technologies), to make relevant information available to the public about the funding of the political parties, political associations which support them and parties' local election campaigns;
- take part in the various forms of co-operation and sharing of experience on the subject.

C. Model initiatives relating to the control and audit

This thematic dossier presents the best practice on the control and audit identified during the examination of issues related to the public ethics at local level which was performed by the Steering Committee on Local and Regional Democracy (CDLR). In order to be precise and concise, this best practice has been structured according to the author of the measures which are, in the opinion of the CDLR, examples of good practice and are worded in a concise, short manner. However, they do not constitute a corpus of recommendations to be implemented, in full, by all countries. Central and local authorities should select the practices that might be useful in their specific situation.

This dossier was conceived so as to be possible to be used independently from the other parts of the model initiative package; however, for better consistency, the situation in Europe (presented in the second part of the package) and the other thematic dossiers should also be consulted.

To provide effective supervision of local authorities and avoid infringements of public ethics ("pork barrels", cronyism, exercise of powers for personal advantage, conflicts of interest, misuse of assets, abuse of trust, misuse or abnormal use of delegated management) while preserving local autonomy, law provides for a control system that is organised according to the following principles:

- local authorities are subject to the rule of law, and the arrangements for supervising compliance with the law must be clearly laid down;
- the main representatives of the community are elected democratically and periodically, at not too long intervals;
- throughout their terms of office, office-holders must be under the supervision of pluralist assemblies elected democratically and periodically, at not too long intervals;

- democratic control in the form of public access to information, in particular administrative and budgetary documents, is possible and to be encouraged;
- there is independent external control;
- there is effective internal control;
- the control is adapted to the size and to the tasks of the municipality.

1. External control

a. Possible action by central authorities

Central authorities lay down a legal framework which is based on the following principles:

i. The purpose of controls is to give elected representatives in charge of the local authority and all interested third parties – essentially the citizen and central government – a reasonable guarantee that the authority is being managed in accordance with:

- the law applicable in the various fields for which it has responsibility;
- general or special accounting and budget rules;
- generally acknowledged principles of economics, efficiency and effectiveness;
- the principles of public ethics as laid down in the various national and international codes of conduct.

Except for delegated powers, external control does not pass judgment on the advisability of local authority management policy. That is entirely a matter for public opinion and the voter.

ii. Control is ex post facto. However, the external supervisory body's independence (in particular from central government), as laid down in the relevant rules, may also allow it to perform an advisory function. The manner in which the external supervisory body performs its prior control, and the limits of that control, are laid down in high-level rule-making instruments so as to ensure that the advisory function remains compatible with the principle of local authority self-government and with the control function.

iii. External control entails:

- annual certification of the accuracy of the local authority's accounts which also covers subsidised entities or entities in which the local authority holds most of the capital or has a preponderant management say, and it also applies to the accounts of public services which the local authority has contracted out to private firms, and here the supervisor/auditor has to be able to check the books on the spot for accuracy;
- a management audit, which is wider-ranging than the financial audit. This "wide" audit is performed at sufficiently regular intervals, according to the size of local authorities;

– the external controller is precluded from passing judgement on the advisability of the local authority's decisions, but there is nothing to prevent the controller from commenting on the groundwork for local authority decisions or on their coherence, in particular from the financial standpoint.

iv. External control is performed independently both of the authorities being supervised and of the central authorities. In terms of organisation and performance, it involves the following principles:

– an obligation on local authorities to accept external control and the main arrangements for that control are laid down as high up as possible in the hierarchy of legislation applying to local authorities;

– the purpose of external control is to verify the quality of internal procedures and check that the service overseeing the introduction and use of the internal procedures is functioning properly; by means of random checks, external control also makes sure that the internal control procedures are effective;

– the arrangements for appointing the external control authority guarantee its independence. They are laid down as high up as possible in the hierarchy of legislation governing local authorities;

– the authority responsible for external control is irremovable or is least be appointed for a lengthy, specified period longer than electoral terms of office;

– the external supervisory authority fulfils requirements of utmost competence and impartiality, which are laid down in advance;

– where the external supervisory authority is a collegiate body, these requirements apply to all members of the college;

– disciplinary authority over the external supervisory authority and its members is exercised by a body which is independent of the supervised authorities and which presents full guarantees of impartiality;

– the supervisory authority has a proper budget of its own and this budget is set by the assembly of the entity on whose behalf the control is performed;

– the external supervisory authority is free to decide its own programme and schedule of controls;

– professional control rules are laid down in high-ranking legal instruments based on generally accepted international standards. The rules cover, in particular, the arrangements for enabling the local authority to comment on the supervisory authority's observations;

– a local or regional ombudsman is appointed who can request information to local authorities; failure to comply with the requests of the local/regional ombudsman triggers disciplinary sanctions for the person(s) who should have provided the required information.

Control comes under administrative, not criminal law, though obstruction of external control may be a punishable criminal offence. However, the supervisory authority's investigative powers do not overstep the requirements of administrative control as opposed to criminal investigation; the supervisory authority has a duty to inform the criminal authorities of matters found which might constitute a criminal offence.

The law designates certain officers of a local authority to be responsible for the manner in which the authority discharges its functions – in particular ensuring that the law is not breached and that expenditure is not unlawfully incurred. When designated officers have reason to believe that unlawful actions are being considered, they are under a duty to prepare reports for consideration by the whole authority.

Where external control is entrusted to a firm of auditors, that decision should be taken by an independent authority, preferably a public authority, meeting the requirements set above. That authority should set the control requirements and the budget and, in general, deal with all matters to do with performance of the control.

v. *A priori* compulsory control is confined to measures of some importance. External control is *a priori* control where the intervention of the central government is a condition for the local measure to be valid or to take effect; *a priori* control is confined to powers delegated to local authorities by central authorities. Measures to which the external control (both *a priori* and *a posteriori*) applies are listed in the legislation. External control may be devoted to one or several bodies which are different from the body mainly in charge of external control, according to the specificity of measures to be controlled. The competence of each control body is clearly laid down so that there is no uncertainty as to the authority performing the control.

b. Possible action by local authorities

Local authorities:

– provide all relevant information to the external supervisory authority;

– make it clear, as a matter of general policy, that in taking decisions in the course of their duties, local public servants are answerable to no-one but the local authority;

– co-operate in good faith with the external supervisory authority.

2. Internal control

a. Possible action by central authorities

Central authorities establish a legislative framework which lays down the general principles of internal control:

– internal control is formed by all the written procedures governing practice in a local authority's various fields of activity; internal written procedures are used not only in budget preparation and execution, including purchases and contracts, but also in staff recruitment and staff management;

– internal control, at least in local authorities of some size, is a specialist service providing expert assistance to operational departments in the design of procedures; the internal control service is also responsible for checking that procedures adopted are complied with; where they are not being complied with, internal control is responsible for establishing why and suggesting solutions to the problem (revision of inappropriate procedure, reorganisation of departments or departmental methods, training, reassignment of staff, etc.);

– local authorities are allowed to use external management audits whenever they consider it necessary; the law lays down rules for delegating internal control to private auditing firms.

Central authorities provide advice as to the organisation of internal control to local authorities which request it.

b. Possible action by local authorities

Local authorities are wholly answerable for their management to the electorate, public opinion, the administrative or civil courts or, in appropriate cases, the criminal courts.

They must set up specialist internal-control machinery so as to reduce to a minimum the risk of:

- economic or financial mismanagement;
- administrative mismanagement resulting from ignorance of the rules;
- poor delivery of services;
- administrative, civil or criminal proceedings.

Members of the deliberative assembly have access to all internal-control documents.

The local deliberative assembly appoints a specialist financial committee which oversees budget preparation and execution, checks the financial implications of any projects the council decides, makes proposals to the council on supervisory machinery and procedures and checks the quality of procedures. Setting up and operating the internal control are a matter for the local authority executive.

Local authorities use financial and management audit firms:

- whenever they consider it necessary and in particular whenever there are doubts about the accuracy of the accounts;
- to prepare the ground for any privatisation of a local authority service or activity;
- where the authority has a chronic, or very serious, financial deficit;
- to assess the financial risks of and the financing plans for capital-investment schemes costing more than a specified amount;

– to analyse the methods of estimating expenditure and receipts where large discrepancies are found between estimates and actual expenditure/receipts.

Local authorities select firms of financial or management auditors according to their qualifications and professional expertise and according to the general rules for contracts governing supply of services.

c. Possible action by local elected representatives and local public servants

Local authority elected representatives and local public servants:

- make available to the internal control or audit body any information they hold which that body requests or which they consider relevant to the internal control work;
- report to the local executive any negligence found in the local authority's work and any malfunctioning of the supervisory machinery and, where appropriate, make proposals on how to improve control;
- request the local authority to use external audit whenever they consider it necessary and, in particular, in those cases listed under 2.b above.

3. Judicial supervision

a. Possible action by central authorities

Central authorities adopt the provisions and organise judicial supervision of the local authorities in such a way as to:

- prevent the courts from usurping the local authority's role of assessing the advisability of measures and ensure that, where the diligence of a measure or of behaviour needs reviewing, the review is performed by an independent body or by the administrative supervisory authorities;
- empower the courts to take interim measures where such measures are justified by the urgency of the matter or by a risk of irreparable harm;
- ensure full and immediate execution of judicial decisions concerning the legality of a reviewed measure. This includes procedural provision for replacement of negligent authorities;
- ensure that dispute proceedings in the courts are not of undue length.

b. Possible action by local authorities

Local authorities:

- make available to the courts whatever information is necessary;
- act prudently in any measures concerning matters which are the subject of judicial proceedings;
- take the necessary steps to give immediate effect to judicial decisions.

c. Possible action by local elected representatives and local public servants

– Local elected representatives and local public servants make available to the courts whatever information is requested.

4. Alternative mechanisms

a. Possible action by central authorities

Central authorities take the necessary steps to:

- improve their dialogue with local authorities, including associations of local authorities;
- strengthen the advisory and evaluation role which certain bodies (whether independent of central government or belonging to it) can perform, in particular in the financial sphere and the management field;
- reinforce the role played by independent bodies such as ombudsmen and mediators;
- promote good accounting practice and managerial effectiveness using in particular new information technologies;
- particular offices of local authorities in charge of monitoring the compliance with the rules and procedures may have statutory functions and a certain degree of autonomy.

b. Possible action by local authorities

Local authorities:

- seek external advice whenever necessary, for example from central authorities or specialist bodies;
- make available to ombudsmen or mediators whatever information is required;
- co-operate with other authorities at the same level or on a different level, in particular in order to improve the organisation of internal controls and the use of external audits.

c. Possible action by local elected representatives and local public servants

Local elected representatives and local public servants:

- make use of the advisory services of other authorities or specialist bodies;
- facilitate the work of ombudsmen and mediators.

5. Information and transparency (see also part E of the Handbook)

a. Possible action by central authorities

The findings of external administrative controls are of a public nature. The manner in which external control findings are made known to the public must be laid down in high-ranking legal instruments. The guiding principles here are as follows:

– the external control authority arrives at its own findings and makes them public as the outcome of an adversarial procedure in which the local authority undergoing the control participates;

– the executive or assembly of the local authority cannot – even though they are the main recipients of the findings – prevent the external control authority from making the findings public;

– the replies of the local authority are published together with the findings.

Through use, in particular, of information and communication technologies, central authorities make the following information available to the public:

- statistics for external administrative and judicial controls and information on the main problems found and remedial measures taken;
- best practice in the matter of internal control;
- best European practice in management auditing and controls;
- national legislation and the provisions of international treaties and other instruments on the subject.

b. Possible action by local authorities

Through use, in particular, of information and communication technologies, local authorities make public the findings of external, judicial or internal controls and of external audits.

c. Possible action by local elected representatives and local public servants

Local elected representatives and local public servants participate in the pooling of experience as regards management audits and controls.

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

This thematic dossier presents the best practice on the status of local public servants identified during the examination of issues related to the public ethics at local level which was performed by the Steering Committee on Local and Regional Democracy (CDLR). In order to be precise and concise, this best practice has been structured according to the author of the measures which are, in the opinion of the CDLR, examples of good practice and are worded in a concise, short manner. However, they do not constitute a corpus of recommendations to be implemented, in full, by all countries. Central and local authorities should select the practices that might be useful in their specific situation.

This dossier was conceived so as to be possible to be used independently from the other parts of the model initiative package; however, for better consistency, the situation in Europe (presented in the second part of the package) and the other thematic dossiers should also be consulted.

These model initiatives specifically apply to the situation of local public servants. A large part of the principles and measures presented applies however to other employees of the local authority.

1. Legal framework

This chapter only includes general principles of the legal framework; an important number of model initiatives included in the following chapters should be or could be established by law or other regulations.

a. Possible action by central authorities

Local public servants have a legal framework which:

- is as simple, clear and comprehensive as possible;
- sets out rights and obligations, responsibilities, safeguards and protective mechanisms and covers recruitment, pay, working conditions, controls, disqualifications and termination of duties;
- has been drawn up in consultation with the local authorities;
- follows the basic principles of the legal framework applying to central-government civil servants;

The list of obligations of local public servants may be added to or adapted by local authorities to meet their particular requirements or situation.

In addition to the legal framework proper, central authorities draw up model codes of conduct for local public servants. These model codes contain a list of provisions which local authorities must include in the codes of conduct adopted at local level and a list of model provisions that local authorities may, where appropriate, adapt and include in local codes of conduct. The provisions of the codes of conduct become compulsory for civil servants upon their signature. Failure to comply with the code of conduct triggers disciplinary sanctions.

With the help of new information technologies, central authorities ensure public and local authority access to the rules applying to local authority staff. In particular they:

- publish and promote the various pieces of legislation governing the work of local public servants;
- publish the various codes of conduct adopted by local authorities so that they can be analysed and compared;
- collect, process and publish statistics on court decisions on cases of corruption and other infringements of public ethics, together with statistics relating to public confidence in local authority staff.

b. Possible action by local authorities

Local authorities:

- in so far as the law permits, adapt, mainly through the adoption of local codes of conduct, the legal framework for local public servants to the particular features and

requirements of the individual authority on the basis of model codes of conduct;

- adopt codes of conduct for local public servants by adapting central government’s model code to the circumstances of the particular authority; once adopted, this code of conduct becomes a legal instrument compulsorily applying to all local public servants and defining their administrative responsibility regime; disciplinary sanctions are stipulated against infringements of the code of conduct; these sanctions may be challenged in court;

- ensure that codes of conduct are known to local authority staff, the central authorities, other interested bodies and the public by using information technologies and other means.

c. Possible action by local elected representatives and local public servants

Local elected representatives:

- know and comply with the provisions of the code of conduct applying to the local authority’s staff;
- refrain from applying improper pressure on local public servants;
- do not seek or tolerate any infringement of the code of conduct by the authority’s staff;
- report any breach of the code of conduct to the competent authority.

Local public servants obey the legal rules and codes of conduct laid down by the local authority.

2. Disqualification, suspension and termination of duties

a. Possible action by central authorities

Central authorities establish a legal framework governing disqualification, termination of duties and staff suspensions in local public service, adapting it to national circumstances and basing it as far as possible on the following principles:

i. disqualification may arise from:

- conflict of interest; for example, no-one may be in a position where they would be supervising themselves or supervising a close relation;
- outside activities which would prevent the staff member from properly performing his or her duties;
- legal mental or financial incapacity, which could affect the individual’s liability in the performance of his or her duties;

– a criminal conviction for a serious offence or for an infringement of public ethics; the period of disqualification depends on the seriousness of the situation and the courts have a wide discretion in deciding the period;

ii. termination of duties against the will of the staff member concerned may be decided, in accordance with the law, by

the representative of the local authority, on the ground of serious professional misconduct or breach of public ethics and subject to judicial safeguards.

Staff is protected against wrongful dismissal, but local authorities are able to dismiss staff for incompetence or serious negligence or misconduct.

b. Possible action by local authorities

Subject to the law and to the municipal code of conduct, the local authority:

- define the cases of conflict of interest;
- decides what conduct an official must adopt in cases of conflict of interest;
- resolve, before any appointment is made, any conflict of interest declared by a candidate for a position or an applicant for a post;
- suspend or dismiss a staff member in certain cases, in particular where there has been serious negligence or misconduct or a breach of public ethics and the offence is contrary to the law, the staff rules, the code of conduct or the employment contract;
- seek to ensure a degree of stability of administrative staffing;

c. Possible action by local public servants

Local public servants:

- avoid, wherever possible, to put themselves in a real or apparent conflict of interest or in a situation disqualifying them from service and observe restrictions on conflicts of interest;
- make known any situation that may give rise to an incompatibility or conflict of interest as soon as it arises;
- abide by any final decision ordering them to withdraw from a situation or to renounce an advantage that has caused conflict of interest;
- if they hold a post in which personal or private interests might interfere with their official duties, comply with the legal requirement to declare the nature and extent of such interests on appointment to their post and at regular intervals thereafter or whenever their circumstances change;
- refrain from any activity or transaction and from taking up any post or position, whether paid or not, which is incompatible with proper performance of their public duties or which would harm performance of their public duties; where there is doubt as to whether an activity is incompatible, they must consult their superior;
- subject to the law applicable, inform and obtain the consent of their superiors before taking on any activities, offices or duties which might interfere with their work, paid or unpaid, in addition to their local authority work;

– declare, as required by law, any membership of organisations that might conflict with their duties or with proper performance of their work as public servants;

– subject to observance of basic and constitutional rights, take care that any personal involvement in political activities or political debate does not damage public confidence, or their employers' confidence, in their ability to perform their duties impartially and loyally;

– abide by any restriction which, by reason of their position or the nature of their duties, the law imposes on specified categories of public servant as regards engaging in political activity.

3. Rights and obligations of local public servants

a. Possible action by central authorities

Central authorities establish legal rules that set and ensure that the following principles are observed:

- entry to local public service is based solely on competence;
- the terms of employment of local public servants are fair;
- the level of social protection afforded local public servants is appropriate and reasonable;
- in the performance of their duties local public servants are entitled to legal protection against: improper interference on the part of elected representatives; misuse of power by their superiors; any unlawful measure taken against them, including any measure resulting from anticorruption action which they have taken under the anticorruption rules; and any act by the public that undermines their impartiality and integrity;
- local public servants have access to legal remedies against any misuse of power against themselves;
- local public servants have the right of association and other social rights.

In addition, central authorities:

- inform public servants and the public at large about the rights and obligations of local public servants, using the various channels available;
- establish suitable supervisory procedures.

b. Possible action by local authorities

Local authorities:

- ensure that the material and employment conditions of public servants are appropriate and consistent with their needs;
- establish, if they do not already exist, rules of conduct to help local public servants meet the relevant standards of public service;
- define clearly the responsibilities and duties of local public servants;

- ensure that they fulfil their duties;
- prevent any unlawful or unethical behaviour on the part of public servants and punish, while ensuring complete transparency, any failure by public servants to fulfil their obligations; the disciplinary procedure must be adversarial and the public servant is allowed to be assisted by the person of his or her choosing; the penalties must be laid down in law; local public servants have the right to appeal against a disciplinary decision;
- foster accountability, proper supervision and responsibility within public service;
- impose restrictions, particularly as regards holding a second job or engaging in certain activities within the limits of the law;
- ensure and encourage the participation or consultation of local public servants in decisions relating to the organisation, structure and principles governing the performance of public duties;
- protect the rights of local public servants and, within the limits of their statutory powers, make good and punish any infringement of a local public servant's rights;
- foster transparency, discourage arbitrary behaviour and reduce anonymity; at the same time, protect the privacy of public servants by keeping confidential, save as otherwise provided by law, the various statements which local public servants are required to make;
- improve communication with the public and inform them of what they are entitled to expect from public servants;
- provide the appropriate legal provisions and procedures for civil servants to report to the appropriate authorities concerns or allegations of breach of the public ethics by other staff members or elected representatives.

c. Possible action by local public servants

Local public servants:

- loyally serve the local authority, with due regard for the law, ethics and the established hierarchy;
- are honest, impartial, conscientious, fair and dedicated to their public task;
- ensure that the resources with which they are entrusted are managed appropriately, efficiently and thriftily in the public interest;
- are politically neutral in the exercise of their duties and not attempt to frustrate the lawful policies, decisions or actions of the public authorities;
- are efficient and perform their duties to the best of their abilities, with skill, fairness and understanding, having regard only to the public interest and the relevant circumstances of the particular matter;
- are courteous and respectful in their dealings with the public, as well as in their dealings with their superiors, colleagues and subordinate staff;

- observe the principles of good administration and promote administrative ethics;
- take note of all their rights and obligations;
- undertake to fulfil all their obligations and exercise their rights with moderation and for the public good; refrain from acting in an arbitrary manner to the detriment of any person, group of persons or entity, and show due consideration for the lawful rights, obligations and interests of others;
- try to avoid any conflict of interest and refrain from commenting on any case in which they have a personal interest; they must never take improper advantage of their official position for their own personal interest;
- declare all gifts, favours, invitations or other benefits offered to them, their family, their friends or other persons or organisations which might affect or appear to affect the impartiality with which they perform their duties or which constitute or might constitute a reward in connection with their duties (any gift worth more than a certain amount laid down in the municipal code of conduct to belong automatically, if possible, to the municipality; otherwise they should be refused); avoid extensive dealings with the person who made the gift; and try to have witnesses present at any meetings with that person;
- refuse all gifts or personal favours from persons who make a request of the municipality; where the gift can be neither refused nor returned to the sender, they declare it, keep it and make as little use of it as possible; they officially notify, preferably in writing, their superiors and, where appropriate, the competent authorities; clear rules concerning the conduct requested in case of offer of gifts or other favours are included in the municipal code of conduct;
- promote all measures designed to increase transparency in the way they perform their duties and in the work of the administrative departments for which they are responsible;
- always conduct themselves in such a way as to retain and strengthen public confidence in the integrity, impartiality and efficiency of the public authorities;
- not put themselves in a position which requires them, or appears to require them, to render a favour to a third party;
- refrain from using their position as public servants to bestow improper advantage on third parties or to influence third parties for personal ends;
- where they consider that they are being asked to act in an unlawful, improper or unethical manner, report it in accordance with the law;
- inform the competent authorities, in accordance with the law, of breaches of the criminal law or code of conduct by other local employees of which they may be aware and pass on to the competent authorities any evidence, suspicions or allegations in that connection;

– refrain from granting other individuals, such as former public servants, preferential treatment or privileged access to the administration.

4. Liability of local public servants

a. Possible action by central authorities

Central authorities establish the general framework on liability of local public servants for acts or omissions in the performance of their duties. The framework is based on the following principles:

– any person who has suffered undue damage as a result of an act or omission on the part of local public servants is entitled to compensation;

– local public servants are not liable for damage caused to their municipality if they have shown all due diligence in the matter in question;

– local public servants do not execute orders which are clearly illegal;

– local public servants cannot be held liable for decisions of their superiors or elected representatives to which they have not participated or they have made known their objections;

– there is no mechanism for automatic punishment of local public servants without prior adversarial proceedings; they have the right of appeal to the courts;

– local public servants who face specific risks are allowed to take out at least partial cover against civil liability, through risk-pooling organisations or private insurance;

– local public servants may oppose to clearly illegal orders; if, after having made known their objection the order is confirmed in written, they are exonerated from any responsibility except if the execution may generate serious and irreversible damage or physical injury.

b. Possible action by local authorities

Local authorities:

– quickly and fully compensate parties injured by an act or omission of their public servants;

– take action to recover costs from public servants who cause them damage through serious negligence or wilful misconduct;

– make sure there is an effective internal legal-supervision service, which can also provide legal advice to public servants requesting it;

– consider setting up a risk-pooling arrangement with other municipalities;

– through risk-pooling arrangements or insurance companies, take out complete or partial cover against financial risk arising from their own civil liability and, where applicable, against risk arising from the civil liability of their public servants;

– provide public access to full information about local authority liability and liability of public servants.

c. Possible action by local public servants

Local public servants:

– perform their duties diligently and honestly;

– take care there is minimum risk of substantial or irreversible damage to any third party resulting from an act or omission on their part;

– provide the authorised bodies with full information about cases in which they are liable.

5. Recruitment, remuneration, working conditions and career development of local public servants

a. Possible action by central authorities

Central authorities establish the framework governing the recruitment, remuneration, working conditions and career development of local public servants, based on the following principles:

– the recruitment and promotion of local public servants rests on equality of entry to public service, individual merit, open competition and non-discrimination; the general prerequisites for entry to public service are prescribed by legislation or other measures adopted in pursuance of the law;

– applicants may appeal against decisions of the competent authorities concerning admission to examinations or failure in such examinations;

– there is a general framework for the remuneration of local public servants, but the local authority must have considerable discretion in setting the level of remuneration;

– remuneration is commensurate with the responsibilities and duties performed and is sufficient to secure public servants a reasonable standard of living;

– allowances and remuneration paid to local public servants are taken into account in the calculation of taxes, contributions and social benefits;

– the amounts of allowances and remuneration received by the various categories of local public servant are made public; central authorities prepare national statistics on these allowances and make them available to the public, using in particular new information technology;

– public servants, especially those holding executive positions, are prohibited for a limited period from working for certain employers after their local authority employment has ended.

b. Possible action by local authorities

Local authorities:

– recruit local public servants under clearly defined, transparent procedures designed to ensure that the best

candidate is recruited according to the specific needs of the department or body concerned;

- ensure the confidentiality of any sensitive personal information provided under the selection procedure;
- determine, within the limits prescribed by law, the remuneration and system of reimbursement of expenses for local public servants;
- actually reimburse any expenses or loss of earnings incurred by local public servants in the performance of their duties;
- ensure that any transfer of public servants is in the interest of sound public administration and that such transfers do not become a form of punishment in disguise;
- provide a right of appeal to enable public servants who have been transferred without their consent to challenge the lawfulness of their transfers;
- ensure that promotions involving an increase in responsibilities are based on merit or, in case of equal merit, on seniority or criteria that ensure the promotion of under-represented groups;
- see to it that there is no discrimination, notably on the ground of age, disability, sex, marital status, sexual orientation, race, colour, ethnic or national origin, social background, political or philosophical opinions or religious beliefs, as regards access to public service or treatment, promotion or termination of the duties of local public servants;
- ensure that local public servants have the material and logistical facilities they need for their work.

c. Possible action by local public servants

Local public servants:

- declare honestly and provide proof of expenses, loss of earnings or material benefits arising from the performance of their duties;
- refrain from actions which procure them professional advantage from public or private entities which they supervise, with which they enter into contractual relations or which they were professionally involved in setting up, and avoid working for such companies when their employment ends, in accordance with the applicable law;
- public servants and former public servants refrain from using or disclosing any confidential information which they obtain in their official capacity as public servants unless allowed to do so in law.

6. Training, information, co-operation and transparency

a. Possible action by central authorities

Central authorities:

- provide a general framework for the training of public servants by establishing (if possible in the framework

of a suitable institution at a regional level) a special service providing professional advice, education and training concerning prevention of corruption for public administration, accessible to companies and citizens, by providing a training network or by covering part of the cost of training local public servants;

- prepare legal and management manuals for public servants;
- prepare training modules and distribute them to any training centres which so request, using new information technology;
- provide a legal advice service to any local authorities which so request;
- encourage the sharing of experience among local public servants through seminars, conferences and online discussion forums;
- prepare information tools and make them available to local public servants, preferably using new information technology: statistics on demography, finance and the standard of services in the country's local authorities; management and benchmarking tools for local public services;
- encourage and assist private or local authority initiatives involving the training of local public servants;
- create a framework for, encourage and take part in the various forms of inter-municipal, inter-regional and international co-operation designed to identify best practices regarding the rights and duties of local public servants;

– provide the public, using in particular new information and communication technologies, with access to national legislation and the provisions of international treaties concerning the rights and duties of local elected representatives, as well as to European best practice and the recommendations of international organisations in this field.

b. Possible action by local authorities

Local authorities:

- provide training for public servants; education and training should be recognised as a high priority both in general, strategic plan (the improvement of public administration culture and confirmation of ethical values) and in its capacity of a practical tool providing information and explanation to rules and guidelines, acquiring practical knowledge and skills, spreading good practices etc.; it should be recommended to involve judges, prosecutors, police officers, local ombudsmen in the process of education in appropriate forms (lectures, debates, publication of their experience);
- ensure that all information which public servants need for their work is made available;

- collect and forward to the central authorities the information necessary for compiling statistics and creating comparative management tools for local authorities;
- adapt the central authority’s training modules to the needs of their own public servants;
- produce and supply to local public servants access to information resources best suited to the particular authority and its staff;
- take part in various experience-sharing activities at local, regional, national and international level regarding the rights and duties of local public servants;
- establish a special service to provide professional advice and training in the prevention of corruption in public administration and the interpretation and application of codes of conduct;
- help the local media to accurately cover issues relating to administrative ethics; in any case, local authorities must offer accurate information and respect the presumption of innocence;
- publish the results of anti-corruption measures taken at local level.

c. Possible action by local elected representatives and public servants

Local public servants:

- take basic and further training courses;
- keep abreast of legislative developments and new management tools (mechanisms, techniques and procedures);
- ask their authority for the information they need to do their work properly;
- play an active part in experience-sharing activities organised by central or local authorities.

It is primarily up to elected representatives and senior officials (with special responsibility of mayors and chief executives) to establish in concrete circumstances the atmosphere of confidentiality and support to public officials’ legitimate efforts and possible assistance in solving their problems. Senior officials must be obliged (and evaluated accordingly) to:

- recognise as their duty to behave in a way that can serve as a model for the staff;
- exercise consistently their supervisory functions and apply or initiate disciplinary and other kinds of procedure;
- to use the means of positive motivation, not only of material but also of moral character (appreciation, expressed clearly and without a delay in minor, common events).

As superiors are expected to play much stronger role in the whole process and particularly in the prevention and sanctioning of corruption, they must be well acquainted

with relevant methods, for example how to deal with reports, how to handle cases tactfully, with respect to presumption of innocence and requirements of fair treatment. These demands should be of special concern in local government, namely in smaller communes where the good reputation is particularly sensitive matter.

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

This thematic dossier presents the best practice on transparency, access to information and administrative procedures identified during the examination of issues related to the public ethics at local level which was performed by the Steering Committee on Local and Regional Democracy (CDLR). In order to be precise and concise, this best practice has been structured according to the author of the measures which are, in the opinion of the CDLR, examples of good practice and are worded in a concise, short manner. However, they do not constitute a corpus of recommendations to be implemented, in full, by all countries. Central and local authorities should select the practices that might be useful in their specific situation.

This dossier was conceived so as to be possible to be used independently from the other parts of the model initiative package; however, for better consistency, the situation in Europe (presented in the second part of the package) and the other thematic dossiers should also be consulted.

1. Transparency and access to information

a. Possible action by central authorities

Central authorities establish the general framework for administrative transparency and access to information, based on the following principles:

- secrecy is limited to information connected with particular interests determined by law (public safety, crime prevention, protection of the currency and credit, privacy);
- budgets and financial documents, in particular, should always be available to the public;
- a particular individual interest in or connection with the information is not required in order to access information held by local authorities;
- there are time limits for official replies to requests for information;
- ombudsmen and supervisory bodies have full, immediate access to any information which they require in order to perform their tasks;
- there are clearly defined penalties for contravening the law on transparency and access to information.

Central authorities encourage and assist the local authorities’ efforts to improve transparency in local administration: information drives, training, websites, widely accessible databases, etc.

b. Possible action by local authorities

Local authorities lay down clear rules on administrative transparency and access to information, according to the following principles:

- administrative transparency is stated as a principle not only for the relations between administration and citizen, but also for the standards of individual conduct of civil servants;
- local authorities inform citizens of the measures adopted to implement the principle of administrative transparency, in order to foster the general application and the appropriation by citizens of this principle;
- the meetings of local elected bodies are normally held in public; in this case, documents and information relating to their proceedings and decisions are available to the public except where exceptional circumstances request the protection of personal or confidential data;
- subject to limitations justified by the need to protect personal data, special access to information is provided for certain individuals or bodies (other local bodies, ombudsmen, press);
- administrative archives and files are kept in such a way as to facilitate public access to them; enough personnel are assigned to this;
- as far as possible, public information is available on the Internet;
- local authorities inform the community of the measures taken to implement the principle of administrative transparency in order to encourage widespread application of this principle;
- there are disciplinary penalties for breaking the rules on transparency.

Local authorities adopt and publish service delivery charters which clearly present the local services to be provided, the conditions of delivery and the rights of their users.

c. Possible action by local elected representatives and local public servants

Local elected representatives and local public servants:

- observe the right of access to official information and never try to withhold information which could or should be made public;
- deal appropriately, with proper regard for confidentiality, with all information and documents acquired in the performance, or in connection with the performance, of their duties and must not make improper use of them;
- do not try to access information which it would be inappropriate for them to have;
- refrain from disseminating information which they know, or have reasonable grounds for supposing, to be false or misleading.

2. Administrative procedures

a. Possible action by central authorities

Central authorities establish the general framework for local administrative procedures according to the following principles:

- as a general rule administrative decisions of local authorities state the reasons for them and specify what preliminary inquiries have been made and the criteria used to make the choice which the subject of the decision; these rules are especially recommended for procedures relating to the recruitment, conclusion of contracts, financial support for private enterprises and associations, land-use planning and building permission;
- in procedures relating to the conclusion of contracts with private individuals, the contract is awarded on a competitive basis; European Union law on public contracts is to be considered the model in such matters;
- there are time limits for responding to any request made by a private individual or enterprise;
- in cases provided by law, and mainly for certain authorisation requests, failure to respond within the time limit constitutes approval.

b. Possible action by local authorities

Local authorities set standards for administrative procedures at the level of each municipality based on the following legal rules and principles:

- local authorities determine, by general provisions, the criteria for the concession of financial support to private parties; the availability of public money for such support is object of thorough information campaigns; the information connected to the concession of financial support to private parties is always be accessible to the public; private enterprises receiving such support are required to relate on the use of the money;
- the competent office for each kind of procedure is laid down in general provisions, which should be made public and posted on the Internet;
- local authorities and their representatives give reasons for their decisions;
- when an administrative procedure begins, the person in charge is specified; his or her name, position and administrative address is supplied to the interested parties at the beginning of the procedure and in any subsequent communication with them;
- the time limit for completion of the procedure and its notification to the interested parties is laid down in general provisions for each kind of procedure and these provisions are made public and posted on the Internet;
- according to the actual circumstances in each municipality, local authorities are allowed to set time limits for responding to requests from individuals and

organisations which are shorter than those set at national level;

– failure to comply with time limits gives rise to administrative and or court remedies and to civil liability of the administrative services;

– the public servant may be held liable if he or she fails to meet a time limit without good cause;

– local authorities make sure that their records are held such as to be easily accessible and usable by the public and investigation bodies;

– public access to records and obtaining documents and copies is not subject to high fees; in any case, local authorities do not attempt to generate more revenue from such fees than the expenditure needed to ensure public access to records and covering the costs of producing such copies.

c. Possible action by local elected representatives and local public servants

Local elected representatives and local public servants:

– observe administrative procedures and play an active part in improving them.

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

This thematic dossier presents the best practice on the local authorities' relations with the private sector identified by the Steering Committee on Local and Regional Democracy (CDLR). In order to be precise and concise, this best practice has been structured according to the authors of the measures which are, in the opinion of the CDLR, examples of good practice and are worded in a concise, short manner. However, they do not constitute a corpus of recommendations to be implemented, in full, by all countries. Central and local authorities should select the practices that are relevant to their specific situation.

This dossier was conceived so as to be possible to be used independently from the other parts of the model initiative package; however, for better consistency, the situation in Europe (presented in the second part of the package) and the other thematic dossiers should also be consulted.

1. Public contracts for the supply of goods or services, concluded by local authorities

a. Possible action by central authorities

Central authorities establish a legislative framework for public procurement contracts, which:

– lays down principles, general arrangements and procedures for the award of contracts;

– determines thresholds above which the public supply procedure must be followed;

– guarantees free competition and openness of public procurement markets by creating conditions which ensure that qualified suppliers of goods and services can

participate, regardless of their location or nationality (at least within the EU);

– lays down criteria which disqualify potential suppliers: these may include conflicts of interest, not being of a specified size, a lack of financial credibility or experience in the field concerned or inscription on the national list of disqualified companies and persons;

– set the conditions for inscription on the national list of disqualified companies and persons; such conditions may include a record of failing to respect the terms of public contracts, of offering or accepting bribes, or of fraud or attempted fraud in procedures for the award of public contracts;

– set the conditions for deletion from the national list of disqualified companies and persons; these conditions may include the expiration of a lapse of time set according to the gravity of the fault, offering sufficient conditions of transparency in the management of business, community work, profound changes in the board and other management or supervision structures;

– establishes remedies against decisions by contracting authorities;

– lays down minimum transparency, information and publication requirements for procedures and conditions governing the award of contracts;

– lays down rules to ensure confidentiality, and to protect trade secrets and the bidders' intellectual property.

Exceptions from the tendering rules are very rare and happen only in fully objective conditions, such as inexistence of a competitive market, excessively expensive procedure or emergency; exceptions are motivated and properly controlled.

EU legislation can serve as a model in this field,⁸ and be adapted to national circumstances – particularly in respect of thresholds above which the public procurement procedure must be followed.

Central authorities:

– prepare and circulate model calls for tender, specifications, contracts and other documents for use by local authorities;

– provide the necessary technical and financial means for publishing consolidated lists of persons and firms penalised for failing to respect the rules on public contracts;

– encourage local authorities to apply new technologies, and particularly the Internet, to public procurement procedures by: making these new technologies available, setting up platforms for transactions and calls for tender, and providing back-bone applications, financial aid for local authorities investing in the new technologies, and training for their staff.

b. Possible action by local authorities

Local authorities:

- follow public procurement procedure whenever a contract's value makes this necessary, respecting not only the law, but also the need for economic efficiency in order to follow it for contracts of a lesser value than that set by law;
- set objectives for the selection procedure: quality, cost, lead-times, continuity, risks, sustainable development, job protection, etc.;
- provide sufficient staff to organise the tenders procedure properly;
- clearly lay down the rights and obligations of other contracting parties;
- lay down precise, objective, quantifiable and reliable selection criteria, ensuring as far as possible that the specified objectives will be met;
- provide full and clear documentation on the purpose of the contract, and on conditions for bidding and being selected;
- inform disqualified bidders of the reasons for their disqualification;
- assess tenders solely with reference to the specified objectives and selection criteria;
- publish all the information needed on public contracts, and reply immediately to all requests for information on calls for tender in progress; whenever possible, include all the documents in a compendium or single text also available on the Internet;
- before inviting tenders for major contracts, find out what specialists and interested parties think, and what the public want, by organising a public debate, involving locals, experts, business people and representatives of the municipal opposition;
- prepare good conduct agreements for signing by all those involved in the tenders procedure: the local authority and its staff, and also firms and their employees and any subcontractors thereof. These agreements spell out the main rules on transparency, on equal treatment of bidders, on accepting, soliciting or offering undue advantages, and on reporting any fraudulent activities detected; apart from incurring legal penalties, persons or firms which fail to respect this agreement will be debarred from participating, as bidder or organiser, in any future tenders procedure;
- ensure that the necessary information on the candidates and their possible sub-contractors is available and fully examined by the selection panel;
- wherever possible, use the Internet to circulate information on public contracts;
- ensure that members of selection boards or panels have the professional knowledge and personal probity needed to select bidders, assess tenders and award contracts;

- establish speedy, fair procedures for dealing with complaints and appeals.

c. Possible action by local elected representatives and local authority staff

Local elected representatives and local authority staff:

- do not bid, directly or by proxy through firms or other persons, in response to calls for tenders issued by their municipal authority;
- do not take part in organising calls for tender and, in particular, do not sit on selection boards or panels, if they or members of their family have a personal interest in award of the contract;
- do not discriminate between bidders, particularly in supplying information on calls for tender;
- do not communicate information on a bidder without his/her written consent;
- do not attempt to influence members of selection boards or panels in favour of or against one or more bidders;
- report any irregularities in the selection procedure to their superiors and/or the statutory supervising body;
- do everything possible to avoid any conflict of interest and, if a conflict of interest arises, indicate this and withdraw from the proceedings;
- refuse any important personal benefits (expensive gifts, excessive hospitality, paid travel, etc.) offered by firms or individuals seeking contracts with the municipality and declare any smaller benefit accepted and offer of benefits.

2. Delegation of public services to the private sector

The rules on contracts which local authorities conclude with suppliers of goods or services should apply *mutatis mutandis* when they delegate public services to the private sector.

a. Possible action by central authorities

Central authorities:

- prepare guidelines, handbooks and model contracts to help local authorities which decide to delegate public services;
- encourage and help local authorities and their associations to set up special training courses for their staff and for local elected representatives;
- provide a technical advice service for local authorities seeking it;
- determine, at national level, management data which local authorities should collect and submit; these should be detailed enough to permit meaningful management analysis, but fairly easily obtainable;
- on the basis of these data, set up a national benchmarking system, which external auditors and local authorities can use to make a comparative assessment of their service

providers' performance; make this system accessible via the new technologies; publicise its benefits, encouraging local authorities to use it;

– involve local authorities and their associations at every stage in introduction of the benchmarking system: define data to be collected, indicators to be calculated and compared, and communication policies.

b. Possible action by local authorities

Local authorities:

– base decisions to delegate public services having regard solely to public interest and on the basis of clear, reliable data, and particularly cost/benefit ratios for users and tax-payers;

– refrain from delegating responsibilities that entail significant exercise of public authority; delegation of services must not jeopardise individuals' basic rights and freedoms, legal guarantees or other good governance principles (including the public's right to be consulted on matters concerning them, the need to give reasons for decisions, and the right of appeal);

– ensure that concession/delegation contracts provide for clear division of risks and responsibilities, clear funding arrangements and strict reporting and assessment procedures;

– define performance indicators, which operators must calculate and report;

– ensure that quantitative and qualitative management objectives are spelled out clearly in the contract;

– when the type of service concerned makes this necessary, protect the public interest and disadvantaged members of the community by including "public service" clauses in the contract;

– compensate operators for these "public service" constraints; compensation should be based not on actual costs, but on output (extent of service, number of users, etc.) and be calculated in advance in a standard manner;

– determine the duration of service delegation contracts with reference to operators' need to develop their policies and recoup investments, but also the need to encourage them to improve their performance and so secure renewal of the contract; a period of five to ten years should usually satisfy both requirements;

– equip themselves to assess performance, either directly (specialised staff) or indirectly (independent management auditors);

– in assessing delegated services, "internalise" the costs and benefits (allow for overflow effects), to gain a full picture of the impact and real cost of each service;

– give private operators responsibility by making them share the various kinds of risk: investment, industrial (costs) and commercial (receipts);

– base decisions on levels of cost coverage from public funds on full and detailed information; these are policy decisions taken in advance, and must never depend on results achieved in operating services;

– guarantee operators – public or private – funds which are sufficiently stable and lasting to enable them to accept commitments and fulfil their tasks in the long term;

– make all transfers of public funds contractual, defining in advance the terms on which they are granted, the purposes for which they are granted, and the methods used to calculate them;

– having decided what part of the costs public funds are to cover, fund that part primarily through specific levies or compensation for "public service" constraints (coverage of outlying areas, reduced fares and charges, etc.);

– determine subsidies to offset possible losses before the financial year begins, on the basis of standard costs, not actual expenditure;

– identify any hidden subsidies (premises provided, tax concessions, etc.), allow for them in management assessment, and award them on the basis of clear, informed decisions;

– do not use subsidies to compensate for poor management, but to:

. share costs between direct and indirect beneficiaries;

. assist the disadvantaged;

. promote environment-friendly services;

. ensure sustainable development and make the town/city more attractive to residents and businesses;

– with the central authorities' assistance, encourage operators to improve their performance by using relevant, reliable indicators (benchmarking) to make comparisons with other operators working in similar conditions, and publishing the results, particularly on the Internet;

– publicise the criteria on which the decision to delegate a service and the choice of operator are based, and also the results of any assessment.

3. Share-holdings

a. Possible action by central authorities

Central authorities establish a legal framework, which:

– allows local authorities, in certain circumstances, to form or invest in commercial companies;

– allows local authorities to invest their savings, but not in speculative, unreliable schemes;

– requires local authorities to record and report their off-balance sheet commitments.

Central authorities:

- produce handbooks, on-line training courses and other training packages to help local authorities to acquire the expertise needed to reduce the risks involved in investing in companies;
- encourage and help local authorities and their associations to set up special training structures.

b. Possible action by local authorities

Local authorities:

- do not form or invest in companies unless there are special reasons for doing so, for example when the activity concerned is genuinely in the public interest, when the market is deficient (lack of private operators, *de facto* monopoly, abuse of a dominant position), in case of legal obligations, in cases of *force majeure*, as a short-term measure to boost the local economy, as a capital return on investment in infrastructure, as a “business incubator” project, etc.;
- invest in secure savings schemes;
- acquire the expertise needed to assess the management of firms in which they have shares;
- prepare financial data schedules, and use these to keep track of companies’ progress and react accordingly;
- ensure that the companies and semi-public undertakings they set up have effective structures, decision-making machinery, and personnel management and accounting systems, on a par with those of private companies;
- keep their economic dealings transparent by disclosing their reasons for investing in business ventures, the results achieved, their off-balance sheet commitments and their risk exposure;
- terminate their participation in firms as soon as their reasons for participating no longer apply, and the economic and market situation permits this;
- introduce rules to prevent their representatives (elected or public servants) from serving simultaneously on the boards and supervisory bodies of too many companies when such participation would either generate conflict of interest or would threaten the effectiveness and transparency of the work of the body or representative in question, and keep seats free for members of the municipal opposition.

c. Possible action by local elected representatives and local authority staff

Local elected representatives and local authority staff should refrain from serving simultaneously, as local authority representatives, on the boards or supervisory bodies of too many companies. If necessary, they inform the local authority of any other mandates they hold in order to permit to the local authority to take an informed decision.

According to law, elected representatives and public servants declare any salary, allowance, in kind or other

advantage that they receive for their participation in the boards or other management bodies in companies created or controlled by the local authority that appointed them.

4. Privatisation of public undertakings

The rules on contracts concluded by local authorities with suppliers of goods or services should apply *mutatis mutandis* to privatisation of public undertakings. If the undertaking is a monopole or produces goods and services with public service features or constraints, the rules concerning the delegation of public services should also be taken into account.

a. Possible action by central authorities

Especially in countries where local authorities have substantial business holdings and privatisation is a priority, central authorities:

- devise sectoral policies to establish and preserve free competition (laws, independent administrative authorities, etc.);
- establish and maintain a sound legal framework for any remaining monopolies (public or private);
- plan privatisation programmes and objectives in consultation with local authorities;
- assist local authorities with their privatisation measures.

b. Possible action by local authorities

Local authorities:

- ensure that the terms of sale, their own commitments in the transaction and the purchaser’s obligations before and after privatisation are clearly set out in the contract;
- ensure that transactions are transparent;
- follow through on their decisions by pursuing appropriate social and economic policies in accordance with the law.

5. Relations with the non-profit sector: subsidising associations and delegating public services to them

a. Possible action by central authorities

Central authorities create a legal framework for the subsidising of associations by local authorities, based on the following principles:

- only non-profit associations that are in the public interest may be subsidised;
- local councils award “public interest” status to associations on the basis of minimum criteria laid down by law;
- local authorities may grant associations general operating subsidies and specific subsidies to fund given projects or activities;
- local authorities must ensure that subsidies are properly used;

– the rules governing delegation of public services to associations are similar to those governing delegation to profit-making private-sector operators.

b. Possible action by local authorities

Local authorities:

– award associations “public status” status by reasoned decision of the local council, on the basis of objective criteria: the association’s purpose, its activities’ usefulness to the community, its past record, and the transparency of its management;

– regularly inspect the accounts of subsidised associations and assess their use of subsidies;

– publish, particularly via the new technologies, information on subsidised associations, their statutes, activities and accounts, sums paid to them and the results of assessment;

– in delegating public services to associations, follow rules similar to those applying when such services are delegated to a private operator.

c. Possible action by local elected representatives and local authority staff

Local elected representatives and local authority staff:

– in general, refrain from taking part in local authority decision making on associations in which they have personal interest or of which they are members with management powers, unless they are members as representatives of the local authority;

– do not canvass for or against associations; the council’s decisions must be based solely on objective reports on associations which are seeking, or have already received, subsidies; these reports should be public and generally available, particularly via the new technologies.

6. Issuing licences/permits and certificates (particularly in town-planning matters)

a. Possible action by central authorities

Central authorities create a legal framework for the issuing of permits and licences, based on the following principles:

– the law determines the permits and licences issued by local authorities, and the circumstances in which they are required;

– permits and licences are granted on the basis of objective criteria;

– local authorities must respond to requests for permits or licences within a reasonable time defined by law (generally 30 to 60 days, unless an urgent procedure applies);

– reasons for refusing a permit or licence must be given;

– local authority decision must be open to appeal, both administrative and judicial;

– in certain areas determined by law, a local authority’s failure to respond to a legitimate application constitutes acceptance, once the legal time-limit for replying has expired.

These rules also apply to certificates and declarations over which the local authority has some discretion, or which may confer the possibility to request or obtain pecuniary benefits on the person to whom they are issued.

b. Possible action by local authorities

Local authorities:

– organise their services in a way which ensures that applications for certificates or permits are rapidly and efficiently processed;

– provide access to information concerning the process of delivering permits, licences and certificates;

– issue certificates and permits on the basis of objective, clear, pre-defined criteria;

– give reasons for refusing certificates or permits;

– give public notice of applications for permits or licences, especially in field related to urban planning, and the decisions taken on them;

– arrange for a council committee, specialised department and/or an external auditor to review the lawfulness and soundness of decisions on applications for certificates or permits on a random basis;

– involve associations and relevant special interest lobbies in the work of bodies set up by the municipality to advise or take decisions on applications for the most important types of certificate or permit.

c. Possible action by local elected representatives and local authority staff

Local elected representatives and local authority staff:

– notify their superiors and/or colleagues whenever they or members of their family have a personal interest in an application for a certificate or permit, and take no part in discussing or deciding on this application;

– make no attempt to exert private influence on those responsible for deciding on applications; except when personal data on applicants have to be protected, the information on which decisions are based should be public.

7. Management of municipal assets

a. Possible action by central authorities

Central authorities:

– pass laws which clearly define the characteristics of public property⁹ and determine the procedure for transfer from public to private ownership;

– help local authorities to train their staff in asset management;

– establish coherent benchmarking systems, ideally available on-line, which can be used to compare performances between municipalities, and so secure greater transparency and efficiency.

b. Possible action by local authorities

Local authorities:

- acquire the expertise needed for effective economic management of their real-estate assets by recruiting or training staff, contracting out, or calling in professional consultants;
- inventorise their real-estate assets and classify them with reference to variables which are of relevance for management purposes (for example, nature, use, technical characteristics, maintenance parameters, insured value, etc.);
- set up data collection systems enabling them to gauge the social impact of their management;
- make regular assessments and inspections or have this done by professionals;
- alongside encumbrance accounting systems, introduce accounting systems which provide reliable information on expenditure and income arising from management of these assets (cost-accounting systems, management control systems, in-house financial information systems);
- participate in the benchmarking systems set up at national level;
- lay down clear, transparent rules on the sale and rental of municipal property; transactions with an economic purpose should be governed by the rules on public contracts; transactions with a mainly social purpose should be governed by rules which ensure that they benefit the least well-off, while respecting sound management principles;
- involve associations and relevant special interest lobbies in the work of committees responsible for giving opinions or taking decisions on the sale or rental of municipal land and buildings;

– never take decisions with implications for urban development (transfer of property from public to private ownership, reclassification of land to permit building on it, establishment of infrastructure and services, etc.) solely for the purpose of optimising asset value or asset income, but always in the public interest.

c. Possible action by local elected representatives and local authority staff

Local elected representatives and local authority staff must do everything possible to avoid conflicts of interest in the management of real-estate assets for which they are responsible; when a conflict of interest arises, they must indicate this, and take no part in the corresponding management decisions.

1. Debated and approved by the Chamber of Local Authorities on 21 May 2003 and adopted by the Standing Committee of the Congress on 22 May 2003 (see Document CPL (10) 7, draft opinion presented by Mr C. Newbury, rapporteur)
2. The French version uses the term of “textes normatifs” and not “textes législatifs ou législation” presumably adopted by parliament.
3. Authorities which set the legal framework and monitor the activity of local authorities: central parliament and government in unitary states, federated states’ parliament and government in most federal states.
4. Self governing local and regional authorities.
5. Throughout this handbook, good practice referring to local elected representatives may be extended, *mutatis mutandis*, to non-elected holders of political mandates.
6. Associations which put forward candidates in central, regional or local elections or aim at supporting such candidates.
7. Natural or legal person who acts on behalf of other person in order to hide the identity of the real donor.
8. Information on the European Union rules and procedures can be found on the European Commission’s public procurement website (http://europa.eu.int/comm/internal_market/en/index.htm); for information on use of new information technologies in public procurement within the European Union, consult the SIMAP website (<http://simap.eu.int/EN/pub/src/welcome.htm>).
9. In legal systems which distinguish between public and private property.