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Code of conduct of members of the Parliamentary Assembly: good practice or a core duty?

Report[1]
Committee on Rules of Procedure, Immunities and Institutional Affairs
Rapporteur: Mr Oliver HEALD, United Kingdom, European Democrat Group

Summary

In order to provide members of the Parliamentary Assembly with a transparent and consistent reference framework, in particular with regard to situations of conflict of interest, offers of gifts or hospitality, or the use of office – or former members' prerogatives – to promote and safeguard personal interests, the Committee on Rules of Procedure, Immunities and Institutional Affairs proposes that the Assembly adopt a code of conduct which all members will undertake to respect in the performance of their duties.

These new ethical rules, which supplement the existing regulations, aim to promote the principles of transparency, accountability, integrity and primacy of the public interest, which are essential in maintaining public confidence in the parliamentary institution and elected representatives.

1. Reference to committee: Doc. 12669, Reference 3794 of 3 October 2011.

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A. Draft resolution[2]

1. On several occasions in recent years, the Parliamentary Assembly has expressed concern about criticism of representative democracy and of the institution of parliament, about citizens' disaffection with politics and democratic procedures, and about the public's loss of confidence in the effectiveness of elected assemblies and the integrity of members of parliament. In Resolution 1547 (2007) on the state of human rights and democracy in Europe and Resolution 1746 (2010) "Democracy in Europe: crises and perspectives", the Assembly sought to elucidate this "crisis of democracy", which has been intensified by the financial and economic crisis.

2. Scandals involving misconduct by parliamentarians at both national and European level have increased the need for politicians to behave in an exemplary manner and have led national parliaments and European parliamentary institutions to draw up rules of conduct. In this context, the Assembly has sought to improve its institutional framework so as to promote the principles of transparency, accountability and integrity by which it sets great store.

3. The Assembly has therefore drawn up rules which are aimed at preventing conflicts of interest, cronyism and, in general, any form of corruption to which members might be exposed during their term of office, while taking account of the objectives and specific nature of the duties assigned to them. As a result, principles regarding transparency and the declaration of interests of Assembly members were adopted in 2007, a code of conduct for rapporteurs of the Parliamentary Assembly was adopted in 2011, and specific provisions in the guidelines on the observation of elections by the Parliamentary Assembly were drawn up. The Assembly now considers it necessary to establish principles and rules governing the conduct of all its members and to adopt a transparent and effective reference framework. This code of conduct is not intended to replace the aforementioned rules of conduct, which supplement it.

4. The need to consolidate the rules of conduct applicable to members also derives from the Parliamentary Assembly's duty to set an example as a statutory body of an international organisation which is at the forefront of the fight against corruption, including in the field of politics. The Assembly particularly welcomes the work carried out by the Council of Europe's Group of States against Corruption (GRECO), whose activities it intends to follow closely in the context of its third evaluation round concerning the transparency of political party funding and its fourth evaluation round, launched in January 2012, notably concerning the prevention of corruption in respect of members of parliament.

5. By adopting a code of conduct, the Assembly intends to guarantee the primacy of public interest in its work and, through the establishment of a system of consistent rules applicable to all its members, to respond to general concerns arising with regard to political favouritism, offers of gifts or hospitality to members, situations of conflict of interest, or the use of members' mandates to promote or safeguard personal interests.

6. The code of conduct contains provisions essential for the proper functioning of an assembly of elected representatives in a democratic society and with which members are asked to comply in the performance of their Parliamentary Assembly mandates. The general principles, which form an integral part of the code of conduct, are intended to guide members of the Assembly as to the attitude they should adopt when difficult and confusing situations arise.

7. Members' conduct is first and foremost a matter of personal belief and conviction; however, their behaviour has to meet the expectations of those who placed their confidence in an elected representative. The Assembly considers that the declared commitment to abide by the code of conduct depends from the outset on members' willingness to comply with it, in good faith.

8. The Assembly wishes to introduce greater transparency in its activities and decision-making process. It is, however, concerned at the pressure that some interest representatives, acting on behalf of private entities or States, have exercised on members, even within the Palais de l'Europe. The Assembly firmly supports a pluralist culture, but also considers that clear and transparent procedures should be introduced to regulate interest representatives' access to the Assembly. In this context, it recalls its Recommendation 1908 (2010) on lobbying in a democratic society.

2. Draft resolution adopted unanimously by the committee on 27 June 2012.

9. In view of the above considerations, the Assembly:

9.1. decides to introduce the code of conduct for members of the Parliamentary Assembly appended hereto, and consequently:

9.1.1. amends Rule 12 of its Rules of Procedure as follows:

"Rule 12 – Code of conduct for members of the Assembly

12.1. In the exercise of their duties, the members of the Assembly shall undertake to comply with the principles and rules set out in the code of conduct for members of the Assembly, appended to these Rules of Procedure as a complementary text.

12.2. The provisions governing transparency and declarations of interest by members of the Assembly are appended to these Rules of Procedure as a complementary text.";

9.1.2. decides that these new rules and complementary texts shall come into force as soon they have been adopted;

9.2. with regard to the rules on access to and movement within Council of Europe premises by interest representatives during Parliamentary Assembly sessions, and with a view to clearly identifying members of interest groups, instructs the Bureau of the Assembly to revise the rules governing access to the Palais de l'Europe and the use of the premises, and the appendices to the rules in question;

9.3. with regard to the prerogatives of former members of the Assembly, instructs the Bureau of the Assembly to amend the special rules on honorary association with the Parliamentary Assembly, and the special rules on the title and prerogatives of Honorary President of the Parliamentary Assembly of the Council of Europe, pursuant to paragraph [27] of the appended code of conduct.

10. The Assembly also invites the national parliaments of Council of Europe member States to:

10.1. co-operate with GRECO in the context of the third and fourth evaluation rounds and to continue to promote anti-corruption strategies;

10.2. draw on the provisions of the appended code of conduct in respect of all current ethical rules and rules of conduct concerning their members or in respect of any rules they may need to develop.

11. Lastly, the Assembly instructs its Bureau to review the guidelines for the observation of elections by the Parliamentary Assembly in the light of the provisions of the appended code of conduct, with a view to amending the provisions concerning conflict of interest and clarifying the declaratory requirements incumbent on members of ad hoc committees.

Appendix – Code of conduct for members of the Parliamentary Assembly of the Council of Europe

Purpose of the code of conduct

12. The purpose of the code is to provide a framework of reference for members of the Parliamentary Assembly of the Council of Europe in the discharge of their duties. It outlines general principles of behaviour which the Assembly expects of its members. By adhering to these standards members can maintain and strengthen the openness and accountability necessary for trust and confidence in the Parliamentary Assembly.

Scope of the code of conduct

13. The code applies to members in all aspects of their public life relevant to their duties as members of the Parliamentary Assembly.

14. The code complements the obligations on members of the Parliamentary Assembly, to abide by the Rules of conduct, as well as resolutions of the Assembly and decisions of the President relating to members' conduct and discipline.

15. The application of this code shall be a matter for the Assembly. Guidance on all matters covered by this code of conduct and situations which may arise from its application may be sought from the Secretary General of the Parliamentary Assembly.

General principles of behaviour

16. While performing their mandate as members of the Parliamentary Assembly, members shall:

16.1. carry out their duties responsibly with integrity and honesty;

16.2. take decisions solely in the public interest, without being bound by any instructions that would jeopardise members' ability to respect the present code;

16.3. not act in such a way as to bring the Assembly into disrepute or tarnish the Assembly's image;

16.4. use the resources available to them responsibly;

16.5. not use their public office for their, or anyone else's, private gain;

16.6. declare any relevant interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest;

16.7. promote and support these principles by leadership and example;

16.8. undertake to comply with the Rules of conduct hereafter.

17. These principles will be taken into consideration when any complaint is received of breaches of this code of conduct.

Rules of conduct

18. Members shall respect the values of the Council of Europe and the general principles of behaviour of the Assembly and not take any action which would cause damage to the reputation and integrity of the Assembly or its members.

19. Members shall avoid conflicts between any actual or potential economic, commercial, financial or other interests on a professional, personal or family level on the one hand, and the public interest in the work of the Assembly on the other, by resolving any conflict in favour of public interest; if the member is unable to avoid such a conflict of interest, it shall be disclosed.

20. Members shall draw attention to any relevant interest by an oral declaration in any proceedings of the Assembly or its committees, or in any relevant communications.

21. No member shall act as a paid advocate in any work of the Assembly.

22. Members shall not request or accept any fee, compensation or reward intended to affect his or her conduct as a member, which includes, *inter alia*, supporting or opposing any motion, report, amendment, written declaration, recommendation, resolution or opinion. Members shall avoid any situation that could appear to be a conflict of interest or receiving an inappropriate payment or gift.

23. Members shall not use their position as a member of the Parliamentary Assembly to further their own or another person's or entity's interests in a manner incompatible with the code of conduct.

24. Members shall use information with discretion, and in particular shall not make personal use of information acquired confidentially in the course of their duties.

25. Members shall register with the Secretariat of the Assembly any gifts or similar benefits (such as travel, accommodation, subsistence, meals or entertainment expenses) of a value in excess of 200 euros that they accept in the performance of their duties as Assembly members.

26. Members shall ensure that their use of expenses, allowances, facilities and services provided by the Council of Europe is strictly in accordance with the relevant regulations laid down on these matters.

27. Former members of the Parliamentary Assembly involved in representing and fostering another person's or entity's interests in the Parliamentary Assembly, shall not, throughout the period of such activity, benefit from the prerogatives of the honorary associates or the Honorary President of the Parliamentary Assembly as far as the distribution of documents and the access to the buildings and meetings room are concerned.

Observance of the code of conduct

28. If a member is believed to have acted in breach of the code of conduct, the President of the Assembly may seek clarification and further information from the member concerned, the chairperson of the member's national delegation, the chairperson of the member's political group or the chairperson of the member's committee.

29. If necessary, the President of the Assembly may seize the Committee on Rules of Procedure, Immunities and Institutional Affairs to examine the circumstances of the alleged breach and make a recommendation as to a possible decision to be taken by the President.

30. Should the President of the Assembly decide that the member failed to comply with the code of conduct, the President of the Assembly may prepare a reasoned statement to be read out in the Assembly if need be.

31. Members shall co-operate, at all stages, with any investigation into their conduct by or under the authority of the Assembly.

B. Explanatory memorandum by Mr Heald, rapporteur

1. Introduction

1. The members of the Parliamentary Assembly of the Council of Europe perform a range of duties, including: adopting political resolutions on issues of key interest for European States; participating in missions to observe elections; supporting the activities of different intergovernmental or other bodies; electing the judges of the European Court of Human Rights, the Council of Europe Commissioner for Human Rights, the Secretary General of the Council of Europe, the Secretary General of the Parliamentary Assembly and other important officers.

2. Citizens, on behalf of whom parliamentarians act, should be able to have confidence that Assembly members carry out their duties in good faith and do not use their position for their own private benefit. Moreover, the Assembly should also have the means of holding a given member to account if he or she undermines the institution's reputation.

3. Until recently, the Assembly's Rules of Procedure did not embody any specific requirement for members' conduct. The respect of such principles as integrity and honesty seemed to be taken for granted since Assembly members were national parliamentarians and had to comply with ethical rules or anti-corruption provisions set up at national level. As a first step, conduct requirements were only applicable to co-rapporteurs of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) who had their own code of conduct, approved by the committee in 2001.

4. When dealing with questions of democracy and the fight against corruption in the 2000s, the Assembly underlined on several occasions the need for parliamentarians to declare financial interests. As a consequence, Resolution 1554 (2007) on conflict of interest was adopted in 2007, which introduced into the Assembly's Rules of Procedure an obligation for all Assembly rapporteurs to orally declare any professional, personal, economic or financial interests which might be considered relevant or conflicting with the subject of the report. Moreover, all members were encouraged to make a similar oral declaration of interest before speaking in committees or in the Assembly.

5. In 2006, the experience of the Monitoring Committee led to calls for the code of conduct for its co-rapporteurs to be supplemented. The initial request for an update resulted in the drafting of a code of conduct applicable to all rapporteurs of the Parliamentary Assembly, which was adopted in 2011.[3]

6. The present report on a code of conduct for the Assembly's members results from two motions tabled in 2011 which were referred to the Committee on Rules of Procedure, Immunities and Institutional Affairs for report and have subsequently been merged by a decision of that committee.

7. In June 2011, Mr Mignon and others tabled a motion for a resolution (Doc. 12669) pointing to a need to have a code of conduct for all members of the Assembly. The committee was asked, *inter alia*, to address the issue of gifts as well as to provide for a suitable safeguard against acceptance of hospitality in return for political favours. A second motion for a resolution on strengthening the mechanism for conflicts of interest (Doc. 12754) was tabled in October 2011 by Mr Harutyunyan and others and aimed to regulate the activities of interest groups (non-governmental organisations (NGOs), lobbyists representing private entities or States) which have become more involved in the Assembly's work in recent years. In particular, it was looking to regulate these activities in terms of transparency and Assembly members' accountability. These proposals are to be combined with requests by some Assembly members[4] calling for the rules on access to the Palais de l'Europe, the main building of the Council of Europe, to be strengthened.

8. In the context of the preparation of the present report, the Rules Committee held two hearings, on 1 December 2011 in Vilnius[5] and on 24 January 2012 in Strasbourg.[6] The rapporteur would like to warmly thank all the participants whose input contributed to the drafting of this report.

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3. Resolution 1799 (2011) on a code of conduct for rapporteurs of the Parliamentary Assembly, and Doc. 12524, report by the Committee on Rules of Procedure, Immunities and Institutional Affairs (rapporteur: Mr Jean-Claude Mignon, France, EPP/CD).

4. See, for example, the letter of 16 December 2011 from Baroness Nicholson of Winterbourne to the Secretary General of the Parliamentary Assembly concerning members of the Mudjahaden-e-Kalq (MEK) who had been lobbying in front of the Assembly Chamber.

9. The concerns which have been expressed in the above-mentioned motions coincide with the general call for more transparency of elected bodies. In 2007, the Assembly already expressed concern about the dysfunctioning of political institutions observed in Council of Europe member States and identified the public's diminishing trust in the integrity of parliamentarians as one of the causes of the crisis of democracy in Europe.[7] This public frustration has been amplified by corruption scandals that erupted in several countries and the financial and economic crisis that began in 2008. In this sensitive context, parliaments, including the Assembly, strived to reaffirm their commitment to transparency and integrity standards.

10. Moreover, the general anti-corruption standards set out in the United Nations Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption (ETS No. 173) should be implemented at Assembly level as well. The Council of Europe's Group of States Against Corruption (GRECO) launched, in January 2012, its Fourth Evaluation Round examining prevention of corruption by members of parliament, judges and prosecutors. The time therefore seems right for the Assembly to introduce its own code of conduct.

11. Currently, the Assembly recognises the risk that a member's financial, economic, commercial or other interests may conflict with his or her duties as a member of the Assembly, particularly in the case of rapporteurs or members of electoral observation missions. The aim of the present report is to provide a better understanding of the provisions set forth in the proposed draft code of conduct for all Assembly members (see Appendix to the draft resolution) and to show that, regardless of legal and national diversities, a certain consensus has been reached over core principles essential for the functioning of an elected body in a democratic society, notably on the declaration of gifts and hospitalities, the declaration of conflict of interest and the ban on paid advocacy.[8]

12. The rapporteur wishes to emphasise that the effectiveness of the code of conduct will depend on members' will to comply with those standards,[9] as well as on tools and administrative elements making it possible to ensure its implementation. Once the code is adopted, its implementation will be the next challenge the Assembly will have to face in order to be credible on this subject.

2. Scope of the code of conduct

13. The draft code of conduct completes the existing internal regulations by setting the general standards all Assembly members are expected to follow while carrying out their duties. It does not replace the code of conduct for Assembly rapporteurs, which was drafted bearing in mind the specific nature of rapporteurs' duties, nor the requirements which may be applicable, for instance, to the observation of elections[10] or to members of the sub-committee responsible for conducting interviews with candidates for the election of judges to the European Court of Human Rights.

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5. Hearing on "A code of conduct of members of the Parliamentary Assembly" with the participation of: Mr John Lyon, Parliamentary Commissioner for Standards, United Kingdom; Mr Vaidotas Bacevičius, member of the Commission for Ethics and Procedures of the Seimas; Mr Sergej Muravjov, Executive Director of Transparency International Lithuania.

6. Hearing on "Lobbying activities in the Parliamentary Assembly" with the participation of: Mr Dick Marty, former Chairperson of the Monitoring Committee of the Parliamentary Assembly (2010-2011), former rapporteur of the Assembly; Mr Göran Lindblad, former Chairperson of the Political Affairs Committee of the Parliamentary Assembly (2008-2009), former rapporteur of the Assembly; Mr José Lalloum, Chair, European Public Affairs Consultancies' Association (EPACA); Mr Christian D. de Fouloy, Chair, Association of Accredited Lobbyists to the European Union (AALEP); Mr Gregor Puppink, Director, European Centre for Law and Justice.

7. See the reports presented by the Political Affairs Committee in 2007 on the state of democracy in Europe (Doc. 11203) and in 2010 on "Democracy in Europe: crisis and perspectives" (Doc. 12279), rapporteur: Mr Andreas Gross (Switzerland, SOC).

8. For a complete overview of the situation in the European Union and the European Union member States' parliaments, see the report on "Parliamentary Ethics – a question of trust", Office for Promotion of Parliamentary Democracy, European Parliament, 2011 – www.europarl.europa.eu/pdf/oppd/Page_8/codes_of_conduct_FINAL-ENforweb.pdf.

9. "No set of rules can bind effectively those who are not willing to observe their spirit, nor can any rule of law foresee all possible eventualities which may arise or be devised by human ingenuity. This Code of Conduct has been formulated in as simple and direct a manner as possible. Its success depends both first and last on the integrity and good sense of those to whom it applies", quotation from the code of conduct of the South African National Assembly.

10. Special requirements concerning members observing elections are specified in the guidelines for the observation of elections by the Parliamentary Assembly (AS/Bur (2012) 09 rev), which notably require candidates to disclose conflicts of interest: "18. All candidates for membership of an ad hoc committee, at the time of putting forward their candidacy, shall make a written declaration of any actual or potential economic, commercial, financial or other interests on a professional, personal or family level in connection with the country concerned by the election observation. They shall also declare any substantial gift or benefit in kind, including payment of travel costs, received from the country concerned."

14. The draft code applies to members in their capacity as members of the Parliamentary Assembly and covers situations which occur in members' public life. The code's legitimacy and moral standing derives from the fact that it will be adopted by the Assembly itself; similarly, its credibility will depend on its subsequent application by the members and by the Assembly.

3. General principles of behaviour

15. The success of any ethical regime requires that core principles be shared by all members regardless of their ideological or political positions. Often called ethical standards, the general principles provide a benchmark for expected behaviour. Rather than imposing obligations, general principles are aspirational in nature and make it possible to avoid loopholes whenever members face a new situation or are called to act in new circumstances. Not being subject to adjudication, these principles are used in evaluating complaints.

16. The general principles, listed in paragraph [16] of the draft code of conduct, have been inspired by the seven principles of public life enunciated by the United Kingdom Committee on Standards in Public Life (the Nolan Committee) in 1995. Similar principles, which could be given slightly different interpretations, have been integrated into most parliamentary codes of ethics or codes of conduct and are nowadays inherent in the functioning of any public institution in a democratic society.[11]

17. While acting individually, members represent the Assembly. Therefore, they are required not to bring the institution into disrepute through the activities they carry out publicly. Furthermore, the holders of the office are expected not to use resources available for their or anyone else's private gain and, when carrying out an activity, to ensure that the public interest prevails over any other. Given that parliamentarians often face multiple conflicts of interest, the draft code of conduct tries to draw a clear line between legitimate conflicts relating to constituent services, on the one hand, and private conflicts of interest and their appearance, on the other. It requires such conflicts to be resolved in a way that protects the public interest. Leadership and setting an example require members to be consistent in the values they are promoting and invite members to develop their political culture and to maintain an ethical cohesion within the Assembly.[12]

4. Rules of conduct

4.1. Reputation of the Assembly

18. Paragraph [18] of the draft code of conduct aims to protect the reputation of the institution itself. Members can bring discredit to the institution through a variety of actions that can be unethical, illegal or viewed as inappropriate by the Assembly. These activities will often involve actions that conflict with the member's obligation to serve the public interest. Examples would include blatant and continued disrespect based on gender, race or religion, or inappropriate use of the Assembly's facilities for private business. In some cases, illicit actions will not fall directly under the member's role in the Assembly but rather be so harmful to the reputation of the institution that some action by the Assembly is deemed necessary. Examples of these actions might include criminal indictment for embezzlement or fraud.

4.2. Conflicts of interest

19. Paragraph [19] makes avoiding specific kinds of conflicts of interest a requirement for members of the Assembly. Some conflicts of interest will be inevitable: members may represent farmers, who will differ with businesses over land use, or be physicians who disagree with theologians on the beginning of life, or land developers conflicting with environmentalists. These conflicts are not what this paragraph prohibits. Rather, it requires members to put the public interest before any other interest and requires them to disclose conflicts they cannot resolve.[13] Conflicts to be avoided often arise from personal interests, usually involving financial benefit that will advantage a member, or his or her family or friends.

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11. These general standards also reflect those suggested in the Technical Guide to the United Nations Convention against Corruption: "The [code] standards should include: fairness, impartiality, non-discrimination, independence, honesty and integrity, loyalty towards the organization, diligence, propriety of personal conduct, transparency, accountability, responsible use of organizational resources and appropriate conduct towards the public."
12. Article 17 of the Code of Ethics for members of the Saeima of the Republic of Latvia invites members to keep learning and acquiring knowledge about democratic and political culture.
13. For instance, a member could make a short oral declaration before he or she takes the floor in the Assembly or in a committee.

20. In addition to the transparency that disclosure of interest provides, it also reminds Assembly members that some of their actions in a given area could be seen as biased by the public or their colleagues.[14]

21. Almost every member State of the Council of Europe has laws, rules or guidance for legislative members on conflicts of interest. The Organisation for Economic Co-operation and Development (OECD) has produced several major studies on the importance of controlling conflicts of interest and creating systems to do so.[15] These systems include disclosure of finances or interests, an ethics counselling system for members and regular ethics training.

22. Paragraph [19] refers to actual and potential conflict. The potential conflict requires members to envisage potential situations where their actions and decisions may result in a clear conflict of interest or post-factum appear to their colleagues or citizens as inappropriate. Advice could be sought from the Secretary General of the Assembly to identify potential conflicts of interest.

23. Paragraph [20] encourages members to make an ad hoc oral declaration of interest.[16] However, in some situations, a written declaration is deemed to be more appropriate, for example for those observing elections. Since their last modification on 27 January 2012, the guidelines for the observation of elections by the Parliamentary Assembly require candidates for election observation missions to fill in a special declaration form which includes some information on where conflicts of interest, actual or potential, may arise given the special duties relating to the observation of elections.

4.3. Ban on paid advocacy

24. Paragraph [21] provides an example of a conflict of interest where a member becomes a paid advocate – paid by some outside group or person – to initiate a cause or matter in the Assembly. Even if the member argues that this outside payment has had no impact on his or her decisions, the appearance of bias to the public can damage the reputation of the entire institution. It does not prevent members from pursuing any gainful occupation (such as a consultant or a legal adviser) or being employed in compliance with national regulations, provided members do not receive any payment or benefits in kind for furthering a given interest with the Assembly.

4.4. Acceptance of fees, compensation, gifts and similar benefits

25. The ban in paragraph [22] against parliamentarians soliciting or accepting outside compensation, rewards or gifts in return for carrying out their legislative role is common throughout Europe. In addition, the acceptance of a gift leading to an apparent conflict of interest is also an important standard since "appearances are often the only window that citizens have on official conduct, so rejecting the appearance standard is tantamount to denying democratic accountability".[17]

26. Most countries define "gifts" broadly: they include items above a certain value, travel expenses, tickets to cultural or sporting events, favours or gifts to close family members and personal loans which have been made available by both private entities and public authorities. The provisions concern any benefits which have been offered by a third party, whether they be public authorities or from non-public interests.

27. Offering gifts is part of normal human relations and a matter of courtesy and civility. Moreover, working lunches or social events often provide parliamentarians with an opportunity to discuss an issue or to build up constructive working relationships with others.

28. Different countries have different policies, customs or hospitality thresholds regarding both offering and receiving gifts. However, some indicators, though subjective, would allow members to assess whether a given benefit may be seen as inappropriate or amount to a conflict of interest. The following questions should be

14. Any decision or action could be seen as potentially biased if, for instance, a member taking part in an election observation mission in a given country owns an important share in or is on the governing board of a group which is trying to break into this country's market or increase its local market share; or if a member belongs to his or her national parliament's friendship group with this country's parliament. In this case, the declaration would not prevent them from taking up their duties, but would rather bring more transparency and serve as a reminder that all his or her actions are likely to be more closely scrutinised.

15. For example, "Trust in Government: Ethics Measures in OECD Countries" and "Managing Conflicts of Interest in the Public Service".

16. Transparency and members' declaration of interest, Article 2, Complementary texts.

17. Stuart C. Gilman, "Appearance of Impropriety", Encyclopedia of Public Administration and Public Policy (NY: Crc Pr I Llc, 203).

asked when accepting a gift or a payment: Would it be embarrassing for a member if information regarding such a gift or payment were made public (the "sunshine test")? Would they be considered as proportionate to the legitimate objectives to be achieved? Does their funding come from reputable sources?

4.5. Use of office for private gain

29. Provisions similar to paragraph [23] prescribing use of one's office for private gain are found in some form or another in most codes of conduct.[18] This is an especially difficult problem for legislators because many of their decisions will result in gain for one or more private parties. The difference between acceptable decision-making and an illicit decision is whether it was made in the public interest or to enrich the member or his or her family or friends.[19]

4.6. Improper use of information

30. The misuse of information (paragraph [23]) for personal, economic or political benefit is one of the more pernicious forms of corruption in legislatures.[20] Recently, in the United States of America, changes were made to prevent legislators from using private information to carry out "insider trading". Members had used information they gathered in private or in closed hearings to invest or divest in stocks or other financial interests (for example real estate holdings). Because of their immunities as legislators, laws covering insider trading had not applied to them. Ironically, this exemption from strict criminal penalties had not been available to anyone else in government.[21] It is one of the areas clearly highlighted by the United Nations Convention against Corruption,[22] OECD[23] studies and has been identified as an issue to be explored in the question set being used in the fourth round of the GRECO review process.

4.7. Threshold for registering gifts and similar benefits

31. Many constituents wish to express their thanks to legislators and often provide token hospitality or gifts, such as a cup of coffee, an inexpensive lunch, pens, books, bottles of wine and sometimes even a basket of fruit from a farmer. The problem arises when the gift goes beyond being a "token". Paragraph [25] attempts to address this by providing a *de minimus* value to distinguish a courtesy gift from one that is inappropriate. This avoids complaints about the trivial gift of a croissant and tea at the local café.[24]

32. Assembly members will be required to register all accepted gifts and similar benefits which exceed a minimum fixed amount. Such thresholds for registration can be fixed in various ways. Some parliaments provide for a fixed amount,[25] others determine it in relation to a parliamentarian's monthly wage[26] or in connection with an average national wage.[27] As far as the Assembly is concerned, it would be difficult to calculate an average authorised amount for 47 Council of Europe parliaments, taking into consideration that some parliaments do not fix any threshold whereas other countries provide for an amount that goes beyond an average wage in some member States. The rapporteur's guiding consideration in setting a threshold at 200 euros was that a courtesy has still to be expressed without being seen as excessive by the average European citizen. In addition, to avoid any allegation of influence or corruption, the obligation to register all gifts, entertainment, meals, accommodation, etc. exceeding 200 euros would allow members to refer to a

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18. Principles of Deputies Ethics of the Sejm of the Republic of Poland, Article 3.
19. It is worth noting that, in practice, some distinction needs to be made between a narrow benefit and benefit that accrues to a broad class of citizens. Many legislative actions fall into the latter category. For example, if a parliamentarian votes for a particular measure that would benefit a broad class of citizen (those who own shares or bonds) (s)he might also benefit as a member of that class.
20. Code of Ethics for Members of the Saeima of the Republic of Latvia, Article 12; Code of Conduct of the United Kingdom House of Commons, Rule 13; Code of conduct for rapporteurs of the Parliamentary Assembly, paragraph 1.2.
21. www.cbsnews.com/8301-18560_162-57323527/congress-trading-stock-on-inside-information/.
22. Technical Guide to the United Nations Convention against Corruption, Article 8.II.2.
23. See, for example, "Trust in Government", OECD, 2000, pp. 28-35.
24. *The Telegraph* reported that some members of the United Kingdom House of Commons had registered jars of honey or bunches of flowers.
25. 1 500 Rand (approximately 147 euros), Code of conduct for Assembly and Permanent Council members, South Africa; AUD 750 (approximately 585 euros) if given by official government source, and AUD 300 (approximately 234 euros) if given by a private person or non-governmental body, the Senate of Australia; Members of the European Parliament should refrain from any gift whose approximate value exceeds 150 euros, Article 5 of the Code of Conduct.
26. Exceeding £ 570, namely 1% of the salary of a member of the Scottish Parliament.
27. Exceeding an average monthly salary according to the Croatian Act on preventing of a conflict of interest in exercise of public duties (approximately 725 euros, source: croatiatime.com).

registration requirement to refuse such gifts or similar benefits in countries having a strong tradition of hospitality. The threshold is also consistent with limitations existing within the Council of Europe requiring staff members not to accept gifts of a value exceeding 100 euros.[28]

4.8. Misuse of resources

33. Misuse of Assembly resources is addressed in paragraph [22]. Serving the public is a privilege, and members must not misuse the financial or any other support given to them because of their office.[29] Only three years ago, newspapers in the United Kingdom revealed large-scale abuses in the way parliamentarians used their public expense accounts. As a result, the rules have been tightened and the authorities require transparency in all payments to legislators through publication on a website.[30] Other parliaments make information regarding MPs' fees and allowances available on request.[31]

4.9. Former members

34. Paragraph [23] addresses one of the most difficult problems confronting legislators: how do you balance the rightful prerogatives of former Assembly members with the risk of abuse of the special access granted to them for private financial benefit? This section will address two issues which arise in respect of former Assembly members: restrictions in post-member activity and access to documents and Assembly premises.

4.9.1. Post-member restrictions

35. Given their familiarity with members and procedures, former Assembly members may be prime candidates to be hired by lobbying firms or to create such firms themselves. It is neither practical nor reasonable for the Assembly to have the power to prevent them from making a livelihood or taking a job.

36. Although relatively new to Council of Europe member States, post-member restrictions are being passed or considered in many European countries as part of a general concern to avoid the abuse of power by former legislators. An OECD study examined the various national approaches to post-employment among OECD countries.[32] The measures generally take the form of cooling-off periods restricting either contact or representation with members of parliament. These periods of non-contact or non-representation can be one to a few years, and in the United States for a limited number of persons it can be a lifetime bar.[33]

37. In the rapporteur's view, it would not be necessary to impose, at least at this stage, such restrictions on former Assembly members. Even though some are now officially involved in lobbying activities, the scale of the issue does not seem to call for such restrictions. However, to create a level playing field, the former members should not have any prerogative in terms of access to documents and facilities compared to other lobbyists from outside.

4.9.2. Access to documents and facilities by former members

38. Most European parliaments allow former members privileges that include complete access to legislative facilities. However, some European and North American legislatures have experienced very embarrassing political scandals because of such unfettered access by former members. The United Kingdom House of Commons addressed this in the mid-1990s by introducing rules to cover lobbying by members, their family, journalists and staff.[34] It is currently discussing how to address the problem of former members taking advantage of their unlimited access.[35]

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28. Rule No. 1296 of 18 December 2008 on the acceptance of fees, gifts, decorations or honours, invitations and other advantages from third parties.
29. Principles of Deputies Ethics, Poland, Article 3, and the code of conduct for members of Dail Eireann, Article 9, address the misuse of expenses, facilities and services, etc.
30. www.public-standards.gov.uk/OurWork/MPs__Expenses_and_Allowances_x.html.
31. The Eduskunta of Finland.
32. OECD, Public Post-Employment: Good Practices for Preventing Conflicts of Interest.
33. See 18 USC 207, and accompanying regulations. Furthermore, according to the United Kingdom Ministerial Code, 7.25, ministers who leave office are prohibited from lobbying government for two years.
34. OECD, op. cit., pp. 74-75.
35. A recent exposé by the Bureau of Investigative Journalism found that "one in five of the 79 [UK] MPs who have applied for Former Members' Passes after the 2010 election now work for companies or organisations with a possible interest in influencing present MPs. Several have worked for lobbying firms. There are 326 former MPs who hold Former

39. The current Assembly Rules provide special prerogatives for honorary associates and Honorary Presidents of the Assembly. In particular, honorary associates, that is members who have been Assembly members for more than five years or who held a committee or a political group chairmanship or former Presidents and Vice-Presidents of the Assembly, have access to the same Assembly premises, including the Assembly Chamber, as current Assembly members, with the exception of committee meeting rooms when in session.[36] Honorary associates may also be included on the mailing list for official Assembly documents and for some non-confidential committee documents.

40. The rapporteur suggests that, should any former members be invited, formally or informally, to foster any interests within the Assembly, he or she should be denied these prerogatives for the period of such activity. He or she will, however, continue to be granted access to the Palais de l'Europe and to Assembly documents under the same rules as other lobbyists. Consequently, the Bureau of the Assembly is invited to amend the special rules on honorary association with the Parliamentary Assembly and the special rules on the title and prerogatives of honorary President of the Parliamentary Assembly of the Council of Europe accordingly.

5. Access to facilities during Parliamentary Assembly sessions by representatives of interest groups

41. The rapporteur notes that, even though this issue is not dealt with by the draft code of conduct for Assembly members, it has to be examined to address one of the concerns raised by the motion "Strengthening the mechanism for the disclosure of conflicts of interest in the Parliamentary Assembly of the Council of Europe". For the purpose of this chapter, the rapporteur examined standards created by the OECD,[37] current legislations in Council of Europe member States as well as guidelines used by other countries.[38]

42. As a result, the rapporteur came to the conclusion that, with particular regard to the way the Assembly operates, there is no need, at least for the moment, to define what professional lobbyists are and to distinguish them from other categories of individuals who have any personal or pecuniary interests in fostering their cause with the Assembly.

43. Most modern parliaments are moving in the direction of controlling the effects of outside influence, recognising that abuses can occur. A recent survey claimed that "about 80% of all amendments launched" in European Parliament committees stemmed directly from interest representatives and "the inspiration behind 20% often came from outside Parliament".[39] When confronted with technical, complex or urgent issues, parliamentarians and their assistants often rely on information provided by interest groups. In the case of the Assembly, it could also involve the drafting of reports, in whole or in part, as well as the drafting of motions and amendments by outside representatives. Similar concerns were expressed by stakeholders during the discussion on a new code of conduct for members of the European Parliament when the issue of a "legislative footprint"[40] was debated. Such a "legislative footprint" would require that everyone who provided any input into the drafting of a given document be cited,[41] thus contributing to the goal the transparency register has been trying to achieve. However, this idea met with opposition from MEPs who wanted to protect their sources of information.

Members' Passes, allowing them access to informally meet MPs, bring guests into the House of Commons and book restaurants with family in the Palace of Westminster", "Lobbying: calls for transparency over former MPs' access to Parliament", *The Independent,* 15 December 2011, p. 1.

36. Special Rules on Honorary Association with the Parliamentary Assembly. See also Special Rules on the Titles and Prerogatives of Honorary President of the Parliamentary Assembly of the Council of Europe, paragraph 2.

37. OECD, Lobbyists, Government and Public Trust, Vol. 1: increasing Transparency through Legislation.

38. For a more complete overview of the question, see Assembly Recommendation 1908 (2010) and the report of the former Committee on Economic Affairs and Development on lobbying in a democratic society (European code of good conduct on lobbying)" (Doc. 11937), rapporteur: Mr José Mendes Bota (Portugal, EPP/CD).

39. Lobbying the European Parliament: A necessary evil, Maja Kluger Rasmussen, No. 242, May 2011, CEPS.

40. "An indicative list … of registered interest representatives who were consulted, and had significant input, during the preparation of the report".

41. The insufficiency of registration for interest group representatives in granting the transparency was underlined by a study carried out by Transparence International France and Regards Citoyens in 2009-2010 on influence in the French National Assembly. The study pointed to the mismatch between the number of the groups registered officially (120) and the number of bodies (5 000) who were heard in the context of the preparation of 1 174 reports.
www.regardscitoyens.org/transparence-france/etude-lobbying/.

44. Many of these abuses could involve access to inside knowledge and to buildings and facilities. Currently, interest group representatives have little or no difficulty in accessing spaces which are reserved only for members of the Parliamentary Assembly or its staff, such as the Parliamentary Bar, the Table Office and delegation offices situated on the upper floor.

45. Good professionals know where each member's office is, they know the paths they take to sittings, where meetings will be held and where to get documents. This creates risks that can negatively impact the work and reputation of the Assembly. On the other hand, access and transparency are critical to the democratic process and have to be protected. Some have argued that transparency of those who lobby legislators is a basic right of citizens.[42]

46. Although transparency and openness are necessary to maintain the public's confidence in their democratic institutions, it is also important for legislators to have private space to function. Private spaces in legislative facilities (the floor of parliaments, certain meeting rooms, delegation offices) allow them to have informal discussions with colleagues before drafting relevant documents or to allow the members to decide how they want to control their time for meetings with constituents or interest group representatives. Lack of space to privately confer without the presence of interest representatives or media is an impediment to the effective and timely work of parliaments.

47. As far as the Assembly is concerned, the current rules appear to allow relatively broad access to the Assembly's facilities. Some individuals already have their badges (for example representatives of international NGOs having participatory status with the Council of Europe), or are granted visitor badges upon request from a member of the Assembly, the Secretary General of the Assembly or secretariat staff, [43] thus allowing most interest group representatives to gain access with little difficulty to both the public and the restricted areas of the Palais de l'Europe.

48. Most countries respond to the desire of individual citizens to see the work of the legislature by providing guided, limited tours of buildings. But the public are often isolated in visitors' galleries; in other words they are not allowed on the floor or in rooms with access to the floor where the legislators' business is being discussed.[44] The majority of parliaments have rules allowing a person to enter at the invitation of a staff member or a member of parliament, though for a limited period of time and provided the person is accompanied by a staff member or a parliamentarian throughout his or her stay in the parliamentary building. The European Parliament and the Sejm of Poland, which grant a more flexible access to registered interest representatives, nevertheless impose restrictions concerning the accessible areas.[45]

49. In the rapporteur's view, the Assembly has to follow the general trend which aims to make institutional functioning more transparent and, at the same time, to strengthen members' accountability and responsibility with regard to those to whom they extend an invitation.

50. The Bureau has to consider reviewing the current rules governing access to the Palais de l'Europe and the use of the premises, taking into account the above-mentioned considerations and the following points: a possibility of introducing special badges for special interest representatives, granting a clear separation between public and restricted areas and ensuring the effective implementation of the revised access rules by security agents and staff members.

51. The proposed revision seeks to bring more transparency and efficiency and to streamline the operation of the Assembly. It aims neither to restrict parliamentarians' right to receive information from interest representatives nor to shut the door to those willing to make their viewpoint known. Furthermore, the rapporteur is fully aware that no detailed rules or formal declarations, including easily identifiable badges for interest representatives or members' declaration on absence of conflict of interests, would constitute a sufficient safeguard against those who choose to contravene the spirit of those rules.

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42. See Henri Brun and Guy Tremblay, "Le droit du public de savoir qui cherche à influencer le gouvernement: un droit fondamental", Ethique publique, 8 (2006) 1, pp. 123-136.

43. These considerations, as well as the analysis below, concern access to the Palais de l'Europe during Parliamentary Assembly sessions. No access authorisation is required to attend meetings of the Standing Committee of the Parliamentary Assembly.

44. According to Rule 22.2 individuals can be admitted to the galleries following the authorisation of the Secretary General of the Parliamentary Assembly.

45. The one European country that has detailed rules on access to facilities by registered lobbyists is Poland. Article 201b, paragraph 2, of the Standing Order of the Sejm provides: "A temporary pass shall be issued for a definite period of time and shall authorize the holder to use a particular entrance and to move about indicated areas administered by the Chancellery of the Sejm."

6. Enforcement mechanism

52. Society at large – citizens, interest groups and the media – is increasingly vocal about the need for stronger monitoring of parliamentarians' integrity.

53. Many national legislations grant members of parliaments an element of special immunity enabling them to avoid criminal and civil liability when exercising their parliamentary functions or even when acting as "simple citizens". The scope and the nature of such immunities, which were originally set up to grant parliaments independence vis-à-vis the executive, are the result of the cultural, historical and constitutional context of a given country. Nowadays, demands are made to open parliaments to more scrutiny by, *inter alia,* reducing the scope of immunities and providing safeguards against abuse of privileges.[46] As a response to these demands, several parliaments have set up mechanisms enabling them to hold their members accountable, including for breaches of internal regulations such as codes of conduct.

54. The draft code of conduct suggests introducing an enforcement mechanism to ensure compliance with the rules of conduct which is based on three components: prevention, investigation and imposing of sanctions.

55. The prevention stage includes information and guidance. For a number of reasons, guidance is an important part of any workable code of conduct. First, it sets a positive tone by underlining the expectation that all members are honest and want to act in an ethical manner. Motivated by integrity, any member would seek guidance if they have questions about the application of the code. This is likely to reduce the number of breaches. Second, no code can be truly exhaustive and therefore responsible individuals will want guidance on matters not specifically or directly covered in the code. Third, language in the code might have different connotations to different people, for example in what constitutes a "gift". And finally, because the Assembly represents a number of different countries, with different political cultures and different languages, members should have the opportunity to clarify issues to avoid illicit actions resulting from misinterpretation.

56. Paragraph [15] of the draft code of conduct enables the Secretary General of the Parliamentary Assembly to provide guidance as a neutral third party. Similar provisions can be found in other codes of conduct allowing guiding advice to be provided by an independent body,[47] a legal department of a given parliament[48] or by a Secretary General or his Deputy.[49] The rapporteur deems it necessary to add an information session on the code of conduct to workshops the Secretariat of the Parliamentary Assembly organises for new Assembly members.[50]

57. The investigation procedures set up by national parliaments vary from an enquiry by an independent body,[51] by the President of the Parliament,[52] by a relevant parliamentary committee *ex officio* or following a complaint, even if filed anonymously.[53] At this stage, additional information can be sought directly from the member concerned or from any relevant body or officials.[54]

58. In the rapporteur's view, the procedure suggested by the draft code meets the spirit of the current Rules of Procedure and is consistent with existing policies. According to the Rules of Procedure, the President of the Assembly is generally responsible for the smooth running of Assembly business, which is why it would be reasonable in the first instance for the President of the Assembly to investigate a member's alleged misconduct. In several parliaments, the supervision of members' conduct remains with their presidents,[55] who may require help from other parliamentary bodies and committees[56] or a political group[57] to clarify the matter.

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46. More information on parliamentary immunity regimes in national parliaments could be found in the 2003 report by the Committee on Rules of Procedure and Immunities on "Immunities of Members of the Parliamentary Assembly" (Doc. 9718 rev), in particular in paragraphs 92 to 98. Furthermore, some countries provide a possibility for constituencies (Uganda) or a party (Guyana) to recall a non-performing elected representative. Six cantons in Switzerland allow this right. Other countries have recently envisaged introducing similar mechanisms to reinforce accountability of elected representatives.
47. The Parliamentary Commissioner for Standards of the United Kingdom House of Commons.
48. Relevant Secretariat services of the Denmark Folketing or the German Bundestag provide assistance and information on behalf of the President.
49. Eduskunta of Finland.
50. In the United Kingdom House of Commons the Parliamentary Commissioner for Standards and the Registrar of Members' Financial Interests are available to give advice, information sessions on the code of conduct are organised and the code is available to members in pocket book format.
51. The Parliamentary Commissioner for Standards of the United Kingdom House of Commons; the Déontologue of the French National Assembly.
52. The German Bundestag, Section 8 of the Code of Conduct.
53. Croatia, "Act on preventing of the conflict of interest in exercise of public office", Article 18(2).
54. For instance, a chairperson of a national delegation concerned could be asked to provide further information.
55. German Bundestag, op. cit.
56. Advisory Committee of the European Parliament, the Deputies' Ethics Committee of the Sejm of Poland.

59. While investigating, the President of the Assembly should be allowed to seek relevant information and clarification from the chairperson of the member's national delegation, a chairperson of the committee concerned or the chairperson of the member's political group. The latter would be particularly relevant if an alleged breach has taken place in the context of the observation of elections since members of election observation missions are appointed by their respective political groups.[58]

60. Furthermore, the President of the Assembly should also have the possibility to seek a recommendation from the Rules Committee. Given its composition and terms of reference, being responsible for examining any request for waiver of immunities or challenge of credentials – procedures in which an investigative hearing is held –, the Rules Committee is well placed to collect the necessary data, organise a fair hearing and evaluate facts in the light of precedents.

61. Most parliaments can sanction their members if their conduct is found to be inappropriate. Sanctions imposed by peers instead of an independent authority might sometimes be seen by the public as lacking impartiality. However, any assessment of alleged misconduct by a parliamentarian would require an understanding of the specific functioning of a political body, including interactions this body may have with representatives of interest groups. For these reasons, even though in some parliaments the investigation stage is a matter for an independent authority,[59] subsequent sanctions are often imposed by special committees composed totally[60] or partly[61] of parliamentarians, or by the assembly acting as a whole. The majority of sanctions available to parliaments date back to the time when the main concern of internal regulations, including the Assembly's Rules of Procedure, was the smooth conduct of sittings and maintenance of order in the Chamber, hence sanctions such as call to order or exclusion from the Chamber. Over time, new penalties have been introduced, such as reprimand or forfeiture of entitlement to the daily allowance, including for misconduct which might have happened outside the Chamber.[62]

62. The code of conduct has to be flexible enough to deal with new situations which may arise or to give proper consideration to a standard case which may require special interpretation in view of specific circumstances. The rapporteur suggests adopting the same flexible approach when it comes to imposing sanctions. The President of the Assembly needs to have discretion regarding the follow-up to be given to an enquiry's findings.

63. The range of sanctions available to the President of the Assembly should not differ from those imposed in the majority of national parliaments or the European Parliament:[63] reprimand or admonition, an apology or expulsion of the member concerned from the sittings by the way of motion for censure, a letter to the speaker of the parliament concerned or public disclosure of the circumstances of a case.

64. As regards the latter sanction, it should be up to the President of the Assembly to decide if an enquiry's findings and the penalties applied are to be made public. A minor breach, followed even by a minor sanction, if made public, might have a serious impact on a member's political career or his or her image within the national delegation. In some cases, if taken up by local newspapers, it could lead to a loss of trust of a member's electorate in their candidate and, as a consequence, an eventual removal from office at the next elections. The President's discretion over the publicity of a case could also provide for a safeguard against the misuse of the mechanism by those members who would explicitly seek more publicity for their actions.

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57. German Bundestag, op. cit.

58. It would also be relevant for any ad hoc committee of the Bureau whose members are usually appointed by political groups.

59. If a complaint for breach of conduct is brought against a member of the United Kingdom House of Commons, the Parliamentary Commissioner for Standards, an independent authority, has discretionary competence to order further inquiry, after having examined the evidence provided. Should a breach be established following the inquiry, the Commissioner could resolve the matter himself. In serious cases or at a member's request, a report by the Commissioner is referred to the Committee on Standards and Privileges of the House of Commons, which comes to its own conclusions. If a sanction has to be proposed, it is considered a matter for the House of Commons.

60. The Rules and Deputies' Affairs Committee of the Sejm of Poland.

61. Croatia, "Act on preventing of the conflict of interest in exercise of public office", Article 16.

62. For instance, a failure to declare expenses or relevant interests.

63. The European Parliament's penalties include a reprimand, the forfeiture of the entitlement to the daily subsistence allowance or a temporary suspension from participation in all or some of the activities of Parliament. Penalties are imposed by the President and could be appealed against to the Bureau (Rules 153 and 154). In cases of serious misconduct, the Rules allow for the termination of the member's office by the Conference of the President (Rule 19).