



Model initiatives package on public ethics at local level

Steering Committee on Local and Regional Democracy

Model initiative package on public ethics at local level

**Prepared by the Steering Committee on
Local and Regional Democracy (CDLR)**

Adopted at the International Conference on
“Ethical Standards in the Public Sector”
(Noordwijkerhout, 31 March – 1 April 2004)

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INTRODUCTION

The Steering Committee for Local and Regional Democracy (CDLR) has prepared, with the help of a Group of Specialists on Public Ethics at Local Level (LR-PE) comprising six members, the present Model Initiative Package.

On the basis of the contributions received from specialists and other available information (in particular relevant recommendations from the Committee of Ministers and the Congress of Local and Regional Authorities of the Council of Europe (hereafter: the Congress) and previous CDLR work), six thematic dossiers were prepared comprising lists of recommendations to make to the various entities and people involved: central and local authorities, local elected representatives and staff, candidates and political leaders.

These dossiers constitute the first part of the package, the Handbook of good practice. The second part of the package comprises contributions from the specialists and the third part contains examples of national initiatives.

The model initiative package is not a legal instrument. It is simply a collection of good practices identified during this exercise. Even if not all practices presented in this document can be implemented in all countries, it is suggested that these good practice ideas are taken into account when states are considering the implementation of policies aimed at giving assurance that appropriate ethical behaviour is being followed at local level, in response to the need to maintain public confidence in local government.

In November 2002, the CDLR decided to declassify it and to launch a procedure of national and international consultations on the Handbook of good practice. The Model Initiative Package was revised in the light of the national consultations reports and the opinions expressed by different Council of Europe bodies and other organisations and was formally adopted at the Conference which was held in Noordwijkerhout (The Netherlands) on 31 March–1 April 2004.

Council of Europe achievements

Prevention of corruption and other forms of financial crime is a major concern for all Council of Europe member states, far more so than the punishment of such crimes. It is a problem that concerns local authorities directly, and it is at local level that good solutions need to be found in order to preserve public ethics and thereby protect public interests.

The Council of Europe has done a great deal of work towards establishing a common legal framework for combating corruption.

The Criminal Law Convention against Corruption (ETS No. 173) entered into force on 1 July 2002 and the Civil Law Convention against Corruption (ETS No. 174) on 1 November 2003.

On 11 March 2000, the Committee of Ministers adopted Recommendation No. R (2000) 10 on codes of conducts for public officials, and on 8 April 2003 it adopted Recommendation No. R (2003) 4 on common rules against corruption in the funding of political parties and electoral campaigns. Other recent Committee of Ministers documents relevant to this work are Resolution (97) 24 on the twenty guiding principles for the fight against corruption, Recommendation No. R (98) 12 on supervision of local authorities' action and Recommendation No. R (99) 8 on the financial liability of local elected representatives for acts or omissions in the course of their duties.

The Congress, for its part, has produced several documents:

- Recommendation 60 (1999) including a European code of conduct for the political integrity of local and regional elected representatives;
- the Urban Charter;
- Recommendation 86 (2000) on the financial transparency of political parties and their democratic functioning at regional level.

Although not directly involved in the fight against corruption, the CDLR has nevertheless addressed a number of issues relevant to public ethics, namely the status of elected representatives, the accountability of elected representatives, the status of staff, supervisory mechanisms in various areas including finance, and local electoral systems.

The documents stemming from the Committee of Ministers and the CDLR can be found in both English and French on the Council of Europe Local Democracy website (www.coe.int/local) and in the LOREG (LOcal and REGional Democracy) library: www.loreg.org.

How to use the Handbook

The information and suggested good practice included in the package, although conceived for the fight against corruption at local level, may be useful and may apply, *mutatis mutandis*, to the fight against corruption at regional level where there are self-governing regions with elected bodies. The model initiative package is composed of:

- a first part, including the “handbook of good practice on public ethics at local level”, prepared by the Secretariat on the basis of contributions of the specialists and revised by the Group of specialists and by the CDLR;
- a second part, including the contributions prepared by the specialists; this part tries to identify, on the basis of a common structure, the situation in Europe, the existing problems and risks, but also the policies and measures to be taken in order to improve the situation and to reduce the risks;
- the third part, including case studies prepared by specialists and CDLR members.

Not all practices presented in this document can be implemented in all countries; in certain countries there are constitutional, institutional or simply cultural obstacles which make some of the measures presented in this package difficult to implement as such; moreover, this ambitious exercise is not an exhaustive one: other practice as efficient or even more efficient may exist and has not been identified during this exercise.

All practices presented are however interesting and worth being known during the definition of any reform or policy aimed at ensuring high levels of public ethics and fighting corruption at local level.

The goal of the model initiative package is therefore essentially to:

- present, following a simple and clear structure, the best European practices identified during this exercise;
- stimulate a wide debate about public ethics at local level;
- serve as a source of inspiration for ongoing and envisaged reforms by different countries and/or local and regional authorities;
- serve as a guide for local actors (elected representatives and civil servants) as to the behaviour they should have in different circumstances.

This is not supposed to be a once only exercise; it is meant to continue. In fact, the model initiative package could be improved in the light of debates and new information gathered. Moreover, measure, policies and even principles on which public ethics are based may evolve in time; it is therefore necessary to reflect changes in mentalities, in legislation, in programmes and in practice in order to offer a tool which is really useful because it is alive and evolving.

I. HANDBOOK OF GOOD PRACTICE

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

This thematic dossier presents the best practice on the status of local elected representatives identified by the Steering Committee on Local and Regional Democracy (CDLR). In order to be precise and concise, this best practice has been grouped according to the different categories of actors involved. However, it does not constitute a corpus of recommendations to be implemented in full by all countries. Central and local authorities should select the practices that are relevant to their specific situation.

This dossier was conceived so as to be used independently from the other parts of the model initiative package; however, for better consistency, the papers by individual specialists setting out the relevant issues of concern in various member states with regard to ethical questions (presented in the second part of the package) and the other thematic dossiers should also be consulted.

1. General framework

a. Possible action by central authorities¹

Public officials² in general and local elected representatives in particular are given a simple and uniform legal framework governing their rights and obligations, accountability, guarantees and protection, remuneration and working conditions, supervision, disqualification, termination of office and suspension. The framework is established by the central authorities, in consultation with associations of local elected representatives. The legal framework should make it clear that local elected representatives may incur

1 Authorities which set the legal framework and monitor the activity of local authorities: central parliament and government in unitary states, federated states' parliament and government in most federal states.

2 According to the Council of Europe Criminal Law Convention against corruption (ETS 173), "public official" is understood by reference to the definition of "official", "public officer", "mayor", "minister" or "judge" in the national law of the State in which the person in question performs that function and as applied in its criminal law;

a criminal sanction as a consequence of any criminal behaviour in corruption matters.

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

The legal framework and the codes of conduct should not be over-prescriptive in order to deter able candidates from seeking office if the demands placed on them seem unduly rigorous and to leave room for personal judgement and responsibility in order to enable elected representatives to adapt their action to local circumstances.

The law provides for a specific mechanism for monitoring the implementation of the codes. Breaches of the Code are sanctioned by the courts or specialised independent administrative authorities.

Model codes of conduct may also be prepared by the associations of local and regional elected representatives in consultation with central authorities.

The Recommendation 60 (1999) of the Congress, which includes a European code of conduct for the political integrity of local and regional elected representatives, could inspire national model codes of conduct.

Central authorities grant citizens and local authorities access to information by publication and analysis, particularly through the use of new information technology, of data on:

- the various legal instruments governing local elected representatives' performance of their duties;
- the various codes of conduct adopted by local authorities, so that a comparative analysis of them can be carried out;

- statistics concerning cases of corruption and other breaches of public ethics and public confidence in local elected representatives and public servants.

b. Possible action by local authorities³

Local authorities:

- adopt codes of conduct for local elected representatives, if appropriate, by adapting to the situation in the municipality concerned the model codes prepared by the central authorities and taking account of the suggestions made by different associations;
- ensure that the codes of conduct are distributed to elected representatives, the central authorities, other interested bodies and the public, using the available means, including information technology;
- monitor the implementation of the code and of the general framework for public ethics at local level through regular ethical governance audits;
- ensure the regular examination and, if appropriate, revision of the code of conduct.

2. Disqualification, suspension and termination of office

a. Possible action by central authorities

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

3 Self governing local and regional authorities.

- i. Disqualification as a candidate or also after election may arise from:
 - a final criminal conviction for a serious offence;
 - a serious breach of public ethics;
 - legal incapacity established by judicial decision; such decision may have regard to mental health or financial matters (personal bankruptcy) in accordance with the law;
 - an accessory penalty imposed by judicial decision;
 - the existence of a potential conflict of interest; for example, individuals shall not hold a position in which they would be supervising themselves or supervising a close relative;
 - the simultaneous holding of another elective office which would prevent the elected representative from fulfilling his or her responsibilities properly, according to the law.

The period of disqualification depends on the gravity of the situation and the courts and is decided by a judicial body – civil, administrative or electoral, which has substantial freedom to determine the length of the period.

- ii. Suspension of a local elected representative from office is not automatic if that person is under investigation but:
 - may exceptionally be ordered by the central authorities or by the electoral authority in very grave and emergency situations, but this decision is subject to revision by the court;
 - is ordered by the courts if continuation in elective office seriously threatens to hinder the judicial process or to cause damage that is substantial or difficult to repair.

iii. Early termination of office may be:

- decided upon by the person concerned – straightforward resignation;
- decided by the courts, particularly in the case of serious misconduct in the performance of duties or a breach of public ethics;
- based on a finding by the local authority or the relevant election office in the event of disqualification; the elected representative in question may contest the finding in the courts which shall issue a ruling under emergency procedures.

b. *Possible action by local authorities*

According to law, local authorities:

- inform the relevant body (court, election office, central authorities) of any incompatibility of which they become aware;
- suspend for a limited period – within a range established by law – a local elected representative who does not fulfil his or her obligations (repeated and unjustified absences, non-fulfilment of regulatory obligations, etc); the decision may be contested in the courts by the elected representative; suspension by the collegial body may be for a limited period, or unlimited if the courts have been requested to order the termination of office of the elected representative;
- ask the courts to rule on the termination of office of an elected representative, particularly in the event of serious misconduct or a clear breach of standards of public ethics, and suspend the representative until the courts issue a ruling.

3. Rights and obligations of elected representatives

a. Possible action by central authorities

Central authorities:

- establish the general requirements concerning the fundamental rights and obligations of local elected representatives (see also section 3.c);
- make known the rights and obligations of local elected representatives, using various means for circulating the available information;
- set up appropriate monitoring procedures.

b. Possible action by local authorities

Local authorities:

- take sanctions against the non-fulfilment of obligations by elected representatives in complete transparency and according to law and local statutory acts;
- ensure that the fundamental rights of local elected representatives are respected by other elected representatives, public officials and citizens;
- within the limits of their legal powers, repair and punish any infringement of a local elected representative's rights.

c. Possible action by local elected representatives

Local elected representatives:

- fulfil all their obligations and exercise their rights with moderation and for the public good;
- respect equality by not discriminating unlawfully against any person;

- treat others with respect;
- do not, in their official capacity or any other circumstances, conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute;
- make a written allegation to the appropriate authorities if they become aware of any conduct by another member which they reasonably believe involves a failure to comply with the authority's Code of Conduct;
- sign the municipal code of conduct and agree to observe it;
- encourage and promote any measure which fosters improvements in the operating performance of the services or departments coming under their responsibility and the motivation of the staff concerned;
- do not perform their functions or use the prerogatives of their office to further their own direct or indirect private personal interests or the private interests of individuals or groups of individuals, with the aim of deriving a direct or indirect personal benefit therefrom;
- do not hold other appointments which would prevent local elected representatives from performing their functions efficiently;
- while respecting the choice of their voters and especially when elected on a list, avoid, as far as possible, changing their party membership and remaining in office;
- avoid, as far as possible, any conflict of interest or incompatibility;
- declare any personal interest (economic or other interests, e.g. employment details, assets held, membership of outside bodies), and refrain from participating in any debates in which such personal interests would be likely to prejudice an elected representative's judgement of the public interest;

- observe budgetary and financial discipline, as defined by the national legislation and do nothing to misappropriate public funds and other public assets; they do nothing that might lead to public funds or other public assets being used for direct or indirect personal purposes;
- declare all gifts, favours, invitations or other benefits offered to them, their family, their friends or other persons or organisations which might affect or appear to affect the impartiality with which they perform their duties or which constitute or might constitute a reward in connection with their duties (any gift worth more than a certain amount laid down in the municipal code of conduct to belong automatically, if possible, to the municipality; otherwise they should be refused); avoid extensive dealings with the person who made the gift; and try to have witnesses present at any meetings with that person;
- refuse all gifts or personal favours from persons who make a request of the municipality; where the gift can be neither refused nor returned to the sender, they declare it, keep it and make as little use of it as possible; clear rules concerning the conduct requested in case of the offer of gifts or other favours are included in the municipal code of conduct;
- make public the grounds for all their decisions; if such grounds have to remain confidential, representatives explain why;
- promote all measures designed to increase transparency in the way they exercise their powers and the operation of the administrative departments for which they are responsible;
- oppose the appointment and promotion of local public servants and other employees on grounds other than merit and professional ability or for purposes other than departmental effectiveness;

- respect the independence, the powers and prerogatives of other political appointees and of local public servants and do not ask them to do anything which would give them direct or indirect personal gain or from which particular bodies to which they belong, or their family or friends would derive direct or indirect advantage (or to refrain from doing something in order to obtain such direct or indirect advantages); respect the decisions reserved by law or regulations to civil servants;
- do not prevent another person from gaining access to information to which that person is entitled by law;
- reply openly to questions from citizens or the media about their exercise of office and do not reveal information that is confidential or concerns the private life of other persons;
- encourage and promote any measure which fosters openness concerning their powers, the exercise of those powers and the functioning of the services and departments under their responsibility;
- increase awareness about threats and problems that corruption raises (including higher cost of services, lower salaries, lack of confidence, investments losses etc.);
- play an active role in fighting and denouncing corrupt practices (for example: by giving publicity to any existing protective measures for whistleblowers or by establishing telephone numbers for the use of citizens anonymously in order to denounce corruption cases).

4. Liability of elected representatives

a. Possible action by central authorities

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

- any natural or legal person who has suffered unjustified damage as a result of an act or omission on the part of a local elected representative shall be entitled to reparation;
- the personal liability of local elected representatives is limited to cases of serious or intentional misconduct;
- in collegiate bodies, elected representatives shall not be held liable for any decisions they have opposed;
- there shall be no automatic sanction of local elected representatives without prior adversarial proceedings and the possibility to appeal, with suspensory effect, before a court;
- there shall be some degree of specialisation by judges who deal with liability of elected representatives (specialisation of courts or special training for judges) or there shall be independent specialised administrative bodies which can give an opinion, at the request of judges, on cases in which local elected representatives are involved.

b. Possible action by local authorities

Local authorities:

- quickly and fully compensate parties injured by an act or omission on the part of their elected representatives;
- take action to recover costs from elected representatives who cause them damage through serious or intentional misconduct;

- hold roll-call votes as much as possible, using modern techniques if possible, and make public the elected representatives' votes;
- organise effective internal legal supervision, which may also provide legal advice to elected representatives who request it;
- consider collaborating with other municipalities to set up a risk-pooling arrangement;
- through risk-pooling arrangements or insurance companies, insure cover against financial risk from their own civil liability and, where applicable, partial cover against risk arising from the civil liability of their elected representatives;
- provide public access to full information about local authority liability and liability of elected representatives.

c. Possible action by local elected representatives

Local elected representatives:

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

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

a. Possible action by central authorities

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

- the majority of local elected representatives in any council holds office without remuneration; however, local elected representatives shall not suffer material damage as a result of performing their duties; they shall be compensated through an appropriate allowance or through the reimbursement of expenses incurred and loss of professional earnings;
- there shall be a general framework for the remuneration of elected representatives who work for municipalities full time, but the local authority shall have considerable freedom to set the level of remuneration;
- there shall be provision for adapting the work schedule of persons who become local elected representatives; this shall not penalise companies which employ elected representatives: in the event of damage, the local authority shall make it good, either itself or through a specially created fund;
- persons who have completed a full-time term of office shall be helped to resume employment: incentives shall be available to companies which keep an elected representative's post open for the period of his or her full-time elective office;
- allowances and remuneration paid to local elected representatives shall be taken into account in the calculation of taxes, contributions and social benefits;

- the amounts of allowances and remuneration received by local elected representatives shall be made public; the central authorities shall prepare national statistics on these allowances and make them available to the public, particularly by using new information technology;
- elected representatives, particularly those holding executive positions, are prohibited for a limited period from working for certain employers after their term of office has expired, according to law.

b. Possible action by local authorities

Local authorities:

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

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

c. Possible action by local elected representatives

Local elected representatives:

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

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

a. Possible action by central authorities

Central authorities:

- ensure that there is a general framework for the training of elected representatives, by providing a training network or covering part of the cost of training;
- prepare legal and management manuals for new elected representatives;

- prepare training modules and distribute them to training centres which request them, using information technology;
- offer a legal advice service to local authorities which request it;
- encourage the sharing of experience among local elected representatives through seminars, conferences and online discussion forums;
- prepare information tools and make them available to local elected representatives, preferably using information technology: statistics on demography, finance and the standard of services in the country's local authorities; management and benchmarking tools for local public services;
- encourage and assist private or local authority initiatives regarding the training of local elected representatives;
- create a framework for, and encourage and take part in, the various forms of inter-municipal, inter-regional and international co-operation designed to identify best practices regarding the status of local elected representatives;
- using mainly new information and communication technology, make available to the public national legislation and provisions of international treaties concerning the status of local elected representatives, as well as the best European practices and recommendations of international organisations in this field.

b. Possible action by local authorities

Local authorities:

- provide training for elected representatives;

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

c. Possible action by local elected representatives

Local elected representatives:

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

B. Model initiatives relating to the funding of political parties, political associations⁴ and individual candidates at local level

This thematic dossier presents the best practice for the funding of political parties and associations at local level identified during the examination of issues related to public ethics at local level carried out by the Steering Committee on Local and Regional Democracy (CDLR). In order to be precise and concise, this best practice has been grouped according to the different categories of actors involved. However, it does not constitute a corpus of recommendations to be implemented in full by all countries. Central and local authorities should select the practices that might be useful in their specific situation.

This dossier was conceived so as to be used independently from the other parts of the model initiative package; however, for better consistency, the papers by individual specialists setting out the relevant issues of concern in various member states with regard to ethical questions (presented in the second part of the package) and the other thematic dossiers should also be consulted.

1. General framework

a. Possible action by central authorities

Central authorities establish, in consultation with associations of local elected representatives, a coherent, simple and clear legal framework governing the funding of political parties, political associations and election campaigns. They also publicise the legal framework and provide advice and guidance on it.

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

⁴ Associations which put forward candidates in central, regional or local elections or aim at supporting such candidates.

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

With regard to election campaign funding, the legal framework:

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

b. Possible action by local authorities

Local authorities help the specialised bodies to:

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

c. Possible action by candidates and elected representatives

Candidates and elected representatives:

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

d. Possible action by political parties:

Political parties:

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

2. Funding of local political parties and associations

a. Possible action by central authorities

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

- political parties and associations acting at local level, as vital components of democracy, are granted state support within reasonable limits; state support may be financial ;
- public funding, where it exists, the conditions for granting it, the amount of funding and the arrangements for monitoring how it is used are laid down by law;
- objective, fair and reasonable criteria are applied regarding the distribution of state support;
- citizens are entitled to support political parties at local level; when citizens are able to provide funding to political parties, the conditions under which financial contributions may be made and arrangements for monitoring how they are used are laid down by law;
- central authorities ensure that any support from the state and/or citizens does not interfere with the independence of political parties;
- private funding, where it exists, is regulated so as to ensure its entire transparency;
- donations⁵ made to political parties and associations may be deductible, at least partially and up to a certain ceiling, from income tax or tax on the donor's profits; donors make public the amount and beneficiaries of their donations;
- donations from legal entities to political parties are registered in the books and accounts of the legal entities and shareholders or any other individual member of the legal entity are informed of donations;

⁵ Donation means any deliberate act to bestow advantage, economic or otherwise, on a political party

- organisations, both public and private, which receive public funding or are otherwise under the control of public authorities are not entitled to fund political parties and associations; the law may lay down other categories of organisations not allowed to fund political parties or associations;
- central authorities take measures aimed at limiting or otherwise specifically regulating donations from legal entities and from foreign donors;
- political parties and associations keep proper books and accounts; the accounts of political parties should be consolidated to include, as appropriate, the accounts of all entities which are related, directly or indirectly, to them or are otherwise under their control;
- parties and political associations publish on an annual basis their accounts and sources of funding, including the nature and value of each donation and the identity of donors who made donations over and above a certain value set by law;
- if a threshold is fixed below which the names of private donors need not be revealed so as to protect their privacy and personal convictions, this threshold is reasonable (e.g. the monthly average wage);
- in case of non-compliance with the rules on funding of political parties and associations, penalties should be essentially of an administrative and financial nature; they may entail the loss of elected office and/or some rights for a period to be determined by the courts; some penalties may be decided by the controlling body subject to a possible appeal before the court, others by the court according to the gravity of the facts, within a fairly broad range of sanctions established by law.

b. Possible action by local authorities

Local authorities:

- refrain from intervening in the running of local political parties and associations;
- do not provide any funding for political parties or associations, either direct or through other organisations or companies which they supervise unless there exists a clear legal framework which authorises them to do so and which sets the rules necessary to ensure that such financial contributions are reasonable, transparent, objective and fair.

3. Election campaign funding

a. Possible action by central authorities

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

- provisions regarding the funding of political parties or associations apply, *mutatis mutandis*, to election campaign funding;
- if private funding is allowed, ceilings are imposed on election campaign spending by parties and candidates;
- if private funding is allowed, ceilings are applied to financial contributions from a single donor to a party's or candidate's election campaign, unless the donor is the candidate him- or herself;
- measures are adopted to prevent established ceilings from being circumvented;
- the funding of election campaigns through intermediaries⁶ is prohibited; establishing funding associations intended at gathering

⁶ Natural or legal person who acts on behalf of other person in order to hide the identity of the real donor.

funds for one or several candidates is possible, but they should make public the sources of the funds gathered;

- particular records must be kept of all expenditure, direct and indirect, on electoral campaigns in respect of each political party, each list of candidates and each candidate;
- local office is representative and non-binding: any contract placing obligations on an elected representative regarding his or her political decisions is invalid; the law imposes penalties for such contracts if fulfilment of the obligations is to be rewarded with a financial contribution to an election campaign;
- public radio and television stations, if they exist, grant all candidates a set amount of airtime which is equal or according to the current audience of the parties supporting them (previous results); independent candidates and those supported by organisations/parties whose audiences are below a certain threshold have a minimum amount of airtime;
- other facilities, such as free advertising space or special (reduced or free) postal tariffs may be provided to candidates.

b. Possible action by local authorities

Local authorities:

- in co-operation with the election monitoring body, use their infrastructure to make candidates' funding declarations publicly available;
- provide free advertising space to candidates;
- make the asset declarations of elected representatives available to supervisory bodies authorised by law;

- have appropriate rules or regulations to ensure that municipal representatives do not use public office to finance or facilitate financing electoral campaigns unless there exists a clear legal framework which authorises them to do so and which sets the rules necessary to ensure that such support is reasonable, transparent, objective and fair.

c. Possible action by candidates and elected representatives

Candidates and elected representatives:

- scrupulously obey the laws governing election campaign funding;
- candidates declare the sources of their funding and a spending breakdown for their election campaigns, in accordance with the law;
- where there is no legal obligation to do so, candidates keep their election campaign spending within reasonable limits and make essential information about the campaign accounts (amounts, sources and categories of expenditure) available to the public;
- elected candidates declare their assets and financial interests; any declaration threshold set by law should be reasonable (e.g. it might correspond to the value of an average furnished residence and a car);
- elected representatives declare their assets immediately after election and at the end of their term of office; such declarations may either be public or be made available only to supervisory bodies authorised by law; the courts may decide to make them public in case they rule against an elected representative;

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

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

a. Possible action by central authorities

Central authorities:

- while taking account of national specificities, ensure there is a body which is independent of political influence and verifies the compliance with the laws on the funding of political parties, political associations and election campaigns; this body could be whatever agency is responsible for organising and monitoring local elections or responsible for monitoring and auditing public spending;
- ensure there exists an appropriate framework for adequate monitoring: clear rules and realistic, clear and practical enforcement mechanisms, including appropriate sanctions;
- ensure that the independent monitoring includes supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication;
- give the body responsible for monitoring party and election campaign funding the human, financial and logistical resources necessary for it to fulfil its role;
- ensure the independence of that body from political influence;
- give the body the power to impose fines, which may be contested in the courts;
- ensure the necessary conditions for the specialisation of the judiciary, police or other personnel in the fight against illegal funding of political parties and electoral campaigns;

- require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions.

b. Possible action by local authorities

Local authorities:

- co-operate, in the monitoring of local elections, with the body responsible for monitoring party and election campaign funding;
- use the means at their disposal to circulate that body's reports and findings;
- forward to the body all necessary information concerning local elections.

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

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

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

Political party leaders forward annually a balance sheet and an income statement or budget to the body responsible for monitoring political party funding and, on request, any further financial information which that body considers necessary.

5. Information and publicity

a. Possible action by central authorities

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

- publicise the legal framework for the funding of political parties and political associations and the legal framework for election campaigns;
- publicise the decisions, reports and resolutions of the body responsible for monitoring party and election campaign funding;
- publicise court rulings relating to party and election campaign funding;
- collect, process and publish statistics concerning party and election campaign funding: amounts, expenditure, sources, monitoring operations, breaches, fines and other penalties, legal proceedings;
- make public the provisions of international legal instruments in the field of political funding as well as the best European practice and the recommendations of the international organisations in this field.

b. Possible action by local authorities

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

- publicise the legal framework governing party and local election funding;
- make known the local elected representatives and publicise their declarations on election campaign funding;

- publicise the various decisions, reports and resolutions of the body responsible for monitoring party and local election funding that are relevant to the municipality;
 - publicise court decisions relevant to the municipality relating to party and election campaign funding.
- c. *Possible action by candidates, elected representatives and political leaders*

Candidates, elected representatives and political leaders:

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

C. Model initiatives relating to the control and audit of local authorities

This thematic dossier presents the best practice on the funding of political parties and associations at local level identified during the examination of issues related to public ethics at local level carried out by the Steering Committee on Local and Regional Democracy (CDLR). In order to be precise and concise, this best practice has been grouped according to the different categories of actors involved. However, it does not constitute a corpus of recommendations to be implemented in full by all countries. Central and local authorities should select the practices that might be useful in their specific situation.

This dossier was conceived so as to be used independently from the other parts of the model initiative package; however, for better consistency, the papers by individual specialists setting out the relevant issues of concern in various member states with regard to ethical questions (presented in the second part of the package) and the other thematic dossiers should also be consulted.

To ensure that appropriate auditing procedures apply to the activities of public administration and the public sector⁷, to provide effective supervision of local authorities and avoid infringements of public ethics (for example, the exercise of powers for personal advantage, conflicts of interest, misuse of assets, abuse of trust, misuse or abnormal use of delegated management) while preserving local autonomy, the law provides for a control system that is organised according to the following principles:

- local authorities are subject to the rule of law and the arrangements for supervising compliance with the law must be clearly laid down;
- the main representatives of the community are elected democratically and periodically, at not too long intervals;
- throughout their term of office, office-holders must be under the supervision of pluralist assemblies elected democratically and periodically, at not too long intervals;
- democratic control in the form of public access to information, in particular administrative and budgetary documents, is possible and to be encouraged;
- there is independent external control;
- there is effective internal control;

. 7 Principle 11 of the Committee of Ministers Resolution (97) 24 on the twenty guiding principles for the fight against corruption.

- the control is adapted to the size and to the tasks of the municipality.

Article 8 of the European Charter of Local Self-Government is taken into account when preparing any piece of legislation in the field of control and audit of local authorities' action.

1. External control

a. Possible action by central authorities

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

- i. The purpose of controls is to give elected representatives in charge of the local authority and all interested third parties - essentially the citizen and central government – a reasonable guarantee that the authority is being managed in accordance with:
 - the law applicable in the various fields for which it has responsibility;
 - general or special accounting and budget rules;
 - generally acknowledged principles of economics, efficiency and effectiveness;
 - the principles of public ethics as laid down in the various national and international codes of conduct.

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

- ii. Control is *ex post facto*. However, the external supervisory body's independence (in particular from central government), as laid down in the relevant rules, may also allow it to perform an advisory function. The manner in which the external supervisory body performs its prior control, and the limits of that control, are laid down in high-level rule-making instruments so as to ensure that the advisory function remains compatible with the principle of local authority self-government and with the control function.
- iii. External control entails:
 - annual certification of the accuracy of the local authority's accounts which also covers subsidised entities or entities in which the local authority holds most of the capital or has a preponderant management say, and it also applies to the accounts of public services which the local authority has contracted out to private firms, and here the supervisor/auditor has to be able to check the books on the spot for accuracy;
 - possibly a management audit, which is wider ranging than the financial audit. This "wide" audit is performed at sufficiently regular intervals, according to the size of local authorities; this audit may assess the general management performance and have as an objective to improve the quality of local services and the municipal management;
 - the external controller is precluded from passing judgement on the advisability of the local authority's decisions, but there is nothing to prevent the controller from commenting on the groundwork for local authority decisions or on their coherence, in particular from the financial standpoint.
- iv. External control is performed independently both of the authorities being supervised and of the central authorities. In terms of organisation and performance, it involves principles such as the following:

- administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interest which it is intended to protect⁸;
- an obligation on local authorities to accept external control and the main arrangements for that control are laid down as high up as possible in the hierarchy of legislation applying to local authorities;
- the purpose of external control is to verify the quality of internal procedures and check that the service overseeing the introduction and use of the internal procedures is functioning properly; by means of random checks, external control also makes sure that the internal control procedures are effective;
- the arrangements for appointing the external control authority guarantee its independence. They are laid down as high up as possible in the hierarchy of legislation governing local authorities;
- the authority responsible for external control is irremovable or is at least to be appointed for a lengthy, specified period, longer than the electoral terms of office;
- the external supervisory authority fulfils requirements of utmost competence and impartiality, which are laid down in advance;
- where the external supervisory authority is a collegiate body, these requirements apply to all members of the college;
- disciplinary authority over the external supervisory authority and its members is exercised by a body which is independent of the supervised authorities and which presents full guarantees of impartiality;

- the supervisory authority has a proper budget of its own and this budget is set by the assembly of the entity on whose behalf the control is performed;
- the external supervisory authority is free to decide its own programme and schedule of controls;
- professional control rules are laid down in high-ranking legal instruments based on generally accepted international standards. The rules cover, in particular, the arrangements for enabling the local authority to comment on the supervisory authority's observations;
- a local or regional ombudsman is appointed who can request information from local authorities; failure to comply with the requests of the local/regional ombudsman triggers disciplinary sanctions for the person(s) who should have provided the required information.

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

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

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

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

b. Possible action by local authorities

Local authorities:

- provide all relevant information to the external supervisory authority;
- make it clear, as a matter of general policy, that in taking decisions in the course of their duties, local public servants are answerable to no-one but the local authority;
- co-operate in good faith with the external supervisory authority.

2. Internal control

a. *Possible action by central authorities*

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

- internal control is formed by all the written procedures governing practice in a local authority's various fields of activity; internal written procedures are used not only in budget preparation and execution, including purchases and contracts, but also in staff recruitment and staff management;
- internal control, at least in local authorities of some size, is a specialist service providing expert -assistance to operational departments in the design of procedures; the internal control service is also responsible for checking that procedures adopted are complied with; where they are not being complied with, internal control is responsible for establishing why and suggesting solutions to the problem (revision of inappropriate procedure, reorganisation of departments or departmental methods, training, reassignment of staff, etc);
- local authorities are allowed to use external management audits whenever they consider it necessary; the law lays down rules for delegating internal control to private auditing firms.

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

b. *Possible action by local authorities*

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

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

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

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

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

Local authorities use financial and management audit firms:

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

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

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

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

Local authority elected representatives and local public servants:

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

3. Judicial supervision

a. Possible action by central authorities

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

- prevent the courts from usurping the local authority's role of assessing the advisability of measures and ensure that, where the diligence of a measure or of behaviour needs reviewing, the review is performed by an independent body or by the administrative supervisory authorities;
- empower the courts to take interim measures where such measures are justified by the urgency of the matter or by a risk of irreparable harm;
- ensure full and immediate execution of judicial decisions concerning the legality of a reviewed measure. This includes procedural provision for replacement of negligent authorities;
- reduce the length of time involved in court proceedings.

b. Possible action by local authorities

Local authorities:

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

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

- local elected representatives and local public servants make available to the courts whatever information is requested;
- any suspected case of corruption disclosed as a result of any internal or external control is reported to the competent law enforcement authorities.

4. Alternative mechanisms

a. Possible action by central authorities

Central authorities take the necessary steps to:

- improve their dialogue with local authorities, including associations of local authorities;
- strengthen the advisory and evaluation role which certain bodies (whether independent of central government or belonging to it) can perform, in particular in the financial sphere and the management field;
- reinforce the role played by independent bodies such as ombudsmen and mediators;
- promote good accounting practice and managerial effectiveness using in particular new information technologies;
- give statutory functions and a certain degree of autonomy to particular offices of local authorities in charge of monitoring the compliance with the rules and procedures;
- protect the “whistleblowers” and establish close collaboration with, and reinforce the role of, independent anti-corruption agencies, government inspectorates, law enforcement authorities and professional bodies with a view to preventing and punishing corruption in all its forms.

b. Possible action by local authorities

Local authorities:

- seek external advice whenever necessary e.g. from central authorities or specialist bodies;

- make available to ombudsmen or mediators whatever information is required;
 - co-operate with other authorities at the same level or on a different level, in particular in order to improve the organisation of internal controls and the use of external audits.
- c. *Possible action by local elected representatives and local public servants*

Local elected representatives and local public servants:

- co-operate closely with the advisory services made available by other authorities or specialist bodies;
- facilitate the work of ombudsmen and mediators.

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

a. Possible action by central authorities

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

- the external control authority arrives at its own findings and makes them public as the outcome of an adversarial procedure in which the local authority undergoing the control participates;
- the executive or assembly of the local authority cannot - even though they are the main recipients of the findings - prevent the external control authority from making the findings public;
- the replies of the local authority are published together with the findings.

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

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

b. Possible action by local authorities

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

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

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

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

This thematic dossier presents the best practice on the status of local elected representatives identified by the Steering Committee on Local and Regional Democracy (CDLR). In order to be precise and concise, this best practice has been grouped according to the different categories of actors involved. However, it does not constitute a corpus of recommendations to be implemented in full by all countries. Central and local authorities should select the practices that are relevant to their specific situation.

This dossier was conceived so as to be used independently from the other parts of the model initiative package; however, for better consistency, the papers by individual specialists setting out the relevant issues of concern in various member states with regard to ethical questions (presented in the second part of the package) and the other thematic dossiers should also be consulted.

These model initiatives specifically apply to the situation of local public servants. In countries where there is a distinction between public servants and civil law employees, a large number of the principles and measures presented applies also to the latter type of local authority employee.

1. Legal framework

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

a. Possible action by central authorities

Local public servants have a legal framework which:

— is as simple, clear and comprehensive as possible;

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

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

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

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

- publish and promote the various pieces of legislation governing the work of local public servants;
- publish the various codes of conduct adopted by local authorities so that they can be analysed and compared;

- collect, process and publish statistics on Court decisions on cases of corruption and other infringements of public ethics, together with statistics relating to public confidence in local authority staff.

b. Possible action by local authorities

Local authorities:

- in so far as the law permits, adapt, mainly through the adoption of local codes of conduct, the legal framework for local public servants to the particular features and requirements of the individual authority on the basis of model codes of conduct;
- adopt codes of conduct for local public servants by adapting central government's model code to the circumstances of the particular authority; once adopted, this code of conduct becomes a legal instrument compulsorily applying to all local public servants and defining their administrative responsibility regime; disciplinary sanctions are stipulated against infringements of the code of conduct; these sanctions may be challenged in Court.
- ensure that codes of conduct are known to local authority staff, the central authorities, other interested bodies and the public by using information technologies and other means.

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

Local elected representatives:

- know the provisions of the code of conduct applying to the local authority's staff;
- refrain from applying improper pressure on local public servants;

- do not seek or tolerate any infringement of the code of conduct by the authority's staff;
- report any breach of the code of conduct to the competent authority.

Local public servants obey the legal rules and codes of conduct applicable in the local authority.

2. Disqualification, suspension and termination of duties

a. Possible action by central authorities

Central authorities establish a legal framework governing disqualification, staff suspensions and termination of duties in local public service, which tries to guarantee to staff stability subject to competence, adapted to national circumstances and based as far as possible on the following principles:

- i. disqualification may arise from:
 - conflict of interest; for example, no-one may be in a position where they would be supervising themselves or supervising a close relative;
 - outside activities which would prevent the staff member from properly performing his or her duties;
 - legal incapacity established by judicial decision; such decision may have regard to mental health or financial matters (personal bankruptcy) in accordance with the law;
 - a final criminal conviction for a serious offence or for an infringement of public ethics; the period of disqualification depends on the seriousness of the situation and the courts have a wide discretion in deciding the period;

- ii. termination of duties against the will of the staff member concerned may be decided, in accordance with the law, by the representative of the local authority, on the ground of serious professional misconduct or breach of public ethics and subject to judicial safeguards.

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

b. Possible action by local authorities

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

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

c. Possible action by local public servants

Local public servants:

- avoid, wherever possible, putting themselves in a real or apparent conflict of interest or in a situation disqualifying them from service and observe restrictions on conflicts of interest;

- make known any situation that may give rise to an incompatibility or conflict of interest as soon as it arises;
- abide by any final decision ordering them to withdraw from a situation or to renounce an advantage that has caused conflict of interest;
- if they hold a post in which personal or private interests might interfere with their official duties, they comply with the legal requirement to declare the nature and extent of such interests on appointment to their post and at regular intervals thereafter or whenever their circumstances change;
- refrain from any activity or transaction and from taking up any post or position, whether paid or not, which is incompatible with the proper performance of their public duties or which would harm performance of their public duties; where there is doubt as to whether an activity is incompatible, they consult their superior;
- subject to the law applicable, inform and obtain the consent of their superiors before taking on any activities, offices or duties which might interfere with their work, paid or unpaid, in addition to their local authority work;
- declare, as required by law, any membership of organisations that might conflict with their duties or with proper performance of their work as public servants;
- subject to observance of basic and constitutional rights, take care that any personal involvement in political activities or political debate does not damage public confidence, or their employers' confidence, in their ability to perform their duties impartially and loyally;

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

3. Rights and obligations of local public servants

a. Possible action by central authorities

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

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

In addition, central authorities:

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

b. Possible action by local authorities

Local authorities:

- ensure that the material and employment conditions of public servants are appropriate and consistent with their needs;
- establish, if they do not already exist, rules of conduct to help local public servants meet the relevant standards of public service;
- define clearly the responsibilities and duties of local public servants;
- monitor how the codes of conduct are being followed by local public servants;
- aim to prevent any unlawful or unethical behaviour on the part of public servants and punish, while ensuring complete transparency, any failure by public servants to fulfil their obligations; the disciplinary procedure must be adversarial and the public servant is allowed to be assisted by the person of his or her choosing; the penalties must be laid down in law; local public servants have the right to appeal against a disciplinary decision;

- foster accountability, proper supervision and responsibility within public service;
- impose restrictions, particularly as regards holding a second job or engaging in certain activities within the limits of the law;
- ensure and encourage the participation or consultation of local public servants in decisions relating to the organisation, structure and principles governing the performance of public duties;
- protect the rights of local public servants and, within the limits of their statutory powers, make good and punish any infringement of a local public servant's rights;
- foster transparency, discourage arbitrary behaviour and reduce anonymity; at the same time, protect the privacy of public servants by keeping confidential, save as otherwise provided by law, the various statements which local public servants are required to make;
- improve communication with the public and inform them of what they are entitled to expect from public servants;
- provide the appropriate legal provisions and procedures for local public servants to report to the appropriate authorities concerns or allegations of breach of law or of the Codes of Conduct by other staff members or elected representatives;
- ensure that no prejudice is caused to a local public servant who reports any of the above on reasonable grounds and in good faith.

c. Possible action by local public servants

Local public servants:

- loyally serve the local authority, with due regard for the law, professional ethics and the established hierarchy;
- are honest, impartial, conscientious, fair and dedicated to their public task;
- ensure that the resources with which they are entrusted are managed appropriately, efficiently and thriftily in the public interest;
- are politically neutral in the exercise of their duties and do not attempt to frustrate lawful policies, decisions or actions of the public authorities;
- are efficient and perform their duties to the best of their ability, with skill, fairness and understanding, having regard only to the public interest and the relevant circumstances of the particular matter;
- are courteous and respectful in their dealings with the public, as well as in their dealings with their superiors, colleagues and subordinate staff;
- observe the principles of good administration and promote administrative ethics;
- know all their rights and obligations;
- undertake to fulfil all their obligations and exercise their rights with moderation and for the public good; refrain from acting in an arbitrary manner to the detriment of any person, group of persons or entity, and show due consideration for the lawful rights, obligations and legitimate interests of others;

- try to avoid any conflict of interest and refrain from commenting on any case in which they have a personal interest; they must never take improper advantage of their official position for their own personal interest;
- declare all gifts, favours, invitations or other benefits offered to them, their family, their friends or other persons or organisations which might affect or appear to affect the impartiality with which they perform their duties or which constitute or might constitute a reward in connection with their duties (any gift worth more than a certain amount laid down in the municipal code of conduct to belong automatically, if possible, to the municipality; otherwise they should be refused); avoid extensive dealings with the person who made the gift; and try to have witnesses present at any meetings with that person;
- refuse all gifts or personal favours from persons who make a request of the municipality; where the gift can be neither refused nor returned to the sender, they declare it, keep it and make as little use of it as possible; they officially notify, preferably in writing, their superiors and, where appropriate, the competent authorities; clear rules concerning the conduct requested in case of offer of gifts or other favours are included in the municipal code of conduct;
- promote all measures designed to increase transparency in the way they perform their duties and in the work of the administrative departments for which they are responsible;
- always conduct themselves in such a way as to retain and strengthen public confidence in the integrity, impartiality and efficiency of the public authorities;
- not put themselves in a position which requires them, or appears to require them, to render a favour to a third party;
- refrain from using their position as public servants to bestow improper advantage on third parties or to influence third parties for personal ends;

- when they believe they are being required to act in a way which is unlawful, improper or unethical, which involves maladministration, or which is otherwise inconsistent with the law or the code of conduct, they report the matter in accordance with the law;
- in accordance with the law, report to the competent authorities if they become aware of breaches of the law or the code of conduct by other public officials;
- report the matter in writing to the relevant head of the public service when they have reported any of the above in accordance with the law and believe that the response does not meet their concern;
- carry out the lawful instructions they have been given if a matter has been treated through the procedures and appeals set out in the legislation, even if they do not agree with the outcome;
- report to the competent authorities any evidence, allegation or suspicion of unlawful or criminal activity relating to the public service coming to their knowledge in the course of, or arising from, their employment; the investigation of the reported facts is carried out by the competent authorities;
- if they supervise or manage other public officials, they do so in accordance with the policies and purposes of the public authority for which they work; they are answerable for acts or omissions by their staff which are not consistent with those policies and purposes if they have not taken those reasonable steps required from a person in their position to prevent such acts or omissions;

- if they supervise or manage other public officials, they take reasonable steps to prevent corruption by their staff in relation to their office; these steps may include emphasising and enforcing rules and regulations, providing appropriate education or training, being alert to signs of financial or other difficulties of their staff, and providing by their personal conduct an example of propriety and integrity;
- refrain from granting other individuals, such as former public servants, preferential treatment or privileged access to the administration.

4. Liability of local public servants

a. Possible action by central authorities

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

- any person who has suffered undue damage as a result of an act or omission on the part of local public servants is entitled to compensation;
- local public servants are not liable for damage caused to their municipality if they have shown all due diligence in the matter in question;
- local public servants do not execute orders which are clearly illegal;
- local public servants cannot be held liable for decisions of their superiors or elected representatives to which they have not participated or they have made known their objections;

- there is no mechanism for automatic punishment of local public servants without prior adversarial proceedings; they have the right of appeal to the courts.
- local public servants who face specific risks are allowed to take out at least partial cover against civil liability through risk-pooling organisations or private insurance
- local public servants may oppose clearly illegal orders; if, after having made known their objection the order is confirmed in writing, they are exonerated from any responsibility except if the execution may generate serious and irreversible damage or physical injury.

b. Possible action by local authorities

Local authorities:

- quickly and fully compensate parties injured by an act or omission of their public servants;
- take action to recover costs from public servants who cause them damage through serious negligence or wilful misconduct;
- make sure there is an effective internal legal-supervision service, which can also provide legal advice to public servants requesting it;
- consider setting up a risk-pooling arrangement with other municipalities;
- through risk-pooling arrangements or insurance companies, take out complete or partial cover against financial risk arising from their own civil liability and, where applicable, against risk arising from the civil liability of their public servants;

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

c. Possible action by local public servants

Local public servants:

- perform their duties diligently and honestly;
- take care there is minimum risk of substantial or irreversible damage to any third party resulting from an act or omission on their part;
- provide the authorised bodies with full information about cases in which they are liable.

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

a. Possible action by central authorities

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

- the recruitment and promotion of local public servants rests on equality of entry to public service, individual merit, open competition and non-discrimination; the general prerequisites for entry to public service are prescribed by legislation or other measures adopted in pursuance of the law;
- applicants may appeal against decisions of the competent authorities concerning admission to examinations or failure in such examinations;
- there is a general framework for the remuneration of local public servants, but the local authority must have considerable discretion in setting the level of remuneration;

- remuneration is commensurate with the responsibilities and duties performed and is sufficient to secure public servants a reasonable standard of living;
- allowances and remuneration paid to local public servants are taken into account in the calculation of taxes, contributions and social benefits;
- the amounts of allowances and remuneration received by the various categories of local public servant are made public; central authorities prepare national statistics on these allowances and make them available to the public, using in particular new information technology;
- public servants, especially those holding executive positions, are prohibited for a limited period from working for certain employers after their local authority employment has ended.

b. Possible action by local authorities

Local authorities:

- recruit local public servants under clearly defined, transparent procedures designed to ensure that the best candidate is recruited according to the specific needs of the department or body concerned;
- ensure the confidentiality of any sensitive personal information provided under the selection procedure;
- determine, within the limits prescribed by law, the remuneration and system of reimbursement of expenses for local public servants;
- actually reimburse any expenses or loss of earnings incurred by local public servants in the performance of their duties;

- ensure that any transfer of public servants is in the interest of sound public administration and that such transfers do not become a form of punishment in disguise;
- provide a right of appeal to enable public servants who have been transferred without their consent to challenge the lawfulness of their transfers;
- ensure that promotions involving an increase in responsibilities are based on merit or, in case of equal merit, on seniority or criteria that ensure the promotion of under-represented groups;
- see to it that there is no discrimination, notably on the ground of age, disability, sex, marital status, sexual orientation, race, colour, ethnic or national origin, social background, political or philosophical opinions or religious beliefs, as regards access to public service or treatment, promotion or termination of the duties of local public servants;
- make sure that the persons who have responsibilities for recruitment, promotion or posting ensure that appropriate checks on the integrity of the candidates are carried out as required by law; if the result of any such checks makes them uncertain as to how to proceed, they seek appropriate advice;
- ensure that local public servants have the material and logistical facilities they need for their work.

c Possible action by local public servants

Local public servants:

- declare honestly and provide proof of expenses, loss of earnings or material benefits arising from the performance of their duties;

- refrain from actions which procure them professional advantage from public or private entities which they supervise, with which they enter into contractual relations or which they were professionally involved in setting up, and avoid working for such companies when their employment ends, in accordance with the applicable law;
- do not allow the prospect of other employment to create for them an actual, potential or apparent conflict of interest; they immediately disclose to their supervisor any concrete offer of employment that could create a conflict of interest or their acceptance of any offer of employment;
- comply with any lawful rules that apply to them regarding the acceptance of appointments on leaving the public service;
- in accordance with the law and for an appropriate period of time, do not act for any person or body in respect of any matter on which they acted for, or advised, the local authority and which would result in a particular benefit to that person or body unless appointed to that body by the local authority in question or following a delegation of public services to another entity;
- public servants and former public servants refrain from using or disclosing any confidential information which they obtain in their official capacity as public servants unless allowed to do so by law.

6. Training, information, co-operation and transparency

a. Possible action by central authorities

Central authorities:

- provide a general framework for the training of public servants by establishing (if possible in the framework of a suitable institution at regional or local level) a special service providing professional advice, education and training concerning prevention of corruption for public administration, accessible to companies and citizens, by providing a training network or by covering part of the cost of training local public servants;
- prepare legal and management manuals for public servants;
- prepare training modules and distribute them to any training centres which so request, using new information technology;
- provide a legal advice service to any local authorities which so request;
- encourage the sharing of experience among local public servants through seminars, conferences and online discussion forums;
- prepare information tools and make them available to local public servants, preferably using new information technology: statistics on demography, finance and the standard of services in the country's local authorities; management and benchmarking tools for local public services;
- encourage and assist private or local authority initiatives involving the training of local public servants;
- create a framework for, encourage and take part in the various forms of inter-municipal, inter-territorial and international co-operation designed to identify best practices regarding the rights and duties of local public servants;

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

b. Possible action by local authorities

Local authorities:

- provide training for public servants; education and training should be recognised as a high priority both generally and strategically (the improvement of public administration culture and confirmation of ethical values) and as a practical tool for providing information on and explanations for rules and guidelines, for acquiring practical knowledge and skills, for spreading good practices, etc.; it should be recommended to involve judges, prosecutors, police officers, local ombudsmen in the process of education in appropriate forms (lectures, debates, publication of their experience);
- ensure that all information which public servants need for their work is made available;
- collect and forward to the central authorities the information necessary for compiling statistics and creating comparative management tools for local authorities;
- adapt the central authority's training modules to the needs of their own public servants;
- produce and supply to local public servants access to information resources best suited to the particular authority and its staff;

- take part in various experience-sharing activities at local, regional, national and international level regarding the rights and duties of local public servants;
 - establish a special service to provide professional advice and training in the prevention of corruption in public administration and the interpretation and application of codes of conduct;
 - help the local media to accurately cover issues relating to administrative ethics; in any case, local authorities must offer accurate information and respect the presumption of innocence;
 - publish the results of anti-corruption measures taken at local level.
- c. *Possible action by local elected representatives and public servants*

Local public servants:

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

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

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

Senior officers are expected to play a stronger role in maintaining appropriate standards of conduct, and they need to tackle problems arising in a proper way, for example through the tactful handling of cases, with respect to presumption of innocence and requirements of fair treatment.

These demands should be of special concern in local government, namely in smaller communities where the good reputation is a particularly sensitive matter.

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

This thematic dossier presents the best practice on the status of local elected representatives identified by the Steering Committee on Local and Regional Democracy (CDLR). In order to be precise and concise, this best practice has been grouped according to the different categories of actors involved. However, it does not constitute a corpus of recommendations to be implemented in full by all countries. Central and local authorities should select the practices that are relevant to their specific situation.

This dossier was conceived so as to be used independently from the other parts of the model initiative package; however, for better consistency, the papers by individual specialists setting out the relevant issues of concern in various member states with regard to ethical questions (presented in the second part of the package) and the other thematic dossiers should also be consulted.

1. Transparency and access to information

a. *Possible action by central authorities*

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

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

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

b. Possible action by local authorities

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

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

- local authorities inform the community of the measures taken to implement the principle of administrative transparency in order to encourage widespread application of this principle;
- there are disciplinary penalties for breaking the rules on transparency.

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

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

Local elected representatives and local public servants:

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

2. Administrative procedures

a. Possible action by central authorities

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

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

b. Possible action by local authorities

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

- local authorities determine, by general provisions, the criteria for the concession of financial support to private parties; the availability of public money for such support is published; the information connected to the concession of financial support to private parties is always accessible to the public; private enterprises receiving such support are required to report on the use of the money;

- information on administrative procedures and on officers responsible for carrying them out is made public;
- local authorities and their representatives give reasons for their decisions;
- when an administrative procedure begins, the person in charge is specified; his or her name, position and administrative address is supplied to the interested parties at the beginning of the procedure and in any subsequent communication with them;
- the time limit for completion of the procedure and its notification to the interested parties is laid down in general provisions for each kind of procedure and these provisions are made public and posted on the Internet;
- according to the actual circumstances in each municipality, local authorities are allowed to set time limits for responding to requests from individuals and organisations which are shorter than those set at national level;
- failure to comply with time limits gives rise to administrative and/or Court remedies and to civil liability of the administrative services;
- the public servant may be held liable if he or she fails to meet a time limit without good cause;
- local authorities make sure that their records are held such as to be easily accessible and usable by the public and investigation bodies;
- public access to records and obtaining documents and copies is not subject to high fees; in any case, local authorities do not attempt to generate more revenue from such fees than the expenditure needed to ensure public access to records and covering the costs of producing such copies.

Local authorities have a readily accessible procedure for citizens to make complaints and publicise this procedure.

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

Local elected representatives and local public servants: observe administrative procedures and play an active part in improving them.

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

This thematic dossier presents the best practice on the status of local elected representatives identified by the Steering Committee on Local and Regional Democracy (CDLR). In order to be precise and concise, this best practice has been grouped according to the different categories of actors involved. However, it does not constitute a corpus of recommendations to be implemented in full by all countries. Central and local authorities should select the practices that are relevant to their specific situation.

This dossier was conceived so as to be used independently from the other parts of the model initiative package; however, for better consistency, the papers by individual specialists setting out the relevant issues of concern in various member states with regard to ethical questions (presented in the second part of the package) and the other thematic dossiers should also be consulted.

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

The conclusion of public contracts raises specific and very important risks of corruption and breach of public ethics. Public procurement rules should therefore be very clear, detailed and strict and their implementation should be carefully scrutinised by the central authorities.

a. Possible action by central authorities

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

- lays down principles, general arrangements and procedures for the award of contracts;
- determines thresholds above which the public supply procedure must be followed;

- guarantees free competition and openness of public procurement markets by creating conditions which ensure that qualified suppliers of goods and services can participate, regardless of their location or nationality (at least within the EU);
- lays down criteria which disqualify potential suppliers: these may include conflicts of interest, not being of a specified size, a lack of financial credibility or experience in the field concerned or inscription on the national list of disqualified companies and persons;
- set the conditions for inscription on the national list of disqualified companies and persons; such conditions may include a record of failing to respect the terms of public contracts, of offering or accepting bribes, or of fraud or attempted fraud in procedures for the award of public contracts;
- set the conditions for deletion from the national list of disqualified companies and persons; these conditions may include the expiration of a lapse of time set according to the gravity of the fault, offering sufficient conditions of transparency in the management of business, community work, profound changes in the board and other management or supervision structures;
- establishes remedies against public procurement decisions;
- lays down minimum transparency, information and publication requirements for procedures and conditions governing the award of contracts;
- lays down rules to ensure confidentiality and to protect trade secrets and the bidders' intellectual property rights.

Exceptions from the rules of tender are very rare and apply only to fully objective conditions, such as the absence of a competitive market, excessively expensive procedure or emergency; exceptions are motivated and properly supervised.

EU legislation can serve as a model in this field⁹ and be adapted to national circumstances - particularly in respect of thresholds above which the public procurement procedure must be followed.

Central authorities:

- prepare and circulate model calls for tender, specifications, contracts and other documents for use by local authorities;
- provide the necessary technical and financial means for publishing consolidated lists of persons and firms penalised for failing to respect the rules on public contracts;
- encourage local authorities to apply new technologies and particularly the Internet, to public procurement procedures by: making these new technologies available, setting up platforms for transactions and calls for tender, and providing back-bone¹⁰ applications, financial aid for local authorities investing in the new technologies and training for their staff.

9 Information on the European Union rules and procedures can be found on the European Commission's public procurement web-site (http://europa.eu.int/comm/internal_market/en/index.htm); for information on use of new information technologies in public procurement within the European Union, consult the SIMAP web-site (<http://simap.eu.int/EN/pub/src/welcome.htm>).

10 Master application serving as a software platform which can be adapted by local authorities to local needs or to which local authorities may add specific pieces of software which take advantage of the backbone application but offer new facilities to customers.

b. Possible action by local authorities

Local authorities:

- follow public procurement procedure whenever a contract's value makes this necessary, including for contracts of a lower value than the threshold set by law, if justified by economic efficiency;
- set objectives for the selection procedure: quality, cost, lead-times, continuity, risks, sustainable development, job protection, etc.;
- provide sufficient staff to organise the tenders procedure properly;
- limit cases where contracts are extended without calling for tenders;
- clearly lay down the rights and obligations of all contracting parties;
- lay down precise, objective, quantifiable and reliable selection criteria, ensuring as far as possible that the specified objectives will be met;
- provide full and clear documentation on the purpose of the contract, and on conditions for bidding and being selected;
- inform disqualified bidders of the reasons for their disqualification;
- assess tenders solely with reference to the specified objectives and selection criteria;
- publish all the information needed on public contracts and reply immediately to all requests for information on calls for tender in progress; whenever possible, include all the documents in a compendium or single text also available on the Internet;

- before inviting tenders for major contracts, find out what specialists and interested parties think, and what the public want, by organising a public debate, involving locals, experts, business people and representatives of the municipal opposition;
- prepare good conduct agreements to be signed by all those involved in the tenders procedure: the local authority and its members of staff on the one hand; on the other hand companies also, their employees and any subcontractors. These agreements spell out the main rules on transparency, on equal treatment of bidders, on accepting, soliciting or offering undue advantages, and on reporting any fraudulent activities detected; apart from incurring legal penalties, persons or firms which fail to respect this agreement will be debarred from participating, as bidder or organiser, in any future tenders procedure;
- ensure that the necessary information on the candidates and their possible sub-contractors is available and fully examined by the selection panel;
- wherever possible, use the Internet to circulate information on public contracts;
- ensure that members of selection boards or panels have the professional knowledge and personal probity needed to select bidders, assess tenders and award contracts;
- establish speedy, fair procedures for dealing with complaints and appeals.

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

Local elected representatives and local authority staff:

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

2. Delegation of public services to the private sector

The rules on contracts which local authorities conclude with suppliers of goods or services should apply *mutatis mutandis* when they delegate public services to the private sector. Additional, examples of good practice are set out below.

a. Possible action by central authorities

Central authorities:

- prepare guidelines, handbooks and model contracts to help local authorities which decide to delegate public services;
- encourage and help local authorities and their associations to set up special training courses for their staff and for local elected representatives;
- provide a technical advice service for local authorities seeking it;
- determine, at national level, management data which local authorities should collect and submit; these should be detailed enough to permit meaningful management analysis, but fairly easily obtainable;
- on the basis of these data, set up a national benchmarking system, which external auditors and local authorities can use to make a comparative assessment of their service providers' performance; make this system accessible via the new technologies; publicise its benefits, encouraging local authorities to use it;
- involve local authorities and their associations at every stage in the introduction of the benchmarking system: define data to be collected, indicators to be calculated and compared, as well as communication policies.

b. Possible action by local authorities

Local authorities:

- base decisions to delegate public services having regard solely to public interest and on the basis of clear, reliable data, and particularly cost/benefit ratios for users and tax-payers;
- refrain from delegating responsibilities that entail significant exercise of public authority; delegation of services must not jeopardise individuals' basic rights and freedoms, legal guarantees or other good governance principles (including the public's right to be consulted on matters concerning them, the need to give reasons for decisions, and the right of appeal).
- ensure that concession/delegation contracts provide for clear division of risks and responsibilities, clear funding arrangements and strict reporting and assessment procedures;
- define performance indicators, which operators must calculate and report;
- ensure that quantitative and qualitative management objectives are spelled out clearly in the contract;
- when the type of service concerned makes this necessary, protect the public interest and disadvantaged members of the community by including "public service" clauses in the contract;
- compensate operators for these "public service" constraints; compensation should be based not on actual costs, but on output (extent of service, number of users, etc.) and be calculated in advance in a standard manner;

- determine the duration of service delegation contracts with reference to operators' need to develop their policies and recoup investments, but also the need to encourage them to improve their performance and so secure renewal of the contract; a period of five to ten years should usually satisfy both requirements;
- equip themselves to assess performance, either directly (specialised staff) or indirectly (independent management auditors);
- in assessing delegated services, “internalise” the costs and benefits (allow for overflow effects), to gain a full picture of the impact and real cost of each service;
- give private operators responsibility by making them share the various kinds of risk: investment, industrial (costs) and commercial (receipts);
- base decisions on levels of cost coverage from public funds on full and detailed information; these are policy decisions taken in advance and must never depend on results achieved in operating services;
- guarantee operators - public or private – funds which are sufficiently stable and lasting to enable them to accept commitments and fulfil their tasks in the long term;
- make all transfers of public funds contractual, defining in advance the terms on which they are granted, the purposes for which they are granted, and the methods used to calculate them;
- having decided what part of the costs public funds are to cover, fund that part primarily through specific fees or compensation for “public service” constraints (coverage of outlying areas, reduced fares and charges, etc.);

- determine subsidies to offset possible losses before the financial year begins, on the basis of standard costs, not actual expenditure;
- identify any hidden subsidies (premises provided, tax concessions, etc.), allow for them in management assessment, and award them on the basis of clear, informed decisions;
- do not use subsidies to compensate for poor management, but to:
 - share costs between direct and indirect beneficiaries;
 - assist the disadvantaged;
 - promote environment-friendly services;
 - ensure sustainable development and make the town/city more attractive to residents and businesses;
- with the central authorities' assistance, encourage operators to improve their performance by using relevant, reliable indicators (benchmarking) to make comparisons with other operators working in similar conditions, and publishing the results, particularly on the Internet;
- publicise the criteria on which the decision to delegate a service and the choice of operator are based, and also the results of any assessment.

3. Share-holdings

a. Possible action by central authorities

Central authorities establish a legal framework, which:

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

- allows local authorities to invest their savings, but not in speculative, unreliable schemes;
- requires local authorities to record and report their off-balance sheet commitments.

Central authorities:

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

b. Possible action by local authorities

Local authorities:

- do not form or invest in companies unless there are special reasons for doing so, e.g. when the activity concerned is genuinely in the public interest, when the market is deficient (lack of private operators, *de facto* monopoly, abuse of a dominant position), in case of legal obligations, in cases of *force majeure*, as a short-term measure to boost the local economy, as a capital return on investment in infrastructure, as a "business incubator" project, etc.;
- invest in secure savings schemes;
- acquire the expertise needed to assess the management of firms in which they have shares;
- prepare financial data schedules, and use these to keep track of companies' progress and react accordingly;

- ensure that the companies and semi-public undertakings they set up have effective structures, decision-making machinery, and personnel management and accounting systems, on a par with those of private companies;
- keep their economic dealings transparent by disclosing their reasons for investing in business ventures, the results achieved, their off-balance sheet commitments and their risk exposure;
- terminate their participation in firms as soon as their reasons for participating no longer apply, and the economic and market situation permits this;
- introduce rules to provide restriction on their representatives (elected or public servants) serving on the boards and supervisory bodies of companies in order to avoid that such participation would either generate conflict of interest or would threaten the effectiveness and transparency of the work of the body or representative in question;
- as far as possible, make sure that opposition parties are also represented, on a proportional basis, on the boards and supervisory bodies of municipal companies..

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

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

According to law, elected representatives and public servants declare any salary, allowance, in kind or other advantage that they receive for their participation in the boards or other management bodies in companies created or controlled by the local authority that appointed them.

4. Privatisation of public undertakings

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

a. Possible action by central authorities

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

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

b. Possible action by local authorities

Local authorities:

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

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

a. Possible action by central authorities

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

- only non-profit associations whose activities are of public interest may be subsidised;
- local councils award “public interest” status to associations on the basis of minimum criteria laid down by law;
- local authorities may grant associations general operating subsidies and specific subsidies to fund given projects or activities;
- local authorities must ensure that subsidies are properly used;
- the rules governing delegation of public services to associations are similar to those governing delegation to profit-making private-sector operators.

b. Possible action by local authorities

Local authorities:

- award associations “public status” status by reasoned decision of the local council, on the basis of objective criteria: the association's purpose, its activities' usefulness to the community, its past record, and the transparency of its management;
- regularly inspect the accounts of subsidised associations and assess their use of subsidies;
- publish, particularly via the new technology, information on subsidised associations, their statutes, activities and accounts, sums paid to them and the results of assessment;
- in delegating public services to associations, follow rules similar to those applying when such services are delegated to a private operator.

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

Local elected representatives and local authority staff:

- refrain from taking part in local authority decision-making on NGOs in which they have personal interest or of which they are members with management powers, unless they are members as representatives of the local authority;
- do not canvass for or against associations; the council's decisions must be based solely on objective reports on associations which are seeking, or have already received, subsidies; these reports should be public and generally available, particularly via the new technologies.

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

a. Possible action by central authorities

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

- the law determines the permits and licences issued by local authorities and the circumstances in which they are required;
- permits and licences are granted on the basis of objective criteria;
- local authorities must respond to requests for permits or licences within a reasonable time defined by law (generally 30 to 60 days, unless an urgent procedure applies);
- reasons for refusing a permit or licence must be given;
- local authority decisions must be open to appeal, both administrative and judicial;
- in certain areas determined by law, a local authority's failure to respond to a legitimate application constitutes acceptance, once the legal time limit for replying has expired.

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

b. Possible action by local authorities

Local authorities:

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

- provide access to information concerning the process of delivering permits, licences and certificates;
 - issue certificates and permits on the basis of objective, clear, pre-defined criteria;
 - give reasons for refusing certificates or permits;
 - give public notice of applications for permits or licences, especially in fields related to urban planning, and the decisions taken on them;
 - arrange for a council committee, specialised department and/or an external auditor to review the lawfulness and soundness of decisions on applications for certificates or permits on a random basis;
 - consult associations and appropriate stakeholders in order to involve them in the work of bodies set up by the municipality to advise or take decisions on applications for the most important types of certificate or permit.
- c. *Possible action by local elected representatives and local authority staff*

Local elected representatives and local authority staff:

- notify their superiors and/or colleagues whenever they or members of their family have a personal interest in an application for a certificate or permit, and take no part in discussing or deciding on this application;
- make no attempt to exert private influence on those responsible for deciding on applications; except when personal data on applicants have to be protected, the information on which decisions are based should be public.

7. **Management of municipal assets**

a. Possible action by central authorities

Central authorities:

- pass laws which clearly define the characteristics of public property¹¹ and determine the procedure for transfer from public to private ownership;
- help local authorities to train their staff in asset management;
- establish coherent benchmarking systems, ideally available on-line, which can be used to compare performances between municipalities and so secure greater transparency and efficiency.

b. Possible action by local authorities

Local authorities:

- acquire the expertise needed for effective economic management of their real estate assets by recruiting or training staff, contracting out, or calling in professional consultants;
- inventorise their real estate assets and classify them with reference to variables which are of relevance for management purposes (for example, nature, use, technical characteristics, maintenance parameters, insured value, etc.);
- set up data collection systems enabling them to gauge the social impact of their management;

11 In legal systems which distinguish between public and private property.

- make regular assessments and inspections or have this done by professionals;
- alongside encumbrance accounting systems, introduce accounting systems which provide reliable information on expenditure and income arising from management of these assets (cost-accounting systems, management control systems, in-house financial information systems);
- participate in the benchmarking systems set up at national level;
- lay down clear, transparent rules on the sale and rental of municipal property; transactions with an economic purpose should be governed by the rules on public contracts; transactions with a mainly social purpose should be governed by rules which ensure that they benefit the least well-off, while respecting sound management principles;
- consult associations and appropriate stakeholders in order to involve them in the work of committees responsible for giving opinions or taking decisions on the sale or rental of municipal land and buildings;
- never take decisions with implications for urban development (transfer of property from public to private ownership, reclassification of land to permit building on it, establishment of infrastructure and services, etc.) solely for the purpose of optimising asset value or asset income, but always in the public interest.

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

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

APPENDIX

Links to websites on public ethics

1. Council of Europe LOREG (Local and Regional Government) database: www.loreg.org.

This database includes national legislation concerning local and regional government in Council of Europe member states, as well as Council of Europe documents related to this field. Advanced search facilities offer the possibility to retrieve information easily.

2. Council of Europe Group of States against Corruption (GRECO): www.greco.coe.int

GRECO is an anti-corruption peer review body which evaluates the compliance of members states with undertakings contained in the legal instruments of the Council of Europe to fighting against corruption. It adopts evaluation and compliance reports which are normally public. The GRECO website also contains an exhaustive list of useful links.

3. United Nations Office on Drugs and Crime:
http://www.unodc.org/unodc/en/crime_convention_corruption.html

The UNODC has a global programme against corruption which prepares useful studies and publications e.g.

- The Anti-Corruption Tool Kit
 - The Findings of the National Conference for Cleaner Public Life (Budapest March 2003)
4. OECD: www.oecd.org.

In addition to the focus on multinational companies, the site includes useful information regarding combating corruption in the public procurement process.

5. European Union: www.europa.eu.int

- There is an ongoing programme of developing legal instruments and policy documents. Most recently, the European Commission issued a Communication which gives a broad overview of developments in relation to corruption, and indicates priorities for the future. It is entitled "Communication of the Commission to the Council, European Parliament and European Economic and Social Committee"
- The EU Anti-Fraud Office (OLAF) is a useful source of expertise on the practicalities of developing administrative measures to prevent corrupt and fraudulent practices in organisations

6. European Institute of Public Administration (EIPA): www.eipa.nl. The EIPA has developed a Common Assessment Framework (CAF), which is a means of communication and benchmarking among the public administrations of EU Member States. When addressing the objective of improving an organisation's efficiency and effectiveness, an additional benefit gained is that the opportunity for corruption and fraudulent practices either to occur or to remain undetected, is substantially reduced. The CAF is particularly focused on the needs of local public bodies.

7. Transparency International (www.transparency.org) is an NGO which is mainly focused on national aspects of corruption affecting business interests etc. It has chapters in a range of countries which provide access to information on anti-corruption measures and case studies which may be of interest to local public bodies.

II. PUBLIC ETHICS IN EUROPE: OVERVIEW

A. **Status of local public servants and conditions of office** (*Contribution from Mrs Taisia ČEBIŠOVÁ, Czech Republic*)

1. **Situation**

a. Public servants are the key element of public administration. To be able to play its role in a democratic society public administration must have suitable personnel to carry out properly the tasks assigned to them. Legal status and employment conditions of public servants constitute important factors for achieving these goals. Recently, especially with regard to corruption problems, the means and ways for strengthening public ethics have become high priority at all levels of public administration and in relevant international organisations. The Council of Europe has for a long time played an important role in formulating the principles of good administration; its last documents concerning legal status of public officials, legal status and working conditions of local authorities' staff and codes of conduct for public officials (see point 6) should be given special attention in our context.

b. There are two main systems regulating legal status of public servants in Europe - statutory and contractual. The latter leaves more room for the organisational independence of local government authorities, while the former presents more uniformity, allowing the guarantee of equal treatment and the uniform protection of certain fundamental rights. These qualities are in contract-based systems promoted by co-ordinating local government authorities, through negotiations (collective bargaining). Statutory systems usually include disciplinary responsibility.

A status fixed by law reduces the risk of conflict between local authorities and their staff. This aspect, together with a greater degree of stability, makes this model better adapted to a period of political and economic transition.

Notwithstanding the type of legal regulation, the basic principles and requirements of equal treatment must be safeguarded. In our context this concerns in particular the right of access to local government service, fair employment conditions, welfare coverage, the right to legal protection and trade union (participation) rights. Public servants are obliged to act in compliance with the rule of law, political neutrality and impartiality and to refrain from any action incompatible with their functions or loyalty to public service. Accountability and civil and criminal liability are essential elements of public service status.

In the case of local government special stress is laid on the obligation of loyalty to democratically constituted local authorities, respect for the public and public accountability.

In both systems the lack of more concrete and in some respect more detailed rules of conduct can be seen; an improvement of the situation is sought by means of introducing codes of conduct. Codes of conduct are not intended to replace legislation. By setting out clear and more detailed rules and guidance for the conduct of public officials they can help implement principles and rules set by legal instruments and foster the public administration culture and ethics further than minimum legally secured standards are able to do.

2. Problems

a. Professional performance and ethical standards of public servants play a decisive role in achieving effective local democracy goals. A very broad set of problems is indicated by the public criticism and citizens' complaints concerning the large scale deficiencies in public servants' attitudes and behaviour, ranging from minor impoliteness to serious breaches in legal rules, good administration and moral standards. The situation more or less varies in different countries, regions and municipalities according to type, size etc..

Special concern was recently shown by the public and responsible authorities over the character and growing intensity of conduct where legal duties and principles of good administration had been violated, demonstrating corrupt motives or allowing corrupt motives to be suspected. Generally, people are little aware that moral aspects are conditions for lawful conduct and proper performance of public administration.

Ethics in public administration is a complex problem, rooted in the general ethical standard of a particular social entity, in the family background, education etc. of public servants and interconnected with employment conditions, the material and social status of the public service and with the moral climate of the particular local government service. The response to ethical questions must reflect this knowledge.

b. The following aspects of public service adversely affecting local government missions and tasks can be listed as follows:

i) factors connected with public servants' status:

- unsatisfactory material conditions and social security;
- inadequate legal guarantees for the status and employment conditions of public servants, and excessive use of discretionary powers in decisions relating to personnel matters;
- in some cases excessive political interference in personnel management decision-making („the other side“ of public staff accountability to the elected representatives);
- inadequate public support, low rating of public servants' social status;

ii) factors connected with the organisation of public services:

- competences and duties are not clearly defined;
- little in the way of public and personnel management leading to the neglect of respective senior officials' duties, particularly their supervisory responsibilities;

- conflicting local and central government competences, e.g. where delegated competencies are exercised by the staff nominated and managed principally by local government, but which are partly supervised by the state authorities (for instance when the approval of a nomination is required or when control over the execution of the relevant part of a task is exercised)
- inadequate professional assistance for local authorities and public servants with special problems such as corruption, of which some local authorities – or at least in some forms and intensity – have little experience.

Unsatisfactory interpersonal relations in service units and poor knowledge of the staff's situation by their superiors and personnel managers – subject to the necessary respect for privacy – lead to serious employment or personal problems which only become apparent, in some cases, once the situation has become critical.

3. Risks

Local authorities cannot properly carry out the tasks assigned to them without the qualified personnel meeting appropriate standards of integrity and conduct. An environment that is unsound legally and materially together with poor organisation represents a threat to the effective, lawful, politically neutral and impartial performance of public authorities' tasks.

Both unsolved or inadequately solved problems present substantial risks; in particular they can:

- result in worse performance and lower effectiveness of local public service;
- frustrate public servants and make them less resistant towards corruption;
- undermine citizens' confidence in democratic institutions.

As concerns policies and measures, it would be useful to recall that:

- a reasonable number of clearly stated rules can be acquired and truly observed;
- too wide and detailed regulation shares the danger of too casuistic legal regulations - inescapable gaps lead to avoidance of the law (while more detailed instructions can be justified in special cases, e.g. guidelines concerning corruption);
- attention is to be paid to consistency, steadiness and practical concrete results.

The risk of over-promoting new approaches should be avoided. If too many expectations are made of programmes that consequently fail to be steadily carried out this may exacerbate both the public's and public administration's frustration as well as lead to scepticism about such activities.

4. Objectives

Local government staff exist to serve the local community and to ensure implementation of local government goals and tasks. The ultimate objective of suggested policies and measures therefore is to ensure proper functioning of the public service and to preserve and enhance public confidence and trust in the integrity, impartiality and effectiveness of local administration.

To achieve these aims it is necessary to motivate public servants to act lawfully, ethically and loyally; to be honest, impartial, conscientious, fair and just, and fully devoted to their public functions; to act with political neutrality, only in the public interest and with due respect to citizens and courteously; to observe principles of good administration and to promote public ethics.

The following purposes should be taken into special consideration:

- to ensure adequate material and employment conditions of public servants;
- to enhance their legal certainty (legal guarantees and legal protection);
- to specify standards of integrity and conduct to help public servants meet standards of public service;
- to prevent unlawful and unethical behaviour of public servants; to foster accountability, supervision and responsibility within the public service;
- to foster transparency, reduction of discretionary and arbitrary behaviour and anonymity (particularly desirable in local government where the distance between authorities and citizens should be minimised);
- to improve communication with citizens, to inform the public what they are entitled to expect from public servants.

If we can agree that the rather one-sided focus on productivity and efficiency contributed to the current problems and overshadowed, to some degree, public administration culture and ethical standards, then it is necessary to look at these problems in their context, to put moral values and moral integrity in their proper place, to foster, inter alia, a more balanced administrative culture and to adopt the managerial attitudes for meeting these demands.

5. Measures to be taken

a.i. At national – central government – level

- to make provisions of the Model code of conduct for public officials (the Code) legally binding on civil servants and ensure their observance in state administration and in relations between central, regional and local government ;

- to ensure that the Code's provisions are legally binding on local government staff through statutes regulating public servants' status or which provide assistance to authorities responsible for regulating the terms of employment of local government staff;
- to monitor and if deemed inadequate, to adopt further legal provisions in respect of the civil and criminal liability of public servants ;
- to afford appropriate legal protection to public servants against the misuse of power and against malpractice by their superiors ;
- in particular, to guarantee the protection of civil servants against unlawful dismissal, whilst also providing the possibility for public authorities to dismiss staff members for misconduct (with legal remedies against the misuse of power and with respect had for the need for a reasonable degree of stability within the public service);

a.ii. At local level

- to define clearly the responsibilities and duties of every civil servant ;
- to ensure that the terms of reference incorporated into local regulations and employment contracts comply with the basic principles and imperatives of public services (see point 1.2);
- to adapt the Code provisions to concrete situations and the needs of particular local authorities;
- to include Code provisions in the terms of employment of local government staff ;

- to take all the necessary practical steps for ensuring implementation of the Code provisions, particularly in relation to training and supervision.

Many other measures concerning public officials' duties and legal responsibilities, and in particular those connected with legal procedure (some instances of conflict of interest, transparency, confidentiality, impartiality etc.), form topics of other themes having been analysed by the LR-PE Committee.

b. Initiatives to be considered

- To set up (probably in a suitable institution at regional level) a special service for companies and citizens, providing professional advice, education and training on preventing corruption in public administration.
- To encourage local media to report on topics connected with public ethics.

c. Proposal

To consider continuing CDLR activities on the legal status and employment conditions of local authorities' staff in Eastern Europe (CDLR report No. 62) with regard to principles concerning the civil service (Rec. No. R 2000(6) and Code (Rec. No. R(2000)10 - to be undertaken by the LR-PE Committee.

d. Additional remarks

- i) Though the measures should be as practical as possible, it is important to recognise that an effective solution to the above-mentioned problems, where results are substantial and long-lasting, cannot be found without an accompanying change in participants' mentality and attitude. This would mean, inter alia, that within personnel management, a broader understanding of moral integrity is used (in the Civil Service, moral integrity currently extends no further than having a clean criminal record).

ii) Education and training

Education and training should be recognised as a high priority both in the general, strategic plan (improving public administration culture and confirming ethical values) and as a practical tool for providing information, explaining rules and guidelines, acquiring practical knowledge and skills, spreading good practices, etc. The involvement of judges, prosecutors, police officers, local ombudsmen is recommended in the education process in appropriate forms (eg lectures, debates, publication of their experience).

iii) It is primarily up to elected representatives and senior officials (with the special responsibility of mayors and chief executives) to establish in concrete circumstances an atmosphere of confidence, to give support to public officials' legitimate efforts and to assist where possible in solving their difficulties. Senior officials must be compelled (and evaluated accordingly):

- to acknowledge the need for their behaviour to be exemplary ;
- to exercise consistently their supervisory functions and apply or initiate disciplinary and other kinds of procedure ;
- to motivate staff positively, not only materially but also in terms of morale (appreciation expressed clearly and without delay for minor and common events). An employee that feels unduly underestimated is more likely to look for some kind of compensation, including illegal forms of compensation.

As superiors are expected to play a much stronger role in the whole process and particularly in the prevention and sanctioning of corruption, they must be well acquainted with relevant methods, e.g. how to deal with reports of corruption, how to handle cases tactfully, with respect for the presumption of innocence and requirements of fair treatment. These demands should be of special concern in local government, namely in smaller communes where the good reputation is a particularly sensitive matter.

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**B. Means available for putting local democracy into practice
(electoral campaign funding, funding of political associations
and parties at local level, etc.)**
(Contribution from Mr Paavo NIKULA, Finland)

1. Situation

In the '90s, the Council of Europe produced reports on the funding of political parties and election campaigns. These revealed that, in one way or another, almost every Council of Europe member state regulates funding for political parties and their members. The basic principle is of public disclosure. In this respect, Europe takes a softer approach than the USA, where controls are detailed and aimed at guaranteeing transparency and public disclosure of funding. Furthermore they are supervised by a special Commission, and non-compliance is a criminal offence. Extensive literature on party funding has appeared in various countries.

In Europe, political parties are actually entitled to receive both public and private funding, but both forms must be open to public scrutiny. Election campaign funding relies on a combination of funding from public, private corporate and personal sources. In some countries (e.g. France and Germany), private election campaign funding also entitles the donor to a tax deduction. There are also arrangements which limit the annual or election-specific amount of campaign funding on either a donor basis or a case-by-case basis. The European Parliament's proposal for new legislation on MEP elections (A4-0212/98) would allow EU Member States to set a ceiling on candidates' election campaign costs.

According to a Finnish report (Committee report 1999:6), transparency is viewed as the precondition for credibility, and the more emphasis on individual candidates an election involves, the more extensive and detailed regulation it warrants. In countries where the lists of candidates are put together and decided by political parties the regulation usually applies only to the parties. The same Finnish report notes that the following aspects are among those subjected to regulation of election campaign funding in various countries:

- an upper limit (ceiling) on total campaign costs;
- an upper limit on private donations;
- a prohibition on accepting campaign donations from abroad;
- a prohibition on donations from certain quarters (e.g. banks);
- a prohibition on donations in a (suspected) case of corruption;
- a prohibition on accepting a private donation (especially in connection with acceptance of public funding);
- a prohibition on stating the donor in the case of small donations, appealing to protection of privacy;
- a prohibition on funding through intermediaries;
- a quantitative limit, or complete ban, on accepting unidentified donations;
- tax arrangements, especially the right to tax-deduct election campaign support;
- arrangements under criminal law, especially criminalisation of vote-buying;
- absolute and exclusive regulations on procedures for election campaign funding;
- entry of election campaign funding into accounts, and related publication duty.

According to a survey made by a Council of Europe working group on corruption in the summer of 1999, election campaign funding is usually regulated, and only four countries form exceptions (more recently at least one of these has passed related legislation). Because this was actually a Council of Europe report, it is not referred to further here, and I shall merely note generally that the focus of regulation seems to be on funding for political parties and related organisations, while the legislation pays less attention to individual candidates, though the latter are not completely disregarded. Regulation applies both to funding and to the financial connections of those elected to political office, such as salaried functions, any substantial assets from business and financially significant agreements (e.g. on debts and liabilities). The main emphasis of regulation is on achieving transparency rather than on laying down prohibitions. How detailed the regulation is varies greatly from one member state to another. It mainly applies to parliamentary elections and politicians at the national level.

2. Problems

The drawbacks of the present situation are the loopholes in the regulation. It is always ultimately people who make political decisions, not organisations or institutions (i.e. parties and other political organisations, or other statutory elected councils, etc. and other bodies of trusted individuals that they set up). In fact, the focus should be on those who are candidates for and currently occupying political positions of trust. Equally, the relationships between such people and their political parties and other organisations, and between political institutions and the authorities and individual civil servants preparing and carrying out political decisions also probably deserve scrutiny.

Problem solving at local and regional level seems to have attracted less attention than at national level. Yet it is at local and regional level where decisions are usually taken about the things closest to people, such as community planning and land use, transport services, basic education and health care, and other day-to-day matters. These decisions affect people of all ages. In many cases, such as land use, procurements and building, there are also substantial financial inputs at stake which involve the private financial interests of companies and other enterprises. Local and regional solutions to these issues are financed out of public funds generated through taxation.

The situation in Council of Europe member states varies greatly. This is understandable and justifiable in itself, but a certain minimum level must still be considered desirable.

3. Risks

The political culture is not static. It has a strong tendency to change, which can be negative or positive, depending on the transparency of the local political scene and how completely the electorate can monitor what is going on. The political and official decisions made at the regional and local level often generate private profits or losses that tend to create pressure to bypass public legal procedures and proper justification for decisions. Concealed financial connections often lead to solutions in which the political programmes presented to the electorate fail to be carried out, and which do not correspond to their needs.

As far as the electorate and others affected by politics are concerned, secretive local and regional politics indifferent to their opinions estranges them as voters, further contributing to the distortion of political activity. At worst, the result is that political institutions and the authorities designed to serve them become instruments fulfilling the economic ambitions of faceless private parties exploiting the public decision-making process.

In the international co-operation that the Council of Europe at its best represents, many ways of sustaining a healthy situation and taking new steps forward can be found. The exchange of experiences with other member countries furthers the decision-making process needed to get the necessary rules and regulations in place in individual member countries. Without such collaboration, European practices become fragmented, undermining the very political culture that is so vital if the European Convention on Human Rights is to become a reality in all member countries.

4. Objectives

Politics means harnessing public opinion in implementing goals shared and felt to be important by various groups, by exercising public authority, legislation and other regulations, and through budgets funded out of taxes and public charges. The actions of political decision-makers therefore cannot, and should not, be regulated by prohibitions and orders. In essence, politics is a public activity, and public scrutiny is the most effective and workable way of watching over it. This is also a fairly low-cost method, because it is carried out mostly by the media, without any public funding.

In politics, trust and support must be won one election at a time, but the continuity called for if political parties are to operate requires this trust and support to be gained repeatedly. For this reason, people aiming at political office must be required to reveal all the connections – especially financial ones – that can justifiably be thought to have an influence on the decisions they make or on the electorate's views on the agenda that guides their actions.

Political organisations and officers also have a right to privacy, of course, but this is more limited than the right enjoyed by those with no such ambitions or in no position to decide on behalf of the rest about common affairs. The level of public disclosure must therefore be judged from the viewpoint of the enlightened citizen, taking account of the need to know how, and by whom, a candidate's and decision-maker's election costs have been funded beyond a certain reasonable level that can be understood to be personal funding. It is likewise important to find out such persons' connections – whether these might undermine their ability and desire to keep the promises they have given to voters and are supposed to fulfil as members of the political institution concerned.

Research and analysis show that financial support for political activity can come from very different sources and in highly variable amounts. Though these sources might well provide the most reliable information on the real motives for making a donation, it is questionable whether obtaining such information would be successful. Consequently, the attention must focus on the recipients, i.e. the parties and the people they put up as candidates and who gain positions of trust.

The aim is to obtain a 'full-length portrait' of candidates or elected officers that will help us both to understand their various motives for taking decisions and to prevent them from involvement in decisions where they are disqualified because of their personal interests, while upholding everyone's fundamental right to protect their core privacy. This means achieving a balance between opposing interests.

In the government structure, the authority of bodies at the local and regional level is usually laid down in the Constitution and other legislation, unlike that of central government itself, which operates by virtue of its own sovereignty. This means that exercise of authority at the local and regional level can also be watched over on a legal basis. The means available for such scrutiny comprise the right of appeal against decisions taken by these bodies in which they have exceeded their authority or have proceeded incorrectly, and the fact that persons in elected political office, as well as civil servants, are required to be impartial.

Ultimately, the aim is to achieve at both the local and the regional level an administration of political decision-makers that serves local people in accordance with the key principles of good administration: the right to be heard, the right to public disclosure, the right to obtain a justified decision, and the right to appeal to an impartial judicial organ. In many Council of Europe member countries, good administration has in fact been made a fundamental right, side by side with the right to due process. But fundamental rights also underlie political activity: freedom of speech and association, and the right of participation are ways in which people can influence matters affecting their own lives. Further: private donors giving money to political parties also have the right to spend their own money as they see fit.

By far the most important object of political donations is elections, though money is also given for the offices needed by political organisations and the people who work there. In elections, funds are needed for advertising parties and candidates, for their media appearances and other campaigning. In the case of offices and employees, money is needed for rent, office equipment and salaries.

For these reasons, rules and regulations must not prevent the implementation of fundamental rights, while also guaranteeing political activity where the decisive element in political decision-making is the relationship between the electorate and those elected, rather than the latter's relationship with individual economic actors. In the name of fundamental rights, such relationships must be possible, but they must be open to public scrutiny.

5. Measures to be taken

The following outlines various possible approaches, from which certain measures could be selected to constitute the required minimum level. The concept 'party' is understood broadly to mean not only officially registered political parties but also all associations formed to win support at elections or to back one or more electoral candidates (e.g. youth parties, women's and pensioners' groups, etc.). Because party funding has been dealt with at length within the Council of Europe, I only make passing reference to this, and concentrate primarily on recommendations for individual candidates.

- i. Candidates are required to disclose their election campaign funding if they are elected. If the electoral system recognises election as deputies, those attaining this status also have to disclose their funding. A lower limit can be set above which funding must be disclosed. This varies from country to country, but one possible rule of thumb in local and regional elections could be wage earners' average monthly earnings. In parliamentary and presidential elections the limit could be higher, e.g. double.

ii. Public disclosure takes place by providing some authority, such as the body in charge of the election, with information on funding within a fixed period (e.g. two months from publication of the election results). The authority then makes the information available to the media. Tax exemption for donations cannot be a purpose in itself, but may encourage public disclosure.

iii. Public disclosure also includes any individual donations received that exceed a certain lower limit (this limit may be the same as that described under point i. above). The names of private individuals are not revealed, but those of companies and other corporations giving donations that exceed the limit are.

iv. It is probably unnecessary to specify sanctions under criminal law etc. for failure to disclose. It is enough to make information on those concerned publicly available. Consequently, information usually comes out only after the fixed period set, but failure to comply then affects those concerned and their parties while they are actually in office, and specifically at the next election. Possible sanctions could be various financial consequences or even forfeit of the position won in the election for a set period or completely, and loss of the right to stand in the next election.

v. Candidates also commit themselves to reveal certain connections if they are elected. These could be assets in excess of a normal home and contents, fee-paying duties and positions of trust in companies. The idea is that a person elected to office should not be involved in making decisions on any matter that would affect his or her personal finances. Public disclosure in this case also applies to persons chosen for bodies of a political nature but not in direct elections, or at least the most important of them, e.g. on city administrative boards.

vi. Disclosure within the conditions set for campaign funding and connections is required for the entire period for which a person holds office. Any changes, or at least any additions, must thus be disclosed separately.

vii. Public radio and TV stations (assuming they exist) provide all those standing for election with a quota of programme time, which may vary based on the current party-political breakdown (on the political support won earlier by the participants).

viii. Provision for appeal to a court against decisions taken by local and regional political bodies (councils, city administrative boards and the like) is made if the decision exceeds the body's authority or is contrary to the procedure laid down for taking the decision. The political appropriateness or feasibility of the decision is not grounds for appeal.

ix. Legal provisions are issued on the disqualification of persons in political office. The grounds for disqualification are more limited than for civil servants. A person in political office is certainly disqualified from involvement in processing any matter that directly affects himself/herself or a close relation.

x. The public and private donations received by political organisations for their rental, office and salary costs are disclosed in the same way as election donations and other financial support of the same kind.

xi. The duties and authority of civil servants and those in political office at the local and regional level must be precisely specified in order to keep decision-making based on political objectives and arguments distinctly separate from administration covered by legislation.

xii. Those on political councils and in other similar positions of trust at the local and regional level receive a fee from public funds. This fee can be set by the body concerned or made subject to the approval of an impartial outside body. Information on fees is public.

xiii. All these obligations are prescribed in the national legislation, though some, such as public disclosure of election campaign funding, could be implemented through voluntary agreements between the political parties which would be made public.

xiv. The Council of Europe makes recommendations to member states in order to facilitate the passing of such legislation.

xv. The possibility of adding an article on good administration (see outline under point 4 above) to the European Convention on Human Rights could be considered, since defining it as a human right would offer strong support to efforts to raise the level of political ethics and fight corruption in all member countries.

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C. Internal/external monitoring
(Contribution from Mr Bernard LEVALLOIS, France)

1. Situation: decentralisation as a new risk factor for local public ethics

The general movement towards decentralisation seen in most European countries is resulting in greater powers and responsibilities for local authorities and an increase in both their operating and investment budgets. At the same time, the reduction or abolition of supervision by central authorities is strengthening the autonomy of local authorities (reduction or abolition of a priori monitoring of their decisions).

This change is in line with the principles of the Council of Europe's European Charter of Local Self-Government, Article 4(3) of which provides that "public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen".

However, when local authorities are strengthened in this way (increased powers and responsibilities, budgets and autonomy), there is an increased *risk* that ethical standards may be breached – a risk inherent in any management of the affairs of others and, more particularly, in any management of public affairs and funds. Moreover, as already emphasised in several documents, potential breaches of local public ethics entail a subsequent even more serious risk: that citizens may distrust their elected representatives and disengage themselves from the management of their own affairs. In short, decentralisation – the objective of which is to further local democracy – may, through a kind of internal distortion, actually reverse its development.

2. The objective: to reduce the potential for breaches of public ethics without reducing local autonomy

The risk that local self-government could bring about its own destruction must be taken seriously. However, it would be a grave error to use this as an argument in favour of reversing the decentralisation process and reinstating a priori supervision and monitoring by central or devolved authorities - practices which have been abolished or reduced.

As Recommendation No. R (98) 12 of the Committee of Ministers states “the experience of many member states shows that it is possible to make the systems of supervision evolve in a way favourable to local self-government without endangering their effectiveness”.

The main objective of Council of Europe recommendations must therefore be to reduce to a reasonable level – the lowest possible level – the potential for breaches of public ethics which is inherent in decentralisation, *by means compatible with the very principle of local self-government*.

3. Identifying the main potential breaches of local public ethics

The main *categories* of potential breaches of public ethics associated with local self-government appear in the European code of conduct for local and regional elected representatives put forward by the Congress of Local and Regional Authorities of the Council of Europe. They are summarised here, in similar terms:

— *Patronage and favouritism*

This type of breach of public ethics involves elected representatives performing their functions or using the prerogatives of their office “in the private interest of individuals or groups of individuals, with the aim of deriving a direct or indirect personal benefit therefrom”. The risk of this type of breach exists in most of the spheres of activity of local leaders, in particular:

- the recruitment and management of staff;
- the payment of aid and subsidies to individuals and associations;
- public contracts with traders and business people;
- town planning management (regulations and individual decisions);
- property transactions, etc;

The reward for favouritism may be a benefit – financial or in kind – given personally to one or more elected representatives or their political groupings. Such rewards, which constitute irrefutable proof of favouritism, are not easy to detect because they do not appear in the local authority's accounts.

— *Using powers for personal advantage and conflicts of interest*

Elected representatives may be tempted to use their powers (their own decision-making power or their right to participate in deliberative assembly debates and votes) to make decisions on regulations and on individual cases from which they gain a direct or indirect advantage, or to ensure that such decisions are made by others. This kind of breach may occur in the areas previously mentioned.

— *Misuse of assets (or breach of trust)*

The misuse of assets is a type of breach of integrity which overlaps with the case just described. It involves the use of the authority's movable or immovable property for direct or indirect personal ends (for example, private unauthorised use of vehicles or accommodation).

— *Misuse or irregular use of delegated management*

These different breaches of integrity by local elected representatives may occur either in the direct management of public services by the local authority or in the management of these services as delegated to subsidised associations, public enterprises, semi-public companies or even private companies. In some cases, the aim of this kind of delegated management may be to evade the stricter rules governing local authority self-management and the monitoring to which it is subject (particularly in relation to staff recruitment and remuneration, including the issue of fictitious jobs, and in relation to contracts).

4. Measures to be taken

The experience of several European countries, including the recent experience of France – its strong tradition of centralisation notwithstanding – suggests that potential breaches of public ethics in local authority management can be kept at an acceptable level by the public, while the authorities in question retain their autonomy. This can be done in the following ways, in particular:

- by subjecting authorities to the law and making arrangements for checking compliance;
- by ensuring that democratic elections of leaders take place at sufficiently frequent intervals;
- by allowing pluralist assemblies which are democratically elected at sufficiently frequent intervals to monitor leaders during their term of office;
- by allowing democratic monitoring thanks to public access to information, particularly administrative and budget documents;
- by organising independent external monitoring;
- by organising effective internal monitoring.

The proposals below relate to the setting up of external and internal monitoring.

a. External monitoring

- The objectives of external monitoring

The aim of external monitoring must be to give local authority leaders and all interested third parties – mainly the public and the central authorities – reasonable assurances that the authority is managed in conformity with:

- the law applicable in the different areas that fall within its remit;

- the general and specific budget and accounting rules applicable;
- generally accepted principles of economy, efficiency and effectiveness;
- the public ethics principles set out in the code of conduct proposed by the Congress of Local and Regional Authorities of the Council of Europe and laid down in the positive law of the country concerned.

The object of external monitoring is not, however, to give an opinion on the *appropriateness* of management choices made by local authorities. Assessment of these choices is a matter for public opinion and the electorate only.

- The scope of external monitoring

In the light of the proposed objectives, it is advisable for external monitoring to cover all aspects of local authority management, but it should be carried out a posteriori.

However, the organisational independence of the external monitoring body, particularly from the central executive authorities, must allow it to fulfil an advisory function. The conditions for and limits on a priori intervention by the external monitoring body must be laid down in high-level instruments covering their rights and status, so that the advisory function remains compatible with the principle of local authority autonomy.

Specifically, it is advisable that external monitoring:

- include annual certification of the local authority's accounts;
- include a management audit, broader than the accounting and finance audit. An "extended" audit of this type must be conducted at sufficiently frequent intervals, which are to be determined according to the size of the local authority;

- also be applied to subsidised entities or those in which the local authority holds the majority of the capital or the predominant managerial power - and to the accounts for public services where provision has been delegated to private companies - in conditions which allow the monitoring body to verify, on the basis of documents and on the spot, the accuracy and reliability of the accounts produced by the company in question.

It must be pointed out that, although the external monitoring body would be forbidden to give an opinion on the appropriateness of the local authority's decisions, this does not mean that it could not make comments on the decision-making process and the coherence, particularly in financial terms, of the decisions made.

- The organisation of external monitoring

In order to achieve the twofold objective of efficiency and respect for the autonomy of local authorities, external monitoring must be independent in two respects: independent of the authority being monitored and independent of the central authorities.

Independence from the authority being monitored gives the central authorities and the public an assurance that monitoring will be conducted without leniency or compromise. This independence justifies the reduction or abolition of supervisory monitoring by the central authorities.

Independence from the central authorities gives local authorities an assurance that the monitoring applied to them, though not lenient, is neutral and objective, and that its conclusions can only serve their interests, which are well understood (assuming, obviously, that effective management is also management that complies with the law).

This twofold independence does not impose a single way of organising the external monitoring of local authorities. However, experience has highlighted the following principles:

- the obligation on local authorities to undergo external monitoring and the main arrangements for carrying this out must be laid down in standard-setting instruments of as high a level as possible in the hierarchy of instruments defining the powers and responsibilities of local authorities and the rules for their operation. Depending on the country, these rules fall either within the remit of central government, federated states or regions, or within a shared remit.
- The conditions for appointing the authority responsible for external monitoring must guarantee its independence. They must therefore be laid down, as for the previous point, in instruments of as high a level as possible in the hierarchy of instruments applicable to local authorities.
- The authority responsible for external monitoring must be shielded from the political ups and downs which affect both central authorities and the local authorities undergoing monitoring. It is therefore advisable that the monitoring authority be a permanent body, or at least appointed for a set, long period, longer than electoral terms of office. The minimum period should be 10 years.
- The external monitoring authority must provide pre-defined high-level guarantees of competence and impartiality.
- If the external monitoring authority is made up of a college, the foregoing recommendations apply to all members of the college.
- The discipline required of the members of the external monitoring body must be enforced by a body which is independent of the authorities undergoing monitoring and which provides every guarantee of impartiality.
- The monitoring authority must have its own budget, set directly by the assembly that adopts the budget for whichever entity funds the monitoring authority. This budget must be calculated so as to provide the monitoring authority with the necessary resources, both human and material, to carry out its functions.

- The external monitoring authority must be free to determine its own monitoring programme and schedule.
- Professional monitoring standards must be laid down in high-level instruments, with reference to generally accepted international standards, and should include a mechanism allowing the entity undergoing monitoring to present its arguments against the observations of the monitoring body.
- If private sector audit professionals are asked to carry out monitoring, the relevant decision, monitoring standards, budget and, in general, everything relating to the conduct of the monitoring should be adopted by an independent authority - preferably a public authority - which meets the criteria listed above.
- Bearing in mind that the funds and services being audited are public ones, the body responsible for external monitoring of local authorities must have powers of investigation, on the basis of documents and on the spot, that are broader than those enjoyed by bodies carrying out external monitoring of private companies. It may be advisable to make obstruction of external monitoring a criminal offence. The external monitoring body's powers of investigation must, however, be restricted to what is necessary for monitoring that is still of an administrative nature rather than a criminal law matter.

In addition to independence, the public nature of the conclusions of the monitoring process is vital to the effectiveness of external monitoring. Here again, the arrangements for communicating these conclusions to the public should preferably be laid down in high-level instruments. It is recommended that these arrangements be based on the following principles:

- It is up to the external monitoring authority to determine and publish the results of its monitoring, which are established after the monitored entity has had an opportunity to put forward an opposing point of view.
- The executive or the assembly of the monitored entity – even if it is the main addressee of the results of the monitoring process – may not prevent the external monitoring body from publishing the results.
- The published results must also include the responses made by the monitored entity.

For external monitoring to be effective, the authority responsible for it also has an obligation to bring to the attention of the criminal courts any facts constituting a criminal offence that have been noted during the monitoring process.

This provision is important: central government or federated states with responsibility for organising the operation of local authorities may accept reduction or abolition of a priori monitoring only if they are assured that the independent external monitoring which replaces supervisory monitoring is itself subject to the law and also serves the purposes of the law.

b. Internal monitoring

- The objectives of internal monitoring

In return for their autonomy, local authorities must assume full responsibility for their own management, whether it be responsibility to the electorate, to the public, to the administrative or civil courts, or to the criminal courts.

As is the case for all organisations, it is therefore in the interests of local authorities to set up an internal monitoring mechanism so as to minimise the risks of:

- poor economic and financial management;
- poor administration through ignorance of the applicable regulations;
- poor-quality service provision;
- administrative, civil *or* criminal law disputes.

Moreover, if there is an effective internal monitoring mechanism, external monitoring is quicker, more effective and more advantageous for the entity undergoing monitoring. In such cases, external monitoring consists firstly of verifying directly the quality of internal procedures and the smooth running of the department responsible for ensuring that these procedures are put in place and implemented, and secondly of just verifying, by means of sampling, whether the procedures have the level of effectiveness required in terms of management quality.

- The organisation of internal monitoring

The organisation of internal monitoring is the responsibility of the local authority itself and is a matter for the authority's own initiative. High-level instruments can therefore only recommend that such monitoring be put in place and set out the few generally accepted principles on the subject, which are reiterated below.

Firstly, internal monitoring encompasses the set of written procedures which describe the methods of operation for the entity's various areas of activity. In the case of local authorities, it is especially desirable for written internal procedures to be adopted for the preparation and implementation of the budget, particularly for procurement and contracts, but also for staff recruitment and management. Depending on the powers and responsibilities exercised, internal procedures should be developed in any other areas of activity.

Secondly, internal monitoring also – at least in entities of a certain size – means a specialised department, responsible for using its expertise to help the operational or functional departments to develop their procedures. The internal monitoring department also has the task of checking that the procedures adopted are respected in practice and, if not, looking into the reasons and proposing appropriate solutions (revision of unsuitable procedures, reorganisation of methods of operation or departments, training or redeployment of staff, etc).

While the local authority executive has primary responsibility for putting in place and conducting internal monitoring, the deliberative assembly should preferably be kept informed in detail. Some decisions, such as the decision to establish an internal monitoring department, must be taken by this assembly itself, particularly because of their budgetary implications.

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D. Access to information, administrative transparency and administrative procedures

(Contribution from Bernardo Giorgio MATTARELLA, Italy)

1. Current situation

a. In most European countries, administrative transparency and access to information are recognised as principles of administrative law and instruments for the citizens' control over public administration and for prevention of corruption. Provisions, however, vary from country to country: in certain cases, large areas of public administration are kept secret: the same information (e.g., on administrative contracts and operations in the competitive market) is accessible in some countries but not in others; legislation on local authorities is sometimes markedly influenced by those principles; in many cases, a particular relation with the information is needed in order to obtain it. Moreover, the implementation of these principles is often insufficient, especially in the local administrations which have greater organisational problems and are less intensively monitored by the media.

b. Similarly, most European countries have statutes providing general rules for administrative procedures. Not all of these rules are interesting for our purposes. We can concentrate on some of the issues particularly relevant to problems of administrative ethics: 1) identifying the person responsible for the procedure; 2) procedure duration, time limits and lack of administrative decisions; 3) the statement of reasons behind administrative decisions. Certain procedures should also be given particular consideration since they give rise easily to corruption: a) concluding of contracts; b) financial support to private enterprises; c) land planning and building permissions.

2. Problems

a. As regards administrative transparency, two issues should be considered: firstly the extent and limits set by law for regulating transparency and access to administrative information; second the ease with which citizens can access the information.

With regard to the first issue, a lack of transparency is more harmful at local level than at national level. When the administrative action is close to citizens' interest, their point of view is more important: transparency allows both their participation in the making of administrative decisions and their ex-post evaluation of them. Moreover, as already observed, newspapers and other media pay less attention to local administration: thus, local authorities need to be kept in check directly by people.

With regard to the second issue, actual access to information can be difficult despite it being granted by law for several possible reasons: documents are kept in a disorderly fashion or in inaccessible places; the offices housing the information have staff shortages; copying the documents is difficult or expensive; citizens are unaware of their right to access the information; violations are not adequately punished.

b. The most relevant problems relating to the regulation of administrative procedures seem to be the following:

1) Public administration is a complex and impersonal creature. Competences and responsibilities are often uncertain. The difficulty of identifying the decision-makers and the officers responsible for single acts provides room for corruption: it allows the officer to abstain from fulfilling his/her duty, unless he/she receives money from the interested party; it helps the corrupted officer to avoid his/her responsibilities;

2) The absence of time limits for administrative decisions gives too much discretion to the officers, and provides further scope for corruption, especially in procedures arising from a private person's request (e.g. authorisations). Even when time limits are set, corrupt officers can still refuse to fulfil their duties if the law does not provide adequate remedies for the lack of decision;

3) If the public administration is under no obligation to state the reasons for their decisions, officers may believe there is a lack of control over their action, and therefore pursue private interests rather than public ones.

Certain kinds of procedure, particularly common at local level, can easily give rise to corruption:

- a) procedures for concluding contracts with private parties: as they involve the expenditure of public money, the danger of collusion is ever present;
- b) procedures for awarding financial concessions to private enterprises: in this instance there is always the danger of collusion, increased by the frequent lack of competing enterprises, and therefore by the lack of interested parties which can seek judicial review of administrative decisions;
- c) land planning and building permissions procedures: private parties can pay bribes to public officers in order to obtain undue benefits; public officers can ask money from private parties before issuing authorisations.

3. Measures

a. To solve the administrative transparency problems, the following measures can be proposed:

- classified areas should be limited to information connected to particular interests as determined by law (public safety, crime prevention , currency and credit protection , privacy);
- budget and financial documents, in particular, should always be made accessible to the public;
- a particular individual interest or relation with the information sought should not be required in order to access the information owned by local bodies;
- elected local body meetings should normally be public; documents and information concerning their procedures and decisions should be accessible to the public;

- time limits should be set for the administration's reply to requests for information;
- Special facilities for accessing information could be set up for certain bodies (other local bodies, ombudsman, press);
- administrative archives and files should be kept so as to enable citizens' access to them; adequate personnel should be allocated for this purpose;
- all public information should be made available on internet sites, when possible;
- local authorities should inform citizens of the measures adopted for implementing the principle of administrative transparency, in order to foster the common sharing of this principle;
- administrative transparency should be laid down as a principle not only for the relations between administration and the citizen, but also for the standards of individual conduct of civil servants;
- disciplinary sanctions should therefore be provided for violations of the rules of transparency.

b. The following measures can be proposed for the administrative procedures:

- the competent office for each kind of procedure should be determined with general provisions; such provisions should be made public and available on the internet;
- when an administrative procedure begins, the person in charge should be determined; his name, his position and his administrative address should be forwarded to the interested parties at the beginning of the procedure and in every subsequent communication to them;

- the time limit for concluding the procedure and the communication of the same to the interested parties should be determined with general provisions for each kind of procedure; such provisions should be made public and available on the internet;
- violations of time limits should give rise not only to administrative remedies and civil liability on the part of the administration, but also to disciplinary sanctions in respect of the officers responsible;
- administrative decisions of local bodies should, as a general rule, state their reasons, specifying the preliminary inquiries and studies and the criteria adopted for choosing among different applicants. These rules are especially recommended for procedures relating to the conclusion of contracts, financial support to private enterprises, land planning and building permissions;
- in connection with the conclusion of contracts between private parties, the private party should be selected following a call for tender; the EEC law on public contracts is to be considered as a model in this respect;
- local bodies should determine, with general provisions, the criteria for the concession of financial support to private parties; the availability of public money for such support should be the object of thorough information campaigns; information on financial support to private parties should always be accessible to the public; private enterprises receiving such support should be required to account for how the money is used.

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E. Status and rules governing the accountability of local elected representatives (guarantees, allowances, professional protection, civil, criminal and administrative liability, etc.)
(Contribution from Alan DOIG, United-Kingdom)

1. Introduction

The issues of ‘politikverdrossenheit’ and ‘sleaze’ in national politicsⁱ, together with the increasing emphasis on decentralisation and public engagement, as well as the promotion of public management procedures and practices in the delivery of public services, have combined to create a changing local government context or environment within which to consider the question of ethics relating to local elected representatives. While the landscape of change may vary substantially across European countries, a number of these issues at national level are magnified or exacerbated at local level in terms of the effect, for example, of the size of local party membership or voter turnout, the closeness of local elites, or the watchdog role of the local media.

Efforts to improve and promote public ethics at a local level must have cognisance of such issues and their impact in the local government context, particularly in terms of the intentions of the European Charter of Local Self-Government. This promotes political decision-making by authorities ‘which are closest to the citizen’, the transparency of such decision-making to allow for effective supervision by citizens, and the right of local authorities not to be subject to intrusive external supervision and control. Not only is there the issue of whether the objectives of the Charter and the wider changes to the local authority landscape are compatible, but also there is the question of their combined impact on the promotion of effective public ethics.

2. Current Situation

The landscape of local government in terms of population size, legislative provision, powers and relations with central or regional government is very varied, ranging from entities for a few hundred people and minimal service delivery to what are, in effect, multi-function, multi-million pound companies.

The status of local elected representatives is, however, substantively the same in legal terms. No country grants local elected representatives immunity in relation to the conduct of official business. Most countries operate limited disqualification criteria (mostly concerning criminal convictions, and financial and mental incapacity) although some countries debar those with significant interests in the activities of the local authorities (the norm, however, is the use of disclosure and registration requirements to avoid any conflict of interest). A number of countries allow public servants to run for local office and a lesser number have formal employment arrangements to allow those from the public and the private sector to take up elected posts without detriment to their careers.

Few countries exercise the financial and other restraints on local parties and election funding that are currently applicable at national level. In part this is because local politics has (wrongly) been assumed not to be driven to the same extent by the partisan or ideological imperatives dominating national politics. It has also been argued that many of the legislatively determined functions of local government – such as social services, education or planning – allow little opportunity for decision-making influenced by local political perspectives. Overall, local elected representation has been thought to be driven by a sense of service to the community and, in nearly all countries, the ethos of elected representation is of voluntary or part-time public service.

In most countries new representatives receive training in their duties and training where new legislation affects their work but in general lack the infrastructural support given to national politicians both for political and constituency work. Where allowances or salary reimbursement exist, the rates are not significant. Such financial support, as well as the limited number of countries with full-time local representatives (such as elected mayors), is only available to a small minority of representatives. Normal terms and conditions of service, such as holiday entitlement, sickness pay or pensions, rarely exist. There is general concern, in part because of the issue of remuneration and the issue of release from full-time work, the pool from which local elected representatives are drawn. Many countries have no formal restraints on multiple office holding but it is believed in some countries that the demands of public office preclude multiple-office holding in practice.

The supervision of local elected representatives has traditionally reflected their subsidiary role to national or regional government (whereby their functions and thus the exercise of their powers is prescribed by legislation) and to a range of external agencies with oversight and scrutiny responsibilities. The internal requirements for disclosure and registration of interests, or the use of a code of conduct are not universal although many countries forbid local elected representatives to speak or vote on matters in which they have an interest. In all countries local elected representatives have civil, criminal, financial and political liability for matters arising in connection with the performance of elective duties.

Civil liability is generally applicable (in some cases it is formally addressed in the constitution) for wrongful damage to individuals or organisations ensuing from local authority action, although there are variations as to whether this encompasses personal or corporate responsibility on the part of the local authority. While a similar approach exists for financial liability, oversight of that liability is usually exercised by an external public audit body. Similar third-party responsibility for criminal liability lies with agencies such as the police who act in the public's interest to determine whether or not any individual or organisation can establish direct damage as a consequence of the authority's actions, legally or illegally, individually or collectively.

The range of offences where criminal liability may be established is extensive, ranging from bribery to unauthorised use of personal data. Some offences, such as maladministration or misuse of public office, may be handled by law enforcement agencies but, in other cases, may be addressed under civil or administrative liability. Criminal liability does not always result in the debarring of representatives from office. Similarly, political liability – which may be both to the electorate as well as to the party – varies significantly between countries. In a number of countries individual and corporate insurance is taken out to protect against negative decisions where liability is established; it is neither universal nor mandatory.

3. The Problems

The patterns of misconduct and corruption reflect those at national levels; a 1996 survey from the Netherlands local government suggests a typical range of offences:

Integrity violations in The Netherlands: Local Governmentⁱⁱ

Leaking information	31%	Outside functions	8%
Conflict of interest	15%	Corruption	5%
Theft	12%	Other	22%
Fraud	8%		

While such offences may appear not to have the impact or significance of similar offences at national level, they do take on a different perception when one considers that, within the spectrum of local authorities, there are a minority (principally urban conurbations) which, in terms of expenditure, size of staff and impact on local economies, are in effect major businesses.

Conversely, and probably more importantly in transitional European countries where contact with local authorities was intended to make government more relevant and accountable to citizens, a number of countries have reported that issues of fragmentation, control of revenues and the focus on national leadership have diluted the acquisition of democratic legitimacy at a local level, magnified by the continued pervasive presence of low-level corruptionⁱⁱⁱ.

For many local authorities with substantial functions and services, there may be professional managerial leadership but there is often an absence of full-time political leadership - and a limited pool from which such leaders may be drawn. This does not appear associated with disqualification criteria but with levels of remuneration provision and constraints on executive authority that would work outside the traditional collectivity of local decision-making. The risk is that local government may require, but lack the appropriate ethical framework to exercise, control over those seeking elected positions at local level whose motivation is, as one British city political leader described in the 1960s, 'public service with a piece of the action'.

A further concern is the promotion at national and supranational level of local engagement or inclusion – or a more comprehensive move to direct participation – ignores the fact that, for developed countries, involvement in local politics has a negative gravity. This means that people have little active interest because they are generally satisfied by the nature and cost of service provision and only become active in response to adverse circumstances. Further, in many countries, the pool of elected representatives is also limited by the nature of party activity which tends to be bureaucratic and centralist, where the basics of party activity predominate over policy design and development.

There is a need to recognise the pervasiveness of party politics at all levels of a country's politics. Party support and party funding, the use of public resources as rewards for party supporters or to facilitate influence peddling, has been noted in a number of major cities. This may also be exacerbated by the *cumul des mandates* which, while suggested as impractical in terms of demands on time, has been noted as a continuing source of misconduct in some countries^{iv}.

Finally, the promotion of local empowerment and self-determination may persuade local elected representatives to disregard due process and the separation of powers, to focus on delivery. This in turn increases the exercise of discretionary power and the bypassing of procedures, allowing the potential for corruption and conflict of interest. On the other hand, such promotion has in some countries been matched by the development of audit and inspection regimes by centrist states uneasy about too much local freedom. While the liability relating to local elected representatives is already addressed through a range of legislative and institutional arrangements, the current emphasis is on accountability - including political, financial, administrative and managerial accountability. What accountability thus means in different contexts, and how accountability is married to issues of probity and integrity, may also lead to confusion about what standards are expected of local elected representatives.

4. The Risks

The risks are evident from the problems now facing local authorities:

- What is the impact of the moves toward decentralisation and local empowerment as well as the wider impact of public management on the delivery of public services? For example, the purposes underlying reforms relating to the delivery of public services – of economy, efficiency and effectiveness, measured by compliance with performance targets – are alien to the legal culture, which are largely concerned with ‘principles of good administration such as legality, fairness and rationality’^v. From which perspective will public ethics be drawn?
- How can the interests of local citizens be aggregated and articulated outside the local party framework in such a way that is both meaningful and positive in terms not only of on-going policy development but also of services delivery and monitoring the conduct of local elected representatives? If, as Article 21 suggests, the engagement of citizens will require engineered inclusion as well as ‘mechanisms to allow people access to information and provide the skills needed to use that information’^{vi}, what will they do with that information and how will they be able to press for adherence to public ethics?
- Will emerging regulatory and inspection regimes, as well as more traditional means of compliance, allow sufficient discretion and flexibility to local elected representatives and how will they interact with the public on whose behalf they supposedly act as ‘proxies’ or ‘surrogates’ of the people?^{vii}.
- How can party politics be controlled? Democracy, national, regional or local is not in itself intrinsically more honest than other forms of political organisation. Indeed, politics is about winning, maintaining party machines, running campaigns, building networks and coalitions, and decision-making that has some electoral benefit, at the least, benefits – all of which has a price tag and is part of the political grease that binds political activity.^{viii}

- Will the public management approach – which may well result in quality management, corporatisation of authority units and focused and responsive delivery – turn citizens into consumers and turn the local elected representatives toward ‘sectoral-oriented policy networks’ to build on service delivery, rather than ideology and policy, as the basis for political support?^{ix}
- How can leadership be encouraged to become involved without being over-policed, especially when the rewards of local office are not particularly significant. As Quentin Reed has argued for transitional states:

“In terms of prioritised reconstruction, there may be strong reasons for not moving too quickly to establish mechanisms of accountability within an institution, partly because a wide degree of discretion combined with good leadership may be more desirable than establishing mechanisms that slow down institutional learning processes, and also because surrounding public officials and politicians in highly restrictive accountability mechanisms may reduce an already small pool of talent further. Several transition states have been faced with dilemma with respect to introducing conflict-of-interest rules, which may discourage competent politicians who are unwilling to completely sacrifice their private activities for low-paid public service, while failing to prevent corruption due to weak enforcement mechanisms.”^x

5. Objectives

The purpose of reform is to ensure that democratisation and democracy pays the ‘democratic dividend’. Without this public engagement or participation becomes meaningless and, especially for those countries where active involvement in local politics is a new phenomenon, attracts apathy, cynicism and mistrust.^{xi} While well-intentioned reform cannot require citizens to join in local political activity, or ensure the widening of the pool from which elected local representatives are selected, it must be focussed on persuading them that the representatives are working in their interests.

This suggests that ethics' reforms should be part of wider reforms. It may also be argued that most countries have the agencies, mechanisms and procedures that address liability. Indeed, one issue raised in a number of countries where citizens have recourse to the law is the increasing likelihood of damages. This, together with the surprising lack of prevalence of corporate insurance, may continue to discourage the pool of local elected representatives. More cases of liability, more laws on corruption, more police, and so on, as part of an expanding compliance or accountability environment, may thus not be the answer. As Jim Jacobs and Frank Anechiarico argue: 'in searching for solutions to the corruption problem, we must look beyond the traditional strategies of monitoring, control and punishment...Laws, rules, and threats will never result in a public administration to be proud of; to the contrary, the danger is that such an approach will create a self-fulfilling prophecy: having been placed continuously under suspicion, treated like quasi-criminals or probationers, public employees will behave accordingly'.^{xii}

On the other hand, another issue is that, for many countries, such components do not, surprisingly, exist at local level. As research has showed in the Netherlands, local governments differed substantially in their efforts. Of the 441 local authorities that participated in the survey, 39% had no policies in this area, while 20% had written documents with policy initiatives. 22% of the local governments said they were preparing policies and 22% is paying some attention to it. When rules have been developed, they most often concern the acceptance of gifts (72%) and invitations (65%), having outside positions (44%) and dealing with information (34%).^{xiii}

6. Measures

Public life and public service draws on wider social and cultural contexts, themselves changed and changing. The development of a management culture within a public service context is, on the one hand, embraced by officials as the route to managerial independence and rewards commensurate with the size or complexities of the public services being provided. It has also, in the process, led to the development of other private practices and expectations in a new public management context - new public entrepreneurialism - that may have led to a conflict between private sector values and the enterprise culture, and the roles, responsibilities and standards of public office and the public sector.^{xiv}

It is clear that, whatever the approach or the solution, it must recognise the influence of the developing cultural and social issues: ‘the challenge for the new era is to discover the moral and political principles which are appropriate to the public domain facing the transformations of our time’.^{xv} This means a range of initiatives that are intended to promote local democracy, encourage the emergence of appropriate local elected representatives, and develop an ethical environment that is realistic and realisable.

One initiative could be to mesh and merge the various agencies of oversight and inspection to ensure that local authorities are able to work in a positive rather than negative context – accountable as well as liable. In the United Kingdom it has already been noted that reforms in the past decade have resulted in a ‘crowded stage of actors advising councils on their administrative practices which now includes, internally, the statutory financial and monitoring officers, non-statutory complaints, and ombudsman procedures. Externally, there are government inspectorates for particular services, and the Local Commissioners, and, in the Best Value regime, inspectors, the District auditor, and the Audit Commission. Although these approach the issues from the divergent directions of maladministration and of value for money and effectiveness, there is substantial overlap between the handling of complaints and audit in attempts to encourage good practice by councils’.^{xvi}

A second is to ensure those terms and conditions that make public service a positive experience. While the sense of voluntary public service may be strong in a number of countries and any material reward for that service modest and secondary to status and virtue, the nature of local government may require rewards commensurate to the responsibilities and time commitment involved *or* the provision of an appropriate infrastructure that sustains public service (such as appropriate staffing support) *or*, with limited time and other careers, that local elected representatives focus on core activities such as policy and decision-making rather than become submerged in the minutiae of local authority business.

A third would seek to design out the opportunities and incentives for corruption and conflict of interest in ways that vitiate any benefit to the parties involved: for example, suing for the full recovery of any bribe (restitution) rather than criminal proceedings (retribution); voiding any contract for criminal conviction and blacklisting *and* requiring a forensic corruption prevention audit prior to restoration to any tender list (a crime control strategy); linking internal and external audit staff in a quasi-inspectorate-general regime; developing comprehensive control environment risk assessments; using cheap IT technology to make transparent any vulnerable areas, such as procurement; addressing citizens rights through integrated standards charters and redress procedures; encouraging local journalism.

A fourth initiative follows on from the above and is the educating of both citizens (particularly in secondary education) in what to expect from local elected representatives in terms of service and conduct and representatives in what is expected of them. It is thus important that codes, the register of assets, disclosure of interests, and so on, are not only policed but also policed internally and the consequential information published. This may well mean some form of publication concerning ethical issues, and the support and rewarding of 'best practice' councils.

Finally, the initiatives should always set themselves within a more general institutional reform in terms of measures that 'design out' corruption through simplified administrative procedures and oversight controls (one-stop shops and the customerisation of public services, benchmarking of services); quick and effective complaints and redress (hotlines, whistleblowing, Ombudsmen and administrative tribunals); community involvement (awareness and education, transparency of and access to information, citizen's watchdog groups). Here the objective is to address misconduct and corruption by focusing on what the public might want from *existing* procedures which may include the certainty of a decision (time-limited), the reason for the decision (transparency), the name of the official who made the decision (responsibility) and the right of redress (accountability). It is thus a question of not only addressing the minimisation of opportunity and incentive, and raising the risk of detection and sanction, but also raising awareness and expectation, on both the part of the public and the local elected representative, of what is public ethics and why they are integral to local public life.

Alan Doig is grateful for the advice of Professor F. F. Ridley, Emeritus Professor of Politics, University of Liverpool.

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F. Structures governed by private law
(Contribution from Jaume Galofré Crespi, Spain)

1. Introduction

The European Charter of Local Self-Government (ECLSG) gives local authorities the power to determine their own internal administrative structure, which is considered to be one of their essential functions. The remarks below are consequently not concerned with limiting the exercise of this power. They examine various forms of administrative structure or ways of providing public services in order to see whether they are of any relevance to measures for preventing corruption or ensuring ethical conduct of elected representatives and local government staff. In other words, the task is to determine whether certain types of administrative structure may lead to corruption in public administration or make administrative supervision difficult.

Obviously, the structure of a local government body or public service has to be decided before its activity can begin, which means that all the measures regarding organisation of local authorities are essentially of a preventive nature, aimed at protecting local ethics and simplifying the supervision of local-government activity.

Furthermore, even though criminal or corrupt conduct may occur in any sector of local government, there are undoubtedly sectors where experience has shown the problem to be far more serious. And it is precisely in these sectors that abnormal structure is frequently discovered and lapses from public law are found.

This paper does not claim that more flexible and efficient structure always pursues unacceptable objectives. In Spain, for example, efficiency of public administrative authorities is a principle enshrined in Article 103 of the Constitution; but it is also true that, as mentioned above, the easier the organisational approach makes it not to apply rules of public-sector functioning, the more it encourages disorder in the activity in question, and that can be dangerous.

This paper tries to identify types of structure that lend themselves to corruption, as recommended in the Programme of Action against Corruption adopted by the Multidisciplinary Group on Corruption (CM(96)133).

2. The most vulnerable activities and sectors

Obviously, improper conduct may occur in any area or sector of public administration. However, as conflicting interests are present in some sectors, these are the most vulnerable, and experience shows that they are the ones where the most corruption is to be found.

In practice, where local government involves certain methods, we need to identify any situation in which not or only partially applying the established rules may lead to increased disorder in the management of public affairs.

The most vulnerable sectors of usual local-government responsibility include town planning, land-use management, building and other permits and related checks and inspections, checks to ensure that work has been done and agreed rates have been kept to, and in particular checking that public works and contracted-out activities are proceeding properly.

Procedure is important in all these sectors but public procurement is the most problematical. As indicated in Part Three, Section C, Chapter I of the Programme of Action against Corruption adopted by the Committee of Ministers in 1996, “public procurement is by far the most important domain of corruption”. The methods used to appoint public servants may also present irregularities. The sums of money involved may be small, but any favouritism still contravenes the principles of merit and competence set out in Article 6.2 of the ECLSG.

3. Bringing administration under private law and the resulting effects

In order to simplify management, local authorities have different, independent structure to develop activities or run public services. This method involves setting up bodies with a legal status which, even though there is supervision by the local authority, allows them a degree of independence. Such bodies can be governed by public law or private law.

The first type does not raise any major problems, as their activities are ruled by public law in the same way as the local authority itself. The names for them vary, and they may or may not have legal personality: self-governing body, public institution, charitable trust, and so on.

The problem becomes more serious when local authorities delegate functions that involve some exercise of authority to bodies set up under private law, like public limited companies or public companies subject to commercial law.

Naturally, these problems do not affect the activities of the authority, which is merely the owner of companies operating openly on the markets, as Renault does in France or Iberia in Spain. Public ownership companies like these are subject to market rules and have to compete in accordance with those rules. However, it is not the purpose of this paper to examine privatisations, even though they do have a connection with the subject under study. I shall deal only with the exercise of local authority powers by private-law bodies.

The most important consequences of using private-law bodies are, firstly, that a number of decisions are taken out of the hands of the local assemblies or local councils of elected representatives, and transferred to the people on the boards of management of the enterprises or companies which are responsible for the activity or service in question, and, secondly, that rules of public law on local authority financial commitments in particular, on the public's access to local government and, lastly, on supervision of public activities wholly or partly cease to apply.

As regards the rules governing financial commitments, very few legal systems have found satisfactory solutions to the problem of the types of contract entered into with private companies set up with public capital to carry out public works or provide public services. For a long time, such contracts were governed by private law and led to the sort of damage that can cause local authorities to lose their prerogatives. European Union directives were then introduced in this area, at least as regards major contracts, and imposed the principles of openness and access where work or services are paid for out of public funds, regardless of whether the payer is a body governed by public or private law.

However, very few of the contracts which local authorities enter into generate sufficient economic activity to be covered by the EU regulations. Where a private company or enterprise has been set up to manage a public service or activity, it is not unusual, although its capital belongs to a local authority, for local-government rules and methods to apply only partially or not at all; in many cases a company has been set up precisely to develop a more flexible and efficient form of management that is not hampered by muddled and slow administrative methods, and not because the nature of the activity or service necessitates it. Obviously, it is difficult to apply rules of public administration to company management; and although the company-management approach may be more flexible, decisions are often taken more arbitrarily, as there is less transparency and fewer guarantees for the public.

A similar situation can be observed regarding entry to public employment. Normally, local authorities have strict selection systems (some stricter than others) designed to apply the principles of equal opportunity and, in particular, merit and competence in accordance with Article 6 of the ECLSG. A private-law entity, even if performing public functions, will hire employees in the same way as any private company and rarely use selection procedures that observe those principles.

4. Conclusion

As stated in the introduction, this paper does not express any particular view on the shift away from public law, but does point out that one of its consequences is less transparency, which in turn creates disorder and increases opportunities for corruption in various forms, from selling favours to trading them for votes. The fact of having elected representatives on the boards of companies or enterprises set up with public money makes no difference to the basic problem.

The fact is that decisions taken outside parliaments, assemblies or councils made up of elected representatives are harder to keep an eye on. Obviously, the purpose of the checks in commercial companies is quite different from those in public administration. In public administration, the way in which decisions are taken is just as important as the decisions themselves, as a decision must as far as possible be the result of democratic methods that are known to the public, as stated in Recommendation No. R (98) 12 of the Committee of Ministers, which recommends that the governments of member states “adopt the appropriate measures [...] to recognise the

essential role of political supervision by citizens and [...] to strengthen the transparency of local authorities' action and to ensure, in general, the public nature of decisions". And although it is impossible for the state to have a complex structure, given that it is not parliaments' role to govern, the same is not true of local authorities. This is why it is strongly recommended that a number of measures be taken regarding the adoption of private-law structure so that avoidable practices are not encouraged.

5. Proposed measures

a. Structure governed by private law should only be created by local governments when the type of service to be provided so requires - basically, where what is involved is a production activity operating to market rules in a context of free competition, or a public service that is used only by those citizens who choose to do so and is not an essential responsibility of the local authority.

b. A number of administrative rules and methods which are similar to those used under public law, especially those concerning the commitment of public funds, must be adopted and enforced upon structures governed by private law created by local authorities, particularly in the case of bodies set up to exercise local authority planning powers or carry out work paid for by public money.

c. Entry to local government employment, or to employment in enterprises and companies owned by local authorities, must be governed by the principle of equal opportunity subject to merit and competence as set out in Article 6 of the ECLSG.

d. Local authority's tasks which touch directly fundamental human rights and freedoms, such as defined by the European Convention of Human Rights, should not be entrusted to private organisations.

III. EXAMPLES OF NATIONAL INITIATIVES

This section of the Model Initiative Package presents a number of interesting initiatives in the field of public ethics at local level, as they were communicated to the Steering Committee of Local and Regional Democracy (CDLR). The goal of their inclusion in the Package is to illustrate the good practice presented in the Handbook, but also to stimulate and, if possible, to inspire debates on public ethics at local level.

Such examples will continue to be collected by the CDLR and will be published on the Council of Europe website dedicated to local and regional democracy (www.coe.int/local) and in the LOREG database (www.loreg.org).

A. Principles of public life developed by the UK Committee for Standards in Public Life

Selflessness

Holders¹² of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make decisions on merit.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

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Be they elected or appointed

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

B. The Standards Board for England and the Code of Conduct for local elected representatives

The Code of Conduct was introduced by the Government in response to the findings of the Nolan Committee, which enquired into the public's loss of confidence in local democracy. In order to foster public confidence in local democracy it was determined that member misconduct should be addressed not by local councils individually, as had previously been the case, but by a new regulatory body charged with investigating allegations of misconduct and with encouraging higher standards of ethical conduct in local government.

The Standards Board for England was established by The Local Government Act 2000 ('the Act') with the dual responsibility for issuing guidance on the Code of Conduct for local government members and for investigating allegations of breach of the Code, generally described as 'misconduct'. We include a copy of the Code and of the guidance issued by The Standards Board with these comments.

The Code of Conduct was published by The Office of the Deputy Prime Minister (ODPM) on the 5th November 2001. From this date, 'relevant authorities' under the Act were provided six months within which to adopt the Code. The mandatory provisions of the model Code applied to all authorities as of the 5th May 2002.

The Code of Conduct applies to the members and co-opted members of all 'relevant authorities' under the Act. This includes the members of primary authorities such as Metropolitan and District councils, as well as the more community-based council bodies such as parish and town councils. Members are required to sign a declaration to observe the Code upon accepting their office. The Code requires members to provide details of their interests, as defined by the Code, to the Monitoring Officer of their authority within 28 days of the member's admission to office.

The Code of Conduct

Part I of the Code sets out General Provisions or requirements, such as that:

- A member must observe the authority's code of conduct whenever they conduct the business of the authority, conduct the business of the office to which they have been elected or appointed or act as a representative of the authority;
- A member must promote equality by not discriminating unlawfully against any person;
- A member must treat others with respect;
- A member must not do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the authority. That is, a member should not seek to compromise officers in the performance of their employment.

- A member must not disclose information given to them in confidence by anyone, or information acquired which they believe is of a confidential nature, without the consent of a person authorised to give consent, or unless they are required by law to do so;
- A member must not prevent another person from gaining access to information to which that person is entitled by law;
- A member must not in their official capacity, or under any other circumstance, conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute;
- A member must not in their official capacity, or under any other circumstance, use their position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage;
- A member must not use council resources for political purposes

The draft Code of Conduct for Consultation included the provision that members shall not discriminate against others on the grounds of race, gender, sexuality and religion. In the published Code this provision was simplified to the general requirement that members must promote equality and not discriminate unlawfully against others, discrimination on a range of grounds being implicit in this requirement.

Section 7 of the Code places a duty on members to make a written allegation to The Standards Board for England if they become aware of any conduct by another member which they reasonably believe involves a failure to comply with the authority's Code of Conduct. This provision was introduced to address local government corruption through active or passive complicity, such as where members may 'turn a blind eye' to the misconduct of their fellow members. Monitoring officers and members of the public may also make written allegations to The Standards Board. Members however are under a duty to do so, if they reasonably believe the Code has been breached.

Part II of the Code sets out requirements for members on declarations to be made regarding their interests when debating and voting on matters before the council. Members are required to declare whether they have ‘personal’ or ‘prejudicial’ interests regarding the matters for decision at the commencement of the meeting or if an interest becomes apparent during the course of the meeting.

A ‘personal interest’ as defined by the Code arises where a decision upon it might reasonably be regarded as affecting the member, their relatives or friends, their employers, business or corporate body in which they have a beneficial interest, to a greater extent than others in the authority’s area. If members have a personal interest they should declare its existence and nature at the start of the meeting, or when the interest becomes apparent. Having declared a personal interest, the member may however remain in the meeting and vote. The Code provides a definition of a ‘relative’, though does not provide a definition of ‘friend’.

A ‘prejudicial interest’ should be declared if the member considers that the interest is one that a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it would be likely to prejudice the member’s judgment of the public interest. A member with a prejudicial interest must withdraw from the room where a meeting is being held whenever it becomes apparent that the interest is being considered, unless the member has obtained a dispensation to remain and vote from the authority’s Standards Committee. The member must also not seek to improperly influence a decision about a matter.

Part III of the Code sets out specific requirements about the registration of a member’s financial and other interests. The Code requires that the member must provide written notification of their financial and other interests, as listed in the Code, to the authority’s Monitoring Officer within 28 days of the authority’s Code being adopted or applied or within 28 days of the member’s election or appointment to office. The interests are entered into a Register of Interests by the Monitoring Officer, which is available for inspection by the public.

The Code requires registration of members' financial and other interests, including:

- The member's employment or business;
- The name of a firm of which they are a partner or director;
- Names of persons who have contributed to the member's election expenses;
- Details of any contracts for goods, services or works between the authority and the member or the firm of which they are a director or partner.
- The address of any land(s) in which the member has a beneficial interest which are in the area of the authority;
- The member's membership or position of general control or management in any:
 - i. body to which they have been appointed or nominated by the authority as its representative;
 - ii. public body or body exercising functions of a public nature;
 - iii. company, industrial and provident society, charity or body directed towards charitable purposes;
 - iv. body whose principal purposes include the influence of public opinion or policy, such as political parties or lobby groups; and
 - v. trade union or professional association.

The Code also requires that, within 28 days of receiving any gift or hospitality over the value of £25.00, a member must provide written notification to the authority's Monitoring Officer of the existence and nature of the gift or hospitality. Gifts and hospitality declared are entered into a Register, available for public inspection. This provision was introduced to address instances of members receiving gratuities from local businesses and

developers which could be seen to influence a member's vote, particularly regarding local planning and contract tender decisions.

Issues surrounding the Code

From the experience of regulating the Code of Conduct since 2001, the Standards Board would like to highlight the following issues for consideration by the CDLR, regarding the introduction of a model Code of Conduct for members:

— Consultation and ownership

Although the introduction of the Code of Conduct had been prefaced by a considerably detailed and lengthy consultation process by the Government and ODPM, there remained considerable resistance from a number of members to the Code's introduction. Issues raised in opposition to the Code included:

- i. the introduction of a Code impugned members' integrity;
- ii. the Code's requirements were onerous and draconian;
- iii. the requirements for registration of members financial and other interests infringed members' privacy;
- iv. members reporting suspected breaches of the Code by fellow members of their political group might be ostracised by their political group;
- v. objection to the declaration of interests in land, particularly in small rural communities;
- vi. the Code should specifically require members who are members of the Freemasons and Lodges to register their membership.

— Cultural appropriateness of provisions

The provisions of a Code of Conduct should be culturally specific and appropriate. In the last two years, The Standards Board has made a number of presentations to Eastern European delegations on our Code, during which the issues surrounding the cultural appropriateness of code provisions have been highlighted. For example, the giving and receiving of gifts is an important element of demonstrating cultural hospitality in Russia and Eastern European communities, in which case a requirement for members to decline gifts and hospitality may be culturally inappropriate.

— Clarity of Code provisions

It is important that a Code be a simple and accessible document. The Standards Board's work in facilitating the implementation of the Code has entailed extensive work in explaining and educating members and officers on the meaning of its provisions, such as the distinction between prejudicial and personal interests and the nature of interests required to be registered.

— Mechanism for Code Review

It is important therefore that as well as an effective implementation process for a Code, that consideration be given to an efficient and comprehensive programme of review and possible amendment of the Code.

— Ethical performance review

In order to have an optimum impact, a Code of Conduct should be one element of a broader framework for Ethical Governance. Questions regarding the ethical performance of an authority and its members should be incorporated into authority performance review programmes. The authority should regularly undertake an Ethical Governance Audit of its practices and procedures. In this manner, ethical conduct will become incorporated as an intrinsic part of corporate governance. These issues are raised and addressed in Section C of the Handbook: Model Initiatives Relating To Control and Audit.

C. Example of a model initiative in the area of private law companies with public capital in France

It should be noted that French local authorities are not permitted to be the sole owner of a private-law undertaking. Nor are they allowed to acquire minority interests in private-law companies.

However, they are permitted to form an SEML (*société d'économie mixte locale*, a local semi-public company), which is a *société anonyme* (limited liability company) under private law in which they hold at least 50% and not more than 85% of the capital, the remainder (at least 15% and not more than 50%) being owned by private parties.

So that formation of private-law companies by local authorities does not offer a means of circumventing the rules guaranteeing management in accordance with the public interest, the French parliament has introduced a number of legal requirements, some of which are listed below:

1. The corporate purpose of an SEML must come within the ambit of the powers and responsibilities conferred by law on the shareholder local authority(ies) (Article L.1521-1 of the General Code of Local Government Law (CGCT)).
2. It is not permissible to entrust management of a public service to an SEML without first organising a competitive tendering procedure open to all undertakings (whether publicly or privately owned) that may be interested in running the public service in question (Law No. 93-122 of 29 January 1993, sections 38 and 41).
3. Works, study and project management contracts concluded by semi-public companies on their own behalf or on behalf of public entities, with a view to performing a public service or meeting public service needs, are subject to the rules on publishing calls for tenders and competitive tendering laid down in the Code on Public Procurement, applicable to all contracts concluded by local authorities (Law No. 93-122 of 29 January 1993, section 48).
4. Relations between the shareholder local authority and the SEML are governed by many rules (Articles L.1522-1 et seq. of the CGCT) aimed, *inter alia*, at:

- preventing the allocation of local authority funds to the SEML without due economic justification;
- guaranteeing local council supervision over relations between the local authority and the SEML and over the activities of the SEML;
- ensuring scrutiny of remuneration paid by the SEML to local authority representatives sitting on its Board of Directors.

Law 93-122 of 29 January 1993

relating to prevention of corruption and transparency in economic affairs and public procedures

(EXCERPTS)

Section 38

Public service delegations are contracts whereby a public-law entity entrusts the management of a public service for which it is responsible to a public or private operator, whose remuneration essentially depends on the results achieved in running the service. The operator may be required to build facilities or purchase goods and property necessary to the provision of the service.

The authority awarding a public service delegation on behalf of a public-law entity shall publish a call for tenders, permitting the submission of a number of rival bids, under conditions laid down in a decree adopted by the Conseil d'Etat.

The public authority shall draw up a list of candidates authorised to tender following examination of the professional and financial guarantees they offer and their capacity to ensure continuous provision of the public service and equal treatment of public service consumers.

The public authority shall send each candidate a document setting out quantitative and qualitative specifications and, where applicable, the conditions governing consumer service charges.

Tenders submitted shall be freely negotiable by the authority in charge of the delegating public-law entity, which shall select the operator on completion of such negotiations.

Section 41

The provisions of this chapter shall not apply to public service delegations in cases where:

- a monopoly is established by law in favour of a given undertaking;
- running of the service is entrusted to a public body, on condition that the delegated activity is expressly mentioned in that body's statute;
- the amount due to the operator for the entire duration of the agreement does not exceed FRF 700,000 or the agreement covers a period of not more than three years and concerns an amount of not more than FRF 450,000 per year. However, in the latter case, the proposed delegation shall require a call for tenders and be subject to the provisions of section 40. The conditions of publication of the call for tenders shall be laid down in a decree adopted by the Conseil d'Etat;
- the delegation concerns the management of rented social housing entrusted to a public-sector housing organisation.

(NB: Section 41 lists the cases where the provisions of the law on delegation of public services are not applicable. SEMs are not among the bodies to which a public service can be delegated without applying the law of 29 January 1993. A competitive tendering procedure is accordingly required.)

Section 48

1. Works, study and project management contracts concluded by semi-public companies on their own behalf or on behalf of public entities, with a view to performing a public service or meeting public service needs, shall be subject to the rules on publishing calls for tenders and competitive tendering laid down in the Code on Public Procurement under conditions stipulated in a decree adopted by the Conseil d'Etat.

D. Declaration of funding for local elections in Helsinki

Persons elected as members or deputy members of municipal councils are under a statutory obligation to provide the central election committee with a written declaration of the funding for their election campaign within two months of the publication of the results of the election. This declaration must indicate the overall costs of their campaign and a breakdown of funding into the candidate's own funds and outside support. Outside support covers support given directly to the candidate, to a support group for the candidate, or to some other association established for the purpose of supporting the candidate. Itemisation of outside support must be grouped according to support from private individuals, business enterprises, party organisations and other comparable sources.

At the local elections in 2000, the central election committee received 166 declarations, with only five candidates failing to provide a declaration. These 5 were all candidates elected as deputy members. The declarations were provided primarily on a form approved by the Ministry of Justice. All the declarations were public and their contents were referred to in the press. The names of the candidates with the most expensive and the least expensive campaigns were also published (by the media, these names were not collected by the officials). Under the law, there is no sanction for failure to provide a declaration other than the threat of bad publicity; the authorities have no power to take any action to extract a declaration or to punish candidates for failure to provide one.

The declarations provided indicated enormous variation in the costs of the candidates' campaigns. Translated into euros, the most expensive campaigns cost approximately 15,000 euros, while the cheapest cost only a few dozen euros. Conservative candidates attracted the largest amounts of outside funding. Most often this came from their party organisation, but to some

extent also from the business community. Money was also raised through special finance seminars, and to some extent also from private individuals. Conservative candidates' own contributions to funding their campaigns were more often than in other parties smaller than the support they received from outside. For candidates in other parties, the main source of funding was the candidate's own pocket. Outside funding normally came from their own party. Hardly any support came from business enterprises, but there was some outside support from private individuals or relatives, normally a few hundred euros at most. Many of the women standing for the Greens benefited from a grant of 100-200 euros from the party's women's organisation. Candidates in left-wing parties often received support from their local party organisation. This was rarely more than 500 euros in value.

According to a spokesman for the central election committee, the picture provided by the declarations in Helsinki gives a good impression of the situation across the entire Helsinki metropolitan area. In Helsinki after the elections of the year 2000, the largest group on the City Council was the Conservatives (National Coalition Party), the second largest the Greens, and the third largest the Social Democrats. An expensive campaign did not always ensure electoral success.

E. Latest developments in Italy

Initiatives undertaken by the Council of Europe in the field of public ethics have been significant for Italy, since they enabled the legislator's attention to be drawn on several occasions to important factors, and led as a result to the adoption of effective legislative measures. Whilst I do not intend to bother you with a long list of laws and legislative or administrative provisions, I would, however, like to ask you to focus on three laws which play a fundamental role in guaranteeing public ethics.

The first focal point is Law no. 241 of 7 August 1990, which affords citizens important rights in their dealings with public administrative bodies. This law lays down three fundamental principles: that there is a clearly defined reason behind all administrative acts, the need to have a named person in charge of each administrative proceeding and a deadline for the completion of each proceeding. This law initially gave rise to certain difficulties and has since been amended, additionally taking into account some inconsistencies pointed out by judges. In short, the law aims at making administrative procedures more transparent and gives citizens and

public administration an equal footing, with exceptions being made for reasons of state security or the right of the individual to privacy. Concurrently with the law, public administrative bodies began investing in increasingly sophisticated new technology, and this resulted in a greater transparency for administrative activity. I would like to add that an ad hoc Ministry for Innovations and Technology was set up in Italy three years ago, and I need not underline the strategic importance played by Internet in relations between citizens and public administration, where bureaucratic processes that would have taken a long time in the past, are now completed at the click of a button.

A further, more recent, legislative initiative also deserves mention: Law no. 3 of 16 January 2003. Article 1 of Chapter 1 set up a “High Commissioner for the prevention and fight against bribery and other illicit forms within the public administration”. This new body is entrusted with the following fundamental tasks:

- to ensure the right of access to administrative documents and databases managed by public administrative bodies;
- to submit a biannual report to the Prime Minister who in turn refers it to the speakers of the two houses of parliament;
- where provided by law, to refer certain cases to the judicial authority and the Court of Auditors;
- to deal with matters falling within the jurisdiction of the regions and the autonomous provinces of Trento and Bolzano.

A third initiative I would like to mention is the Code of Conduct of Civil Servants, issued by decree on 28 November 2000, by the Minister for Public Administration. This updated a similar act dating back to 1994. The Code is based on the principle established by the Italian Constitution according to which civil servants must work exclusively for the state, conducting their work with honour and discipline, complying in this way with principles of good governance and impartiality.

For actions against persons having committed an administrative offence causing material damage to state finance, Law no. 20 of 1994 established that the Court of Auditors, or auditing judges, may carry out the necessary controls and order persons responsible to pay damages.

Anyone causing damage to state assets, whether by wilful act (ie by a material act, followed by the adoption of an administrative measure) or omission (intentional or unintentional), will be liable for damages.

Liability is personal, but transferable to successors taking over the illegally obtained assets on their appointment.

Where the damage has been caused by a decision taken by a body, only members having expressed themselves in favour of the decision are liable to prosecution.

Representatives of political bodies are not liable for having approved in good faith acts committed by technical or administrative offices. For example, if the executive body of a municipality takes a decision, and the mayor or the city council approves the decision in good faith, neither the mayor nor the city council will be liable for any subsequent damages.

If the damage is caused by more than one person, the Court of Auditors, having assessed the personal liability of persons involved, may order them to pay damages to the extent of their own liability.

The Court of Auditors operates nationwide, has 2 main offices in Rome and field offices at regional level.

Another important aspect is the relationship between public ethics and the visibility of administrative activity.

In trying to establish a new order between citizens and public administration, a major hurdle is preventing public administrative officers from hiding behind bureaucracy, and from the public consequently. Via legislation such as Law no. 241/90, public administration has committed itself to enhancing its visibility, and has recourse to a variety of legislative tools that are often aimed, however, at attaining the same goal.

Public administrative bodies are increasingly involved in “institutional communication” events, often organised jointly with private companies. These enable the public to see the work being undertaken to serve the community. In some Italian cities, such as Rome, Bologna and Milan, important events (exhibitions) are organised annually for keeping the public informed on the various activities carried out by the different bodies of Public Administration. Such events usually include workshops and other initiatives aimed at showing the increasing dynamism of bureaucratic structures and their move towards streamlining red-tape as much as possible.

A key factor in this regard is the increasing use of e-government: the management of public interests via information technology and the widespread usage of Internet. E-governance enables a direct relationship to be created between citizens and public bodies, as well as throughout the various Public Administration bodies, overcomes the traditional operational tools and saves human and financial resources.

Entry of all unrestricted data onto the Internet is the tool par excellence for enhancing administrative activity visibility. Restricted data, eg on matters of state security or protected on account of its personal nature, are not included. Mention should be made of the decree of 30 June 2003 on the Code on the protection of personal data”, which represents an important step forward in this area.

In accordance with the constitutional principles of impartiality and good governance, acts carried out by public administrative bodies are likely to be carried out more quickly in future and be more cost-effective.

Despite the tools in use, a modern administration must only exercise its power in strict compliance with the principle of legality, and must never adopt an authoritarian approach.

Such basic legal tenets and operational criteria are prerequisites to counteracting bribery and corruption within public administration.

I would finally like to talk on a wider aspect of economic globalisation.

It is clear that quick transfers of illicit capital from one country to another favour money laundering.

In the same way, an effective fight against the growth of international crime cannot be carried out by a single country and requires joint action at international level.

To successfully counter bribery and corruption, an increasing closer international co-operation is essential.

While recognising the importance of monitoring bribery and corruption within each country for the purpose of identifying administrative bodies potentially exposed to such a threat, the possibility for establishing cooperation between countries should still be borne in mind.

In this regard and as a member of this study group, I would like to stress the intergovernmental initiatives already undertaken by the Council of Europe and I hope that all of us will do our best to support them in future.

F Latest initiatives in Romania

This is a brief presentation of progress made by the Romanian authorities for improving the public administration system, in order to become more transparent, objective, efficient, ethical and more oriented towards the citizens' interests and needs.

Law no. 215/2001 on local public administration comprises such provisions. For example, the principle of "consulting the citizens in solving the local problems of common interest", which presumes the involvement of citizens belonging to a territorial administrative unit in all aspects concerning their interests.

Last year, the government decided to adopt a legislative pack and submitted it to Parliament. The relevant law was Law no. 161/2003 on measures for assuring transparency in public administration and the Civil Service. The law contains many amended and completed standard-setting provisions, eg the provision on the civil servants' and public dignitaries' obligation to declare their assets. These have to be declared annually or whenever changes to their assets occur. This standard-setting act also contains provisions on preventing conflicts of interests and provides the criteria for disqualification of civil servants or public dignitaries. The principles underpinning the prevention of conflict of interest are impartiality, integrity,

transparency in the decision-making process and supremacy of the public interest. Disqualification criteria for civil servants are rigid. It is prohibited for a civil servant to undertake other remunerated or non-remunerated jobs/activities, with the exception of those working as lecturers in universities and working with the arts.

To protect the neutrality of the civil service, civil servants are prohibited from holding leading positions within political parties or from expressing their political views in public. High ranking civil servants are additionally prohibited from membership of political parties.

Law 161/2003, amongst others, modifies and completes Law 188/1999 on the statute of civil servants. This law introduces a further, higher category of civil servants which did not exist previously in the Romanian legislative framework. This provided junior civil servants with a fast track facility for promotion and made it possible for long-term careers within the civil service.

In order to ensure that civil servants are employed on the basis of meritocracy and objective criteria, entry by competition was set up, as was an appeals commission with independent observers and specialists from other public authorities and institutions (ie independent from the institution advertising the vacant position). These provisions are set out in the newly adopted G.D. no. 1209/2003 on career organisation and development within the civil service.

It is clear that the same section stipulates transparency, efficiency and stability within the civil service, as well as responsibility and orientation towards citizens. It should be underlined that these provisions are not merely words, and are enforced and supported through control mechanisms organised by the National Agency of Civil Servants. The latter has the right to organise controls throughout the different public authorities and institutions in order to verify the correct implementation of the civil servants' legislative field.

Several standard-setting acts were passed in order to increase the transparency of public administration for civil society and to improve the citizen-administration relationship. Among these laws are Law no. 544/2001 on free access to public information, its applicable standards; Law no. 52/2003 on the transparency of public information; and Ordinance

27/2003 regulating the "tacit agreement" (applicable in the event of non-observance of deadlines for responding to citizens requests).

The above-mentioned standard-setting laws ensure greater openness for civil society by requiring the public authorities and institutions to organise monthly public events for informing the public on progress made and difficulties incurred in the exercise of their duties and activities.

As the result of these measures, it is clear that important steps have been made in ensuring the accessibility of citizens to public administration and in facilitating their relationships. In this respect it is important to mention the administrative hotline initiative enabling citizens to address some of their complaints, requests or suggestions by phone, or the website www.administratie.ro. In addition to this the Government of Romania decided to establish some uni pay-offices, in order to save both time and money of tax-payers.

The Romanian Government, through the National Agency of Civil Servants and Ministry of Public Finances, is currently working on drafting a standard-setting law on salaries for civil servants. This should come into force at the beginning of 2005. The idea is to create a proper system for offering the necessary incentives to the civil servants who are subject to many restrictions and disqualification criteria, etc.

A legislative initiative of the National Agency of Civil Servants is the code of ethics for civil servants, which is currently being discussed and analysed by the Romanian Senate. This is an important issue in spite of the non-existence of a code of conduct. The new modified and completed Law no. 188/1999 on the Statute of the Civil Servants contains some direct references to the future standard-setting legislation.

Another important step concerns the issuing of an administrative code, which should comprise the administrative standard-setting acts, standard forms of administrative complaints or requests, etc.

Another initiative in the field of local elected representatives is their code of conduct and this was prompted by an NGO (Civic Alliance), and approved by the two Chambers of the Romanian Parliament. It has now to be promulgated by the President of Romania.

The National Agency of Civil Servants will issue this year a handbook on certain administrative procedures within the civil service, both at local and central level, and also a guide for applying the provisions of the code of conduct for civil servants, which is soon to be adopted and enforced.

With regard to civil servant training, important measures were taken in this direction, notably the development of a civil servants' training strategy. Since training is a responsibility and a right to which the civil servants are entitled, this strategy was prepared by the National Agency of Civil Servants in co-operation with the National Institute of Administration.

Aided by the different legislation we are trying to stimulate the active participation of citizens in the decision-making process, to increase the level of transparency of the entire public administration and to make the whole domain more attractive. The real problem confronting us now is the implementation of the existing standard-setting legislation in a proper and efficient manner, and in this regard we are encouraging the preparation of handbooks and guidelines.

