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## Code of conduct for rapporteurs of the Parliamentary Assembly

### Report<sup>1</sup>

Committee on Rules of Procedure, Immunities and Institutional Affairs

Rapporteur: Mr Jean-Claude MIGNON, France, Group of the European People's Party (EPP/CD)

### Summary

Parliamentarians might be exposed during their term of office to conflicts of interest or corruption. The nature of rapporteurs' duties leaves them more heavily exposed to political, economic or financial pressures, which may emanate from public authorities or private interests. The Parliamentary Assembly may therefore justifiably expect its rapporteurs to comply with certain rules of ethical behaviour and professional conduct in the exercise of their duties.

The Committee on Rules of Procedure, Immunities and Institutional Affairs proposes to introduce in the Rules of Procedure a provision stipulating that Assembly rapporteurs shall comply with the rules set forth in a code of conduct in the exercise of their duties.

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1. 2011 - March Standing Committee



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## A. Draft resolution<sup>2</sup>

1. In order to guarantee their good governance, numerous national parliaments or inter-parliamentary organisations have introduced moral or ethical rules by which their parliamentarians are bound. Those rules or codes of conduct are aimed at preventing conflicts of interest, cronyism and, in general, any corruption to which the parliamentarians might be exposed during their term of office, in order to preserve the confidence of citizens in the integrity of the parliamentary institution. The responsibility of parliamentarians, which implies that they are accountable for their actions, and the transparency of those actions, are a fundamental requirement of democracy.
2. To give that requirement tangible form, the Parliamentary Assembly adopted, in 2007, principles regarding transparency and the declaration of interests of Assembly members in 2007.
3. The nature of rapporteurs' duties leaves them particularly exposed to political, economic or financial pressures, which may emanate from public authorities or private interests. The Assembly may therefore justifiably expect its rapporteurs to comply with certain rules of ethical behaviour and professional conduct in the exercise of their duties.
4. Accordingly, the Assembly decides that it should introduce a code of conduct for rapporteurs of the Parliamentary Assembly and, consequently to:
  - 4.1. add to Rule 48.1 of the Rules of Procedure, *in fine*, the following sentence:  
*"In the exercise of their duties, the rapporteurs shall comply with the rules set forth in the code of conduct for rapporteurs of the Parliamentary Assembly."*;
  - 4.2. insert in the complementary texts the code of conduct for rapporteurs of the Parliamentary Assembly appended hereto.
5. The Assembly decides that the new regulatory and para-regulatory provisions set out in the present resolution shall enter into force upon their adoption.

### Code of conduct for rapporteurs of the Parliamentary Assembly

6. Pursuant to Rule 48.1 of the Assembly's Rules of Procedure, the following rules shall be applicable to the rapporteurs of the Parliamentary Assembly in the exercise of their duties:
  - 6.1. Rules of conduct for rapporteurs:
    - 6.1.1. principle of neutrality, impartiality and objectivity, including in particular:
      - 6.1.1.1. undertaking not to have any economic, commercial, financial or other interests, on a professional, personal or family level, connected with the subject of the report, and obligation to declare any relevant interests;
      - 6.1.1.2. undertaking not to seek or accept instructions from any government or governmental or non-governmental organisation, or pressure group or individual;
      - 6.1.1.3. undertaking not to accept any reward, honorary distinction, decoration, favour, substantial gift or remuneration from a government or governmental or non-governmental organisation, a pressure group or an individual in connection with activities carried out in the exercise of their duties;
      - 6.1.1.4. undertaking to refrain from any act which may cast doubt on their neutrality;
    - 6.1.2. obligation of discretion, in particular the undertaking not to make personal use of information acquired in the course of their duties;
    - 6.1.3. undertaking of availability, in particular:
      - 6.1.3.1. undertaking to attend meetings of the committee, Assembly sessions and Standing Committee meetings in connection with their duties;
      - 6.1.3.2. undertaking to report to the committee;
      - 6.1.3.3. undertaking to carry out all necessary fact-finding visits;

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2. Draft resolution adopted unanimously by the committee on 10 January 2011.

- 6.1.4. undertaking to present a timetable of action to the committee in keeping with the mandate, together with a deadline for submitting their draft report (in line with Rule 25.3 of the Assembly's Rules of Procedure);
- 6.1.5. undertaking to respect the values of the Council of Europe;
- 6.2. Rules applicable to the conduct of fact-finding missions:
  - 6.2.1. undertaking that any fact-finding mission should be consistent with and take place within the framework of the rapporteur's mandate;
  - 6.2.2. undertaking to act in a manner respectful of the laws and regulations of the country in which the fact-finding mission takes place;
- 6.3. Penalty for breach of the rules:
- 6.4. *Should a rapporteur fail to honour one or more undertakings, the committee may withdraw his or her mandate and replace him or her;*
- 6.5. Any appointed rapporteur shall be given a copy of the present code of conduct.

## B. Explanatory memorandum by Mr Mignon, rapporteur

### 1. Introduction

1. On 21 September 2009, following an incident which had occurred during a meeting, involving a failure to comply with the code of conduct for co-rapporteurs of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee),<sup>3</sup> the Chairperson of that committee referred the matter to the Bureau of the Assembly. On 2 October, the Bureau referred the matter to the Committee on Rules of Procedure, Immunities and Institutional Affairs so that it might consider the possibility of incorporating parts of this code of conduct into the Rules of Procedure.

2. At its meeting on 5 November 2009, the Committee on Rules of Procedure held an exchange of views and discussed the idea of adopting a broader approach and drafting a code of conduct which would apply to all Assembly rapporteurs. It also proposed updating the existing code of conduct for co-rapporteurs on the honouring of obligations and commitments by member states of the Council of Europe, given that it had been drafted nine years previously, and including additional undertakings. On 14 December 2009, the Bureau took note of the committee's initial conclusions and asked it to draft a report on incorporating parts of this code of conduct into the Assembly's Rules of Procedure. On 28 April 2010 the Committee on Rules of Procedure appointed Mr Mignon as rapporteur.

### 2. Matters for consideration

3. The 2000 study by the Interparliamentary Union on "the parliamentary mandate"<sup>4</sup> defines a "code of conduct" as "all moral or ethical precepts that parliamentarians must respect during their mandate (and sometimes beyond it) in their contacts with the outside world in order to preserve people's confidence in the integrity of their parliament and avoid any act that might compromise the assembly". The purpose of these rules is to "prevent cronyism, conflicts of interest and, in general, any suspicion of corruption". This study points out that codes of conduct adopted by parliaments "were originally intended to prevent the Assembly from being besmirched by the conduct of one of its members", and "now increasingly form part of the campaign against loss of confidence in parliament and in all political institutions".

4. The scope of this report is more limited, being confined to the rules applicable to rapporteurs in the exercise of their duties, and not to parliamentarians in general. It obviously goes without saying that the ethical principles by which all members of the Parliamentary Assembly are bound also apply to rapporteurs.

#### **2.1. Brief presentation of the code of conduct for co-rapporteurs of the Monitoring Committee**

5. The "Code of conduct for co-rapporteurs on the honouring of obligations and commitments by member states of the Council of Europe" (see Appendix) is an internal Monitoring Committee document, approved by the committee in 2001, which is not formally part of the Assembly's Rules of Procedure (or the complementary texts).

6. It comprises two sections, one on the "Criteria for the appointment of co-rapporteurs" and the other on the "Ethics of co-rapporteurs during the monitoring procedure".

7. Some of the criteria for the appointment of the Monitoring Committee's co-rapporteurs set out in the code of conduct were codified recently<sup>5</sup> and now have para-regulatory force.<sup>6</sup>

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3. This incident concerned the challenging of a rapporteur, considered to have violated the code of conduct for having received an "honorary distinction from the Prince of Monaco", at the rank of Knight of the Order of Grimaldi and for "having organised the Prince's expedition to the North Pole in 2006".

4. Marc van der Hulst, *The parliamentary mandate: a global comparative study*, Geneva: Inter-Parliamentary Union, 2000), pp. 119-29:

[www.ipu.org/PDF/publications/mandate\\_e.pdf](http://www.ipu.org/PDF/publications/mandate_e.pdf).

5. See [Resolution 1710 \(2010\)](#) on the term of office of co-rapporteurs of the Monitoring Committee, adopted on 12 March 2010, and the report presented by the Monitoring Committee ([Doc. 12143](#)).

6. [Resolution 1710 \(2010\)](#) amends [Resolution 1115 \(1997\)](#) by inserting the following provisions:

"11.1. The Monitoring Committee shall appoint two of its members co-rapporteurs in respect of each member state for which a monitoring procedure is initiated. Without prejudice to Rule 48.1 of the Rules of Procedure, the co-rapporteurs shall be appointed on the basis of the following criteria:

– no co-rapporteur shall deal with more than one state at the same time;

– no co-rapporteur shall belong to a neighbouring state or to a state with a special relationship with the state being monitored;

## 2.2. The Parliamentary Assembly's regulatory and para-regulatory provisions

8. It should be borne in mind that Rule 48.1 of the Rules of Procedure already lays down general criteria for the appointment of Assembly rapporteurs:

*“... For the appointment of rapporteurs, the committees shall take into consideration the following criteria by order of priority: competence and availability, fair representation of political groups (based on the D'Hondt system), gender-balanced representation, geographical and national balance.”*

9. The Assembly's Rules of Procedures (and the complementary texts) contain few provisions relating to professional ethics. The main provision is Rule 12 on transparency and declaration of interest of Assembly members. This provision, moreover, is the only one comprising an obligation binding on rapporteurs.

10. **Resolution 1554 (2007)** on conflict of interest, adopted at the initiative of the Committee on Rules of Procedure, provides that “All candidates for rapporteurship shall make an oral declaration of any professional, personal, financial or economic interests which might be considered relevant or conflicting with the subject of the report or with the country concerned by the report at the time of appointment in committee” and that “Committees shall have the right to remove a rapporteur who failed to declare such interests or who made an untruthful declaration.”

11. However, this provision, in force since October 2007, has been applied only to candidates for the duties of rapporteur appointed after that date, and not to rapporteurs already in office at the time the resolution was adopted (a situation which concerns primarily the Monitoring Committee).

## 2.3. References

12. The approach adopted by the Monitoring Committee in its code of conduct might be supplemented by drawing on the existing codes of conduct of a number of national parliaments or interparliamentary organisations, insofar as some of these rules – apart from those mentioned above relating to the declaration of interests – are relevant to the conduct of members of the Assembly in their role as rapporteur.

13. With regard more specifically to the function of rapporteur, it is interesting to note that the United Nations Human Rights Council approved a “Code of Conduct for Special Procedures Mandate-holders” (the “United Nations Special Rapporteurs”).<sup>7</sup> This code defines “the standards of ethical behaviour and professional conduct that special procedures mandate-holders of the Human Rights Council ... shall observe whilst discharging their mandates”, and comprises a definition of the status of mandate-holders, the general principles of conduct in the exercise of their duties, the obligation to make a solemn declaration in writing and the principles to be upheld during their field visits.

14. In order to gather additional information which could help the committee in its task, the rapporteur sent a short questionnaire to national parliaments via the European Centre for Parliamentary Research and Documentation (ECPRD).<sup>8</sup> The rapporteur received replies from 32 parliaments,<sup>9</sup> and he wishes to thank them for their co-operation.

15. An analysis of the replies shows that none of the national parliaments which answered the questionnaire has a code of conduct applying specifically to committee rapporteurs. However, this assertion needs to be qualified in three respects:

- in several national parliaments, the function of committee rapporteur simply does not exist;<sup>10</sup>

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– the two co-rapporteurs shall come from different countries and belong to different political groups.”

7. Resolution 5/2 of the Human Rights Council of 18 June 2007:

[http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_5\\_2.doc](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_2.doc).

8. Two questions were asked: 1. Does your parliament – or any of its committees – have a code of conduct for committee rapporteurs? 2. What kind of standards, obligations, principles and moral and ethical precepts shall apply to rapporteurs in the exercise of their duties?

9. The following parliaments answered the questionnaire: Andorra, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Israel, Italy, Latvia, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, “The former Yugoslav Republic of Macedonia”, Turkey, United Kingdom and also the European Parliament.

10. For example, Canada, Cyprus, Denmark, Finland, Israel, Poland, Turkey and the United Kingdom.

- the function of rapporteur in the Parliamentary Assembly, as defined in Rule 48 of the Rules of Procedure, is in essence very different from that of committee rapporteur in a national parliament, who is responsible – in some cases – for gathering the information needed for the preparation of a report and – above all – for presenting the committee's position and conclusions on a piece of draft legislation in the plenary assembly;
- in those national parliaments where a committee appoints a rapporteur to consider a question which has been referred to it and to draft a report, in the absence of a specific code or rules, rapporteurs are bound by the general ethical rules applicable to all members of the parliament (in particular, obligation to avoid conflicts of interest or to declare interests; obligation to act in accordance with the law and the rules of procedure; obligation to behave in a dignified, responsible, honest and courteous manner; ban on using inappropriate and undignified language, uttering insults or threats, making personal attacks, committing assault, etc.).

16. In those national parliaments which answered the questionnaire and where the function of rapporteur exists, the relevant rules deal only with the manner of appointing rapporteurs and their role in the reporting procedure.

17. The Rules of Procedure of the European Parliament make no mention of any criterion applying both to the appointment of rapporteurs and to the exercise of their duties (committees required to draft a legislative report or a non-legislative report appoint a rapporteur – Rules 45 and 47). Annex 1 to the Rules of Procedure of the European Parliament on transparency and members' financial interests contains a clause referring to rapporteurs similar to that applying in the Parliamentary Assembly ("Before speaking in Parliament or in one of its bodies or if proposed as rapporteur, any Member who has a direct financial interest in the subject under debate shall disclose this interest to the meeting orally").

18. As regards the rules for appointing rapporteurs, it is interesting to note that the rules of procedure of some parliaments (for example, the Belgian Chamber of Representatives) provide for rapporteurships to be divided fairly, or proportionally, between the majority and the opposition.

19. As regards rules of conduct for rapporteurs, some replies mention – although this is a matter of practice rather than a formal stipulation in the rules of procedure – a requirement of objectivity or neutrality, meaning that rapporteurs must confine themselves to presenting the conclusions of the committee on behalf of which they are reporting and must leave aside their personal views.

### 3. Proposals

20. Following its debates at previous meetings, the Committee on Rules of Procedure decided that "the code of conduct for co-rapporteurs on the honouring of obligations and commitments by member states of the Council of Europe" should be broadened to include all Assembly rapporteurs and updated and supplemented with additional undertakings, thus constituting a "code of conduct for Parliamentary Assembly rapporteurs".

21. However, the committee also considered that the model used, the code of conduct for the co-rapporteurs of the Monitoring Committee, included rules that were quite specific to that committee's mode of operation and would be inapplicable to other Assembly committees. Accordingly, it took the view that there was no need to incorporate any criteria for the appointment of rapporteurs in the code of conduct envisaged. The existing rules already contain adequate provisions on this point, in Rule 48.1 (criteria of competence, availability, fair representation of political groups, gender-balanced representation, geographical and national balance).

22. The committee therefore decided to adopt the following criteria and categories of criteria:

#### a. Rules of conduct for rapporteurs:

*principle of neutrality, impartiality and objectivity, including in particular:*

- undertaking not to have any economic, commercial, financial or other interests, on a professional, personal or family level, connected with the subject of the report, and obligation to declare any relevant interests;
- undertaking not to seek or accept instructions from any government or governmental or non-governmental organisation, pressure group or individual;

- undertaking not to accept any reward, honorary distinction, decoration, favour, substantial gift or remuneration from a government or governmental or non-governmental organisation, a pressure group or an individual in connection with activities carried out in the exercise of their duties;<sup>11</sup>
- undertaking to refrain from any act which may cast doubt on their neutrality;

*obligation of discretion, in particular an undertaking not to make personal use of information acquired in the course of their duties;*

*undertaking of availability, in particular:*

- undertaking to attend meetings of the committee, Assembly sessions and Standing Committee meetings in connection with their duties;
- undertaking to report to the committee;
- undertaking to carry out all necessary fact-finding visits;

*undertaking to present a timetable of action to the committee in keeping with the terms of reference, together with a deadline for submitting their draft report (in line with Rule 25.3 of the Assembly's Rules of Procedure);*

*undertaking to respect the values of the Council of Europe;*

b. Rules applicable to the conduct of fact-finding missions:

*undertaking that any fact-finding mission should be consistent with and take place within the framework of the rapporteur's mandate;*

*undertaking to act in a manner respectful of the laws and regulations of the country in which the fact-finding mission takes place.*

c. Penalty for breach of the rules:

Should a rapporteur fail to honour one or more undertakings, the committee may withdraw his or her mandate and replace him or her.

23. Any appointed rapporteur shall be given a copy of the code of conduct.

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11. For information, Rule No. 1296 of 18 December 2008 on the acceptance of fees, gifts, decorations or honours, invitations and other advantages from third parties, which applies to Council of Europe staff members, states in its Article 2 that "Secretariat members may accept from a third party, in relation to the performance of their duties, a gift whose value is reasonably estimated not to exceed 100 Euros if: it does not consist of money or another financial asset, and refusing it would be considered impolite given, inter alia, the cultural context, and they have grounds to believe that it is consistent with normal practice".

## Appendix – Code of conduct for co-rapporteurs on the honouring of obligations and commitments by member states of the Council of Europe<sup>12</sup>

The code of conduct hereafter has been elaborated by the Chairperson of the Monitoring Committee on the basis of the related provisions laid down in [Resolutions 1115 \(1997\)](#) and [1155 \(1998\)](#), as well as of experience acquired over four years of practice. The code of conduct was approved by the committee at its meeting on 6 September 2001.

### A. Criteria for the appointment of co-rapporteurs

#### Resolutions 1115 and 1155

- the Monitoring Committee shall appoint two co-rapporteurs among its members in respect of each member state for which a monitoring procedure is initiated (paragraphs 9 and 11 [Resolution 1115](#));
- the appointment of co-rapporteurs shall aim at ensuring a political and regional balance (paragraph 9 [Resolution 1115](#) and paragraph 2 [Resolution 1155](#));

#### Further criteria (decision by the committee on 25 April 1997)

- no co-rapporteur should deal with more than one state at the time;
- no co-rapporteur should belong to a neighbouring state or to one with a special relationship with the state being monitored;
- the two co-rapporteurs should come from different countries and belong to different political groups.

#### Criteria stemming from monitoring practice

- account should be taken as much as possible of a linguistic criterion: the co-rapporteurs should preferably be able to share the same language in order to facilitate communication with each other;
- co-rapporteurs shall commit themselves to be available: to monitor a member state requires that the co-rapporteurs be largely available to get familiar with the file, to make fact-finding visits, to observe elections, to draft and discuss reports, and to attend committee meetings and Assembly sessions;
- at the start of a procedure, it is no doubt an advantage that the co-rapporteurs are already familiar with the situation of the state concerned and the developments there since the state's admission to the Council of Europe, for example by earlier visits, observation of elections, etc.

#### Ethics of co-rapporteurs during the monitoring procedure

### B. Neutrality

- co-rapporteurs must be totally independent and objective in respect of the state of which they monitor the honouring of obligations and commitments; this implies in particular that:
  - . they should not have any interests – political, commercial, financial or other – in that state at personal, professional or family level;
  - . they should not accept any instruction from the authorities of that state;
  - . they should not accept any reward or honorary distinction from the authorities of that state;
  - . they should abstain from any act, political or other, which might cast doubt, or be used to cast doubt, on their strict neutrality, in particular signing motions or written declarations concerning the state which they monitor.

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12. See progress report of the Monitoring Committee, "Progress of the Assembly's Monitoring Procedure (2000-2001)" ([Doc. 9198](#)), Appendix H.

### **Discretion**

- co-rapporteurs should be aware that their task of monitoring obligations and commitments necessarily implies an obligation of discretion; consequently they should not in any way make public any of their conclusions, at least not before the authorities of the state concerned have had a fair opportunity to comment on them.

### **Availability**

- when co-rapporteurs are engaged in monitoring a particular country, they shall remain members of the committee until the Assembly takes a decision on the relevant report, provided they are still members of the Assembly (paragraph 11 [Resolution 1115](#));
- however, the committee may invite a co-rapporteur to step down should a serious reason jeopardise the monitoring process;
- co-rapporteurs should be ready to make the number of fact-finding visits which the Committee defines as adequate for each state being monitored; depending on the developments in the state concerned, any state should be visited at least once every six months;
- co-rapporteurs should undertake all activities together; to the extent possible, fact-finding visits should be made by both co-rapporteurs.

### **Obligation to report to the committee and the Assembly**

- co-rapporteurs should report to the committee on each fact-finding visit, either by presenting a minute or a preliminary draft report, or by updating an existing draft report;
- co-rapporteurs commit themselves to respect the deadlines mentioned in [Resolution 1115](#) (paragraph 13) according to which the committee must report at least once every two years on each country being monitored;
- co-rapporteurs should endeavour to present to the committee a common point of view.

### **Monitoring deadlines**

- co-rapporteurs should establish, in agreement with the authorities of the state being monitored, deadlines for compliance with the respective obligations and commitments and include these in the texts submitted to the committee.