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OPINION ON THE DRAFT CODE OF ETHICS FOR MEMBERS OF PARLIAMENT OF THE ASSEMBLY OF THE REPUBLIC OF NORTH MACEDONIA

REPUBLIC OF NORTH MACEDONIA

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Based on an unofficial English translation of the Draft Code commissioned by the OSCE Office for Democratic Institutions and Human Rights.



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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The Draft Code of Ethics for Members of Parliament of the Assembly of the Republic of North Macedonia (hereinafter “the Draft Code”) is a self-regulatory tool which purpose to establish standards and provide instructions for conduct of Members of Parliament (hereinafter “MPS”), as well as rules for responding to unacceptable conduct of MPs. It seeks to serve as a complementary document to the existing legal framework regulating the work of the Assembly and the role of MPs and to ensure trust of the public in the work of MPs and the institution of Parliament as a whole.

Elaboration of the Draft Code is highly welcomed as an important precondition for enhancing the public integrity system in general and in line with recommendations by the Council of Europe’s Group of States against Corruption (hereinafter “GRECO”).

The Draft Code contains important provisions that are based on and have been inspired by international standards and best practices on developing ethical guidance for public officials. The Draft Code serves as instrumental document for the wider public enhancing transparency and clarity in the work of parliamentarians and the Assembly as a whole.

At the same time, the Draft Code would benefit from general revision to increase its coherence and cohesiveness, taking care that no contradictory notions dilute the purpose and the intention of the Code. The Code of Ethics should be a laconic and easily comprehensible document serving as a practical yardstick for constant evaluation of MPs’ conduct. It needs to constitute a living body of norms that through clear and simple appeals and monitoring mechanisms is permanently discussed, interpreted and applied in accordance with evolving needs and changes in the public domain and discourse.

More specifically, and in addition to what is stated above, OSCE/ODIHR makes the following recommendations to further strengthen the status of the Draft Code as a promoter of ethical and moral behavior of MPs in accordance with the international standards and best practices:

- A. to include in the Draft Code third aim: to guide MPs as to the ethical foundations in exercising their duties and to structure their actions following a general culture of integrity [pars 27-28];
- B. to enhance throughout the text the status of the Draft Code as a framework for recommended and desirable behavior of MPs [par 29];
- C. to clearly indicate in the Draft Code its connection with other laws and regulations pertinent to the work both of Members of Parliament and also public officials. The Draft Code should not attempt to interpret and summarize any norms of other laws, as this might create ambiguities [pars 30- 35];
- D. to strengthen the provisions of the Draft Code on equality and non-discrimination by focusing on behaviour that constitutes sexual misconduct and chauvinist language and paying particular attention to creating a gender-sensitive parliament, as well as by using gender-neutral terminology throughout the text of the Draft [pars 42-47];

- E. to add reference to the conduct in the Assembly of MPs in relation to voting procedure, specifically to prevent the practice of 'ghost-voting', whereby votes are cast on behalf of members of parliament who are not physically present in the parliament [par 48];
- F. to revise the provisions of the Draft Code introducing guarantees on the right to freedom of expression, especially during political and/or plenary debate, unless it provokes hatred or intolerance on any ground, direct or indirect, calls for violence or in another way abuses public trust and integrity and to revise those related to regulation of MPs private life in order to safeguard the freedom of parliamentary debate and prevent unjustified infringement with private life of parliamentarians [pars 49-59];
- G. to revise the Draft Code's provision considering as conflict of interest concerning MPs succumbing to party pressures and promises, as this may contradict the principle of internal party autonomy [par 69];
- H. to revise the provisions of the Draft Code on participation in election campaigns avoiding overreach into political life and activities of a MP, while regulating use of public resources, such as transportation, staff or equipment for furthering electoral goals [par 72];
- I. to consider defining standards on the employment of MPs family members in the Assembly [par 73];
- J. to expand provisions of the draft Code on mechanisms for monitoring the application of the Draft Code and on confidential counselling to avoid creating ambiguities and potential undermining non-partisan enforcement [pars 74-77];
- K. to consider adding specific provisions dealing with ethical awareness-raising and advice to MPs enforcement [par 83].

These and additional Recommendations, are included throughout the text of this Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing OSCE commitments, the OSCE/ODIHR reviews, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 3 August 2021, the Chair of the Parliamentary Committee on Rules of Procedure, and Mandatory-Immunity Issues of North Macedonia sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) a request for a legal review of the Draft Code.
2. On 23 August 2021 ODIHR responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of the Draft Code with international human rights standards and OSCE human dimension commitments.
3. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE commitments.

II. SCOPE OF THE OPINION

4. The scope of this Opinion covers only the Draft Code submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating parliamentary rules and standards in North Macedonia. At times, the Opinion refers to the Instructions for Use of Code of Ethics for MPs of the Assembly of the Republic of North Macedonia (hereinafter “Draft Instructions”) which interpret and clarify provisions of the Draft Code.
5. The Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements than on the positive aspects of the Draft Code. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national legislation, ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.
6. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*¹ (hereinafter “CEDAW”) and the *2004 OSCE Action Plan for the Promotion of Gender Equality*² and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.
7. This Opinion is based on an unofficial English translation of the Draft Code commissioned by the OSCE/ODIHR, which is attached to this document as an Annex.

1 *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. North Macedonia ratified the Convention on 18 January 1994. .

2 See [OSCE Action Plan for the Promotion of Gender Equality](#), adopted by Decision No. 14/04, MC.DEC/14/04 (2004), par 32.

Errors from translation may result. Should the Opinion be translated in another language, the English version shall prevail.

8. In view of the above, ODIHR would like to stress that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in North Macedonia in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

9. The OSCE Human Dimension commitments on democratic institutions recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions.”³ This implies that, further to building democratic institutions, it is important to ensure that public officials adhere to certain professional and ethical standards⁴.
10. In this regard in its 2006 *Brussels Declaration*, the OSCE Parliamentary Assembly (OSCE PA)⁵, after recognizing that good governance, particularly in national representative bodies, is fundamental to the healthy functioning of democracy, encouraged all parliaments of OSCE participating States (hereinafter “pSs”) to:
 - develop and publish rigorous standards of ethics and official conduct for parliamentarians and their staff;
 - establish efficient mechanisms for public disclosure of financial information and potential conflicts of interests by parliamentarians and their staff;
 - and establish an office of public standards to which complaints about violations of standards by parliamentarians and their staff may be made.
11. While the international community of parliaments and parliamentary support organizations have successfully elaborated international standards or benchmarks for the parliament as an institution⁶, far less progress has been made towards developing standards for the ethical conduct of individual members.
12. The basic principles to uphold the integrity of the institution and retain public trust, as well as requiring its members to act in such a way as to not bring the institution into disrepute were designed and enshrined in a number of international documents as examples of international good practice in democratic governance. Among others, OSCE

³ [Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#) (Copenhagen, 5 June-29 July 1990), para. 26.

⁴ See OSCE/ODIHR, *Background Study: Professional and Ethical Standards for Parliamentarians*, (Warsaw, 2012), page 8.

⁵ OSCE Parliamentary Assembly, *Brussels Declaration of the OSCE Parliamentary Assembly and Resolutions* (Brussels, 2006), para. 32–33.

⁶ The Inter-Parliamentary Union (IPU) adopted the Universal Declaration on Democracy in 1997, which in addition to outlining the key elements of democracies, notes that democracy “requires the existence of representative institutions at all levels and, in particular, a Parliament in which all components of society are represented and which has the requisite powers and means to express the will of the people by legislating and overseeing government action.” Since that time, many regional parliamentary associations, including the Commonwealth Parliamentary Association (CPA) and the Assemblée Parlementaire de la Francophonie (APF), have adopted benchmarks or criteria for democratic parliaments, which describe the key characteristics of a democratic parliament. More recently, the Declaration on Parliamentary Openness has become an important reference point for parliaments that wish to become more open and transparent. The Declaration on Parliamentary Openness has been endorsed by over 180 civil society parliamentary monitoring organizations from over 80 countries, as well as an increasing number of parliaments and parliamentary associations.

Background Study: Professional and Ethical Standards for Parliamentarians⁷ serves as a practical publication combining analysis and good practices on how to build and reform systems that set professional and ethical standards for MPs and regulate their conduct to ensure that those standards are met.

13. Although most of these documents constitute soft law instruments being advisory in nature⁸, the efforts of GRECO towards development stronger integrity guidelines for MPs should be mentioned. In particular, in its Fourth Evaluation Round assessing anti-corruption measures among MPs, judges and prosecutors, the GRECO evaluation teams strongly emphasized codes of conduct in their assessments and recommended that they should be created as soon as possible in countries where such codes had not been established⁹.
14. Furthermore, legally binding obligations concerning bribery of public officials, which can include parliamentarians, emerge for signatories of *the CoE Criminal Law Convention against Corruption*¹⁰ and *the UN Convention against Corruption* (hereinafter “UNCAC”). The latter, in particular, provides the benchmark for anti-corruption initiatives, by setting out a comprehensive set of standards, measures and rules for countries to implement, that include both preventative measures and criminalisation of certain acts¹¹. The Legislative Guide for the Implementation of UNCAC¹² describes the measures needed to implement the Convention and takes a three-stage approach which identifies a) the mandatory requirements that states need to take, b) the optional requirements which states are obliged to consider and c) further optional measures which states may wish to implement. It also provides a useful reference point for parliamentarians, with Article 8 stating that each country should promote integrity, honesty and responsibility amongst its public officials, and should endeavour to apply “*codes or standards of conduct for the correct, honourable and proper performance of public functions.*”¹³.
15. Finally, Article 19 of the *International Covenant on Civil and Political Rights* (hereinafter “the ICCPR”)¹⁴, as well as Articles 8 and 10 of the *CoE Convention for the Protection of Human Rights and Fundamental Freedoms* (hereinafter “the European Convention on Human Rights”)¹⁵ have to be respected as important guarantees of MPs’ rights to freedom of expression and to respect for private and family life.

⁷ OSCE/ODIHR, *Background Study: Professional and Ethical Standards for Parliamentarians*, (Warsaw, 2012)

⁸ See, for instance, CoE *Guiding Principles for the Fight against Corruption*, which include number 15, “to encourage the adoption, by elected representatives, of codes of conduct; *Parliamentary Assembly of the Council of Europe Resolution 1214* attesting to growing international consensus on the necessity of a disclosure mechanism for members’ interest as a minimum in regulating parliamentary conduct; *CoE Resolution 316 of the Congress of Local and Regional Authorities* focusing on the risks of corruption and emphasising the importance of promoting a “culture based on ethical values”; the *Council of Europe Recommendation CM/Rec (2017) on the legal regulation of lobbying activities in the context of public decision making and explanatory memorandum*.

⁹ See GRECO, *Fourth Evaluation Round, Evaluation and Compliance Reports*: out of 49 countries part of the GRECO’s evaluation, 28 have adopted or have taken steps in adopting such a code. However, only nine of these countries have fully complied with GRECO’s recommendations.

¹⁰ CoE, *Criminal Law Convention on Corruption* (Strasbourg, 27 January 1999); North Macedonia ratified the Convention on 28 July 1999.

¹¹ *United Nations Convention Against Corruption* (New-York, 2004); North Macedonia ratified the UNCAC on 13 April 2007.

¹² UN, *Legislative Guide for the Implementation of the United Nations Convention against Corruption*, page 1.

¹³ *ibid*, page 26.

¹⁴ *UN International Covenant on Civil and Political Rights*, adopted by the UN General Assembly by the Resolution 2200A (XXI) of 16 December 1966; North Macedonia ratified ICCPR on 18 January 1994.

¹⁵ *The Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms*, signed on 4 November 1950, entered into force on 3 September 1953; North Macedonia ratified the Convention on 10 April 1997.

16. The ethics and conduct regime interacts with provisions for parliamentary immunity and the freedom of expression for members of parliament, this being political speech par excellence. The importance of the right to freedom of expression, as guaranteed by Article 10 of the European Convention of Human Rights, especially for an elected representative of the people has been consistently emphasised by the European Court of Human Rights in its case-law¹⁶. At the same time, MPs may have to face restrictions pertaining to their political conduct as well. In the case *Karácsony and Others v. Hungary*¹⁷ the Court also held that, while the freedom of parliamentary debate is of fundamental importance in a democratic society, it is not absolute in nature. The exercise of freedom of expression in Parliament carries with it “duties and responsibilities” referred to in Article 10 par 2 of the European Convention on Human Rights in order to ensure the effective operation of Parliament. In this respect parliaments are entitled “to react when their members engage in disorderly conduct disrupting the normal functioning of the legislature. Just as the generally recognised rule of parliamentary immunity offers enhanced, but not unlimited, protection to speech in Parliament, so some restrictions on speech in Parliament – motivated by the need to ensure that parliamentary business is conducted in an orderly fashion – should likewise be regarded as justified.”¹⁸
17. At the same time, protection of the right to freedom of expression has to be balanced against the right to private life as guaranteed by Article 8 of the European Convention on Human Rights.¹⁹ The level of protection that public figures and especially politicians are entitled to has been extensively considered in defamation cases by the European Court of Human Rights²⁰, as well as in a narrower range of cases²¹ that directly concern the balance between the degree of privacy politicians as public figures are entitled to and the right of the wider public to freedom of expression. Those have generally found that such figures do have the right of protection for their private life but with some qualifications, including a reasonable expectation of privacy test that takes into account public function/power/profile as relevant criteria (see subsection 4.3 below).

2. BACKGROUND

18. MPs of the Assembly of the Republic of North Macedonia are subject to rules of conduct contained in different legislative and sublegislative acts, such as the Constitution, the Criminal Code, the Law on Members of Parliament, the Law on the Assembly, the Law on Prevention of Corruption, the Law on Prevention of Conflicts of Interest, the Law on Lobbying and the Rules of Procedure of the Assembly. An initiative to introduce a set of rules of conduct for parliamentarians was launched in 2012, though has not been seen through.

¹⁶ See, for instance, European Court of Human Rights (ECtHR), *Castells v. Spain* (Application no. 11798/85, judgment of Judgment 23 April 1992), para. 42, further confirmed in a number of cases concerning freedom of expression of members of national or regional parliaments (see, among other authorities, *Jerusalem v. Austria*, no. 26958/95, § 36, ECHR 2001 II; *Féret v. Belgium*, no. 15615/07, § 65, 16 July 2009, and *Otegi Mondragon v. Spain*, no. 2034/07, § 50, ECHR 2011), as well as in a series of cases concerning restrictions on the right of access to a court stemming from the operation of parliamentary immunity (see *A. v. the United Kingdom*, no. 35373/97, § 79; *Cordova v. Italy* (no. 1), no. 40877/98, § 59, ECHR 2003 I; *Cordova v. Italy* (no. 2), no. 45649/99, § 60, ECHR 2003 I; *Zollmann v. the United Kingdom* (dec.), no. 62902/00, ECHR 2003 XII; *De Jorio v. Italy*, no. 73936/01, § 52, 3 June 2004; *Patrono, Cascini and Stefanelli v. Italy*, no. 10180/04, § 61, 20 April 2006; and *C.G.I.L. and Cofferati v. Italy*, no. 46967/07, § 71, 24 February 2009).

¹⁷ See ECtHR, *Karácsony and Others v. Hungary* (GC), (Applications nos. 42461/13 and 44357/13, judgment of 17 May 2016), para. 139.

¹⁸ *Ibid*

¹⁹ See ECtHR, *Karhuvaara and Iltalehti v. Finland* (Application no. 53678/00, judgment of 16 February 2005), para. 42.

²⁰ See, for example, ECtHR, *Lingens v Austria*, (Application no. 9815/82, judgment of 8 July 1986).

²¹ See ECtHR *Von Hannover v. Germany* (Application no. 59320/00, judgement of 24 September 2004) and *Karhuvaara and Iltalehti v. Finland* (Application no. 53678/00, judgment of 16 February 2005).

19. The GRECO Forth Evaluation Round Report on the Former Yugoslav Republic of Macedonia of 2013²² recommended to swiftly proceed with the development of a code of conduct for members of the Assembly accompanied by a mechanism of supervision and sanction for misconduct, as well as for raising awareness among MPs on the standards expected of them.
20. A Code of Ethics for Members of Parliament of the Assembly of the Republic of North Macedonia (hereinafter “the original Code”)²³ was adopted on 11 June 2018 at the 47th plenary session of the Assembly²⁴ and regulates the basic ethic principles, rules and standards of conduct of MPs in the parliament. The original Code comprises of 22 articles and six chapters covering a) general provisions: scope and goals; b) basic ethical principles: objectivity and respect of others, acting responsibly, avoiding personal gains and refusing services/gifts/donations which would influence decisions, mutual respect; c) rules of conduct: basic rules, conflicts of interest, prohibition of corruption, receiving of gifts, budget and financial discipline, use of parliamentary funds; d) violations of the Code with a distinction between misdemeanours and serious infringements, the designation of the Committee for procedural and mandate-immunity affairs (hereafter “the Committee”) as the disciplinary body (which shall adopt the disciplinary rules of procedure), sanctions for misdemeanours (warning) and of severe infringements (public warning), a statute of limitations (six months), e) declaration of acceptance to be signed by the MP and publicity of the Code; f) preliminary and final provisions.
21. In its Second compliance report of the Fourth Evaluation Round²⁵, the GRECO welcomed the Code’s adoption, having noted however that the consistency of its rules would need further adjusting (some provisions overlapped on the same subjects). Regarding the enforcement mechanism, the Report required that the Committee had adopted the procedural and other implementing rules. It also found that a mere warning as the only applicable sanction (albeit it would be public) was clearly insufficient to deal with the variety of situations which could occur. Regarding measures to promote the Code and raising awareness about its content, the situation will need to be re-examined once the announced measures (publication, training) and possibly other initiatives are actually implemented.
22. In January 2019, the Assembly adopted amendments to the original Code with revised rules on conflicts of interests, gifts and sanctions which were promptly published in the Official Gazette. In July 2019, the competent supervisory body – the Assembly’s Committee - adopted “Rules on conducting the procedure for determining committed minor and serious violations of the Code and on pronouncing measures stipulated by the Code of Ethics for MPs”, which also included a gift reporting form²⁶. Whilst welcoming

²² See GRECO, Forth Evaluation Round Report “*Corruption prevention in respect of members of parliament, judges and prosecutors*” with respect to Former Yugoslav Republic of Macedonia, adopted on 6 December 2013, para 35, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000116806c9ab5> (last visited on 11 November 2021).

²³ *The Code of Ethics for Members of Parliament of the Assembly of the Republic of North Macedonia*, Official Gazette n°109 of 12 June 2018, available at: <https://www.sobranie.mk/code.nsp> (last visited on 11 November 2021).

²⁵ See GRECO, Second Compliance Report of the Forth Evaluation Round “*Corruption prevention in respect of members of parliament, judges and prosecutors*” with respect to Former Yugoslav Republic of Macedonia, adopted on 22 June 2018, available at: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16808cc85f> (last visited on 11 November 2021).

²⁶ GRECO, Interim Report of the Forth Evaluation Round “*Corruption prevention in respect of members of parliament, judges and prosecutors*” with respect to North Macedonia, adopted on 25 September 2020, para 8, available at: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16809f80e> (last visited on 22 November 2021).

the above amendments as going “in the right direction”, the GRECO further noted²⁷ that in some respects they still did not generate greater clarity or consistency²⁸.

23. The Draft Code submitted for the review has to be considered as a new document to replace the original Code, following the latest GRECO’s recommendations. In this respect, it should be noted that according to the key principles of good law-making, the draft should seek to serve clearly identified policy goals based on evaluation of already adopted acts. The issue, therefore, arises as to rationale for developing the new Code rather than assessing the efficiency of the existing one and introducing the relevant amendments if necessary. The production of new laws and regulations without the necessary regard to the fact that the main aim of the legislative activity is to create a document being effectively applied, leads to the generally low law quality and efficiency of legislation, when the coherent implementation is replaced by a constant process of new law-making. At the same time, good practices from certain OSCE participating States have shown that an in-depth policymaking process, where the debates are based on evidence and extensive research, as well as conducting Ex ante Regulatory Impact Assessment (hereinafter “RIA”) helps render the remaining process of drafting and debating a legislation much more coherent. It also saves time, as the knowledge and conviction gained that a new law or amendment is necessary will inform consultations and help with the assessment process throughout.

3. THE STATUS OF THE DRAFT CODE

24. According to the Draft Code it regulates the basic principles and standards of MPs ethical conduct. It defines itself as “*a self-regulatory tool whose purpose is not to control the work of MPs, but to establish standards of conduct, to provide instructions for conduct, to establish common rules for responding to unacceptable conduct, and to ensure trust of the public in the work of the Members of Parliament and the Assembly*”. The Draft Code serves as a complementary document to the existing legal framework regulating the work of the Assembly and the role of MPs and addresses how MPs should behave, what is expected of them and establishes the standards of good conduct and quality of work to which they have agreed.

3.1. The Purpose and Language of the Draft Code

25. The Draft Code does not sufficiently outline its general nature striving to promote a certain type of behavior rather than enforce it. Formulations like “*the code regulates*” and “*the monitoring and application of the Code are mandatory*” give an impression of a document with the force of law.
26. While acknowledging that codes of ethics should seek to guide the behavior of those to whom they apply, their mission goes beyond clear-cut rules prescribing or prohibiting particular acts. Codes are intended to express common values and lead principles that serve to guide and simultaneously evaluate conduct of MPs. In this respect, the level of trust that the public has in both an individual MP and in the parliament as an institution, which they represent, are relevant. The main motivation behind increased pressure on legislatures to adopt codes of conduct is to maintain and increase trust both in parliament itself and in representative democracy more generally. In this respect, the language of the

²⁷ Ibid, para 9.

²⁸ In particular, according to GRECO, the provisions were not clear on concrete measures that need to be taken in the event of a potential conflict with an MP’s private interest. The provisions on gifts were repetitive and contradictory.

Draft Code should not be too imperative and rigid; the Draft Code should serve as an aspiration to an ethical and moral conduct rather than a commandment. In case of using too imperative formulations, the Draft Code risks becoming a formalistic document, not a living organism, the requirements of which are impossible to match in practice. Depending on the political culture, admission of mistakes and a subsequent public apology (including, for instance, making a public apology on the floor of the parliament and making the full report on the conduct available on parliament's website) can be a powerful tool for public accountability. If such mechanism is not permitted and such culture of admission of mistakes is not fostered, the reaction to potential discoveries can be counterproductive – attempts to hide, wait-out until some other issues take over, etc. For instance, both in the UK²⁹ and in Latvia³⁰, the Codes of Ethics and Conduct for MPs are formulated in a more aspirational language, recognizing the value of admitting mistakes by the MP. **Based on the above considerations, it is recommended to enhance throughout the text the status of the Draft Code as framework for recommended and desirable behavior by MPs.**

27. The Draft Code is aimed to “*regulate and promote the ethical principles and standards of conduct and behavior that are expected from the MPs*”, as well as “*to increase the openness, transparency and integrity of the Members of Parliament and the Assembly and to strengthen the public confidence in the office of Member of Parliament*”. The second goal highlights the function of the Draft Code as an important instrument for civil society organizations (hereinafter “CSOs”) and the public at general, in their efforts to keep MPs accountable to a clear set of standards and is thus, welcomed as contributing to a greater transparency and clarity in the work of parliamentarians and the Assembly as a whole.
28. At the same time, the drafters could look at the Code as the document creating ethical foundations and developing a culture of integrity and ethics among MPs. The rationale behind this is the pressing necessity to design trust strategies and integrity systems ensuring a proper response to issues that are seen as undermining the effort of the legislature to maintain public trust. In this respect the codes of conduct/ethics should be considered as a collection of rules, procedures and standards meant to serve as parliaments’ resources to maintain and enhance public trust: not by applying sanctioning regime to punish wrongdoers, but rather as a recognition of the fact that the conduct of individual MPs is ultimately a concern for the parliament as an institution, and that a failure to respond to unacceptable behavior may have detrimental effect on public trust in parliament as an institution, and in representative democracy overall.

RECOMMENDATION A.

to include in the draft Code a third aim: to guide MPs as to the ethical foundations in exercising their duties and to structure their actions following the general culture of integrity.

²⁹ The Code of Conduct of the UK Parliament at the outset clearly establishes that: “*The purpose of this Code of Conduct is to assist all Members in the discharge of their obligations to the House, their constituents and the public at large*”, see UK, the *Code of Conduct for Members of Parliament*, prepared pursuant to the Resolution of the House of 19 July 1995, Article 1, available at: <https://publications.parliament.uk/pa/cm201719/cmcode/1882/188201.htm> (last visited on 11 November 2021).

³⁰ The purpose of the Code of Ethics in Latvia is “*to establish high standards of behavior and thereby increase society's trust in the work of the [parliament]*”, see the *Code of Ethics for Members of the Saeima of the Republic of Latvia*, Article 1, available at: <https://www.saeima.lv/en/legislative-process/rules-of-procedure> (last visited on 11 November 2021).

29. Furthermore, the Draft Code aims to regulate and promote the ethical principles and standards of conduct and behavior that are expected from the MPs “*during the exercise of the function for the duration of their mandate*”. At the same time, the Draft Instruction indicates that “*after the end of the term of office, the MP continues to be guided by the principles of legality, honesty, objectivity, transparency, accountability and integrity. The relations of the MP with the Assembly, regarding any privilege or obligation, continue even after the end of the term of office*”. Permanent restrictions, according to the Draft Instruction, are also related to the storage of confidential information, which the MP received during the exercise of his/her mandate, due to the function he/she performed. Even though the Code of Ethics can hardly define specific conduct of parliamentarians after they have left the office (as it cannot provide for an enforcement mechanism once an MP does not have a parliamentary mandate anymore), it could still require with the aim to safeguard reputation of the parliament that former MPs for a certain period of time do not engage in using their knowledge and expertise from the law-making period to advantage one and disadvantage other business and other entities (see subsection 5.1 below).

RECOMMENDATION B.

To enhance throughout the text the status of the Draft Code as framework for recommended and desirable behavior by MPs.

3.2. The Connection of the Draft Code with Other Legislation

30. In general, codes are often less static than legislation and may need to evolve over time³¹. There is a significant “value-added” that the codes of conduct/ethics could combine all integrity rules in one document by bringing together MPs' ethical, legal and regulatory obligations in a single copy, as well as include the obligation to observe not only the letter but also the spirit of the rules that could hardly be a part of a normal law. They can bring to a regulatory regime by exhorting elected officials to conduct themselves well (and helping them to do so) even in situations where the law does not necessarily determine the right course of action. However, it is essential that provisions of the codes and provisions of laws in general, if overlapping, are not contradictory.
31. Most codes of conduct/ethics reiterate the obligation of officials to obey and respect the law. For MPs this means primarily compliance with rules regulating Parliament³². For example, Article 2 of the Code of Official Conduct of the US House of Representatives states that “*A Member, Delegate, Resident Commissioner, officer, or employee of the House shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof.*”³³
32. In this regard, the Draft Code and Draft Instruction make references to the following legislative framework:

³¹ See GRECO, Fourth Evaluation Round Report “*Corruption prevention in respect of members of parliament, judges and prosecutors*” with respect to Turkey, page 3, adopted on 22 March 2019, available at: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/168095417c> (last visited on 11 November 2021), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c9d29>.

³² *Toolkit for drafting codes of conduct for members of Parliament*, Partnership for Good Governance II (2019-2021), Regional Project “Strengthening measures to prevent and combat economic crime” Implemented by CoE, page 13.

³³ *Code of Official Conduct*, Rules of the House of Representatives, 26 February 2021, available at: <https://ethics.house.gov/publications/code-official-conduct> (last visited on 11 November 2021).

- Laws that govern the work of parliament and Members of Parliament (The Law on the Members of Parliament, the Law on the Assembly and the Rules of Procedure of the Assembly);
 - Laws that govern particular aspects of the work of Members of Parliament as public officials, i.e. conflict of interests, asset declaration, lobbying, corruption prevention, bribery and regulation for receiving gifts;
 - Other Laws as the Law on Prevention and Protection against Discrimination, Law on Labor Relations, Law on Protection from Harassment at the Workplace, Law on Free Access to Public Information, Law on Civil Liability for Defamation and Insult.
33. While the complementary nature of the Draft Code to the existing legislation regulating the work of the Assembly and the role of MPs is mentioned in the Draft Code, more clarity as to in which areas there might be the only regulation of conduct and in which - a reference to the existing laws currently in force is made – would be desirable. The risk with this is that by addressing such areas as conflict of interest, corruption prevention, receipt of gifts and asset declaration in a summarized manner, an imprecise interpretation of the legal norms can occur. For instance, the Draft Code includes a formulation “*the MP publicly announces his/her debts and loans, as well as other obligatory relations in order to eliminate a situation of conflict of interest*”. However, unless the obligation to declare a loan exists in domestic law (either within the context of conflict of interests or asset declaration), the proposed provisions of the Draft Code might add ambiguity, as the status of the public announcement could be broadly interpreted and conflict with other disclosure obligations. In addition, the Draft Instruction includes even more regulations not always mentioned in the Draft Code, which in practice could lead to uncertainty and contradictions. .
34. “Summarizing” of the norms of the respective laws, as seems to be the case with, for instance, conflict of interests in the Draft Code, can open room for interpretation and ambiguity. The Draft Code could therefore benefit from a **clearer indication of the connection between the Draft Code and other laws and regulations**. In this context, it should be ensured that all pertinent laws are appropriately referred to throughout the Draft Code and in case of opting for collation of any of their provisions for the purposes of the draft Code, this should be done with the highest possible accuracy³⁴.
35. The following principles in the references to other legislation should be observed:
- the reference is clear and the higher legal power to the respective laws is always consistently acknowledged;
 - the Draft Code does not contain provisions and descriptions that in any way are contradictory or ambiguous in explaining the obligations of MPs that are set forth in other laws;
 - the reference to other pertinent laws is clear, summarized, and, advisably can be easily found in one clause of the draft Code instead of being scattered over the text.

³⁴ For instance, in Ireland the Code of Conduct for MPs includes the following reference: “*deputies shall, both under general legislation and pursuant to the Rules of Procedure of the Chamber, scrupulously and rigorously adhere to obligations of transparency and disclosure regarding their financial assets and interests, loans received and positions held in any organization or company, whether public or private*”. In Sweden, the Code of Conduct for parliamentarians includes a clearly indicated special sections where the existing laws for conflict of interests and anti-bribery are precisely quoted with the reference to the respective laws, indicating that both conflict of interest and also anti-bribery while being the ethical categories are also precisely addressed by the respective laws. In this way, both examples include an unambiguous reference to the higher, legal power of the pertinent legislation, see *Code of conduct for members of the Riksdag*, available at: <https://www.riksdagen.se/en/how-the-riksdag-works/the-members-pay-and-conditions/code-of-conduct-for-members/> (last visited on 11 November 2021).

RECOMMENDATION C.

To clearly indicate in the Draft Code its connection with other laws and regulations pertinent to the work both of Members of Parliament and also public officials. The Draft Code should not attempt to interpret and summarize any norms of other laws, as this might create ambiguities.

4. BASIC ETHIC PRINCIPLES AND THE EXPECTED BEHAVIOUR OF MEMBERS OF PARLIAMENT

4.1. Basic Ethic Principles and Values

36. Codes of ethics and codes of conduct serve to provide an overview of the expectations placed on MPs, as representatives of the people, that they will abide by a set of ethics standards in the manner in which they conduct their work. Even though there are some international standards in this respect mentioned above (see section Relevant international human rights standards and OSCE Human Dimension Commitments of this Opinion), every country will most likely have its own definition of what ethical is and the parliament will need to define ethical behavior for its members.
37. Ideally, the exact list of principles should reflect a national consensus, or an agreed list that has emerged from a domestic process³⁵. For example, in the UK almost all codes of conduct for public officials start with the Seven Principles of Public Life, elaborated by the Committee for Standards in Public Life, which are: Selflessness; Integrity; Objectivity; Openness and Transparency; Accountability; Leadership³⁶. The Lithuanian Code of Conduct for State Politicians (Article 4) lays down the following principles of conduct: respect for an individual person and the state; justice; honesty; transparency and publicity; decency; exemplariness; selflessness; impartiality; and responsibility³⁷.
38. According to the Draft Code, the basic principles and values of MPs' behavior are the following: Commitment to the Public Interest and Democratic Values, Objectivity and Fairness, Equality, Openness and Transparency, Mutual Respect, Integrity, Efficiency and Economy, Leadership. While acknowledging that the definition of ethical principles and values lies primarily within participating States, international good practices may serve as an inspiration in this particular context (for instance, the European Code of Conduct for all Persons Involved in Local and Regional Governance (hereinafter "the European Code") of 2018³⁸ and Code of conduct for members of the Parliamentary Assembly of the Council of Europe of 2019³⁹ that can be used as a basic framework to provide guidance on drafting a Code). Based on the above considerations, the drafters

³⁵ *Toolkit for drafting codes of conduct for members of Parliament*, Partnership for Good Governance II (2019-2021), Regional Project "Strengthening measures to prevent and combat economic crime", implemented by CoE, page 12.

³⁶ UK Committee on Standards in Public Life, *Guidance: The 7 Principles of public life*, 31 May 1995, available at: <https://www.gov.uk/government/publications/the-7-principles-of-public-life> (last visited on 11 November 2021).

³⁷ Lithuania, *Law on the Approval, Entry into Force and Implementation of the Code of Conduct for State Politicians*, 19 September 2006 No X-816, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.287040> (last visited on 11 November 2021).

³⁸ *The European Code of Conduct for all Persons Involved in Local and Regional Governance* (hereinafter "the European Code") adopted at 35th session of the Congress of Local and Regional Authorities on 7 November 2018, available at: <https://rm.coe.int/european-code-of-conduct-for-all-persons-involved-in-local-and-regional/16808ec7e3> (last visited on 11 November 2021).

³⁹ *The Code of conduct for members of the Parliamentary Assembly of CoE*, Compendium of provisions in force on 1 July 2019, available at: <https://assembly.coe.int/Li&Ray/APCE/pdf/Procedure/CodeOfConduct-EN.pdf> (last visited on 11 November 2021).

may wish to consider **adding the Primacy of Law, Impartiality/Non-Discrimination, Accountability, Merit and Professionalism to the existing principles and values.**

4.2. Expected Action and Behaviour of Members of Parliament

4.2.1. Behaviour with Parliamentary Services and other Employees in the Institution

39. Given the sensitivity of the MP's position, provisions of the section of the Draft Code on "Behaviour with parliamentary services and other employees in the institution" provide an important safeguard for the administrative staff of the Parliament. At the same time, an MP should be expected to show respect and trust not only to the parliament's employees, but in equal measure to political staff, journalists, visitors, guests and interns. Furthermore, the indication should be needed in this respect of how potential complaints about MP's misconduct are processed or how, for instance, whistle-blower information is proceeded with.
40. Moreover, little is mentioned in the Draft Code when it comes to liability for MPs' staff. In this context the respective provision in the Code of Conduct of Parliament of Scotland can serve as an example of a good practice stating that "*Consistent with their duties as employers, members must take all reasonable steps to ensure that their staff are fully aware of, understand and abide by the policies, rules, requirements and behavioural standards that apply to the conduct of staff when carrying out their duties both within and outwith the Parliamentary complex and in dealing with those individuals mentioned in paragraph 7.5.*"⁴⁰.
41. It is thus **recommended to consider in the Draft Code the provisions on the procedure of dealing with complaints about MP's misconduct and the rules on responsibility of MPs for the behavior of their staff.**

4.2.2. Equality and Non-Discrimination

42. The Draft Code defines exercising the constitutionally guaranteed rights of equality and non-discrimination by creating equal opportunities and respecting diversity as one of the basic value. According to the draft Code, "*the MP does not call for or incite any kind of discrimination. The MP does not practice and support harassment, including gender-based harassment against a person or group*". The above provisions could be enhanced, however, by specifying that MPs shall perform their duties **without prejudices and shall not incite any kind of discrimination or harassment based on race, religion, sex, etc.**
43. At the same time, the draft Code **should focus more on behaviour that constitutes sexual misconduct, bullying and chauvinist language**⁴¹. Making the Assembly a safe place for both women and men to work is essential to creating a gender-equal parliament, as well as ensuring the Assembly serves as an example of good practice for other workplaces.
44. Moreover, the drafters could consider adding the possibility for women MPs that have newly born children to attend the parliamentary works with them, for example including the following or similar wording: **the parliament will keep the working conditions and**

⁴⁰ Code of Conduct for members of the Scottish Parliament, 8th edition, 6 May 2021, Section 7, available at: <https://www.parliament.scot/msps/code-of-conduct/-/media/c160dbee10264603aafe30f11d3ffaed.ashx> (last visited on 11 November 2021).

⁴¹ See, for instance, <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/code-of-conduct-for-the-house-of-lords/code-of-conduct-appendices/>

operational culture under constant review, to make sure that there are equal opportunities for women and men, MPs and staff alike .

45. The Draft Code pays particular attention to a dress code that might create potential problems with evaluating the appearance and manner of dressing at other official events outside the Assembly. Furthermore, when formulating a dress code policy, the drafters should keep potential issues of discrimination in mind, especially given possible religious and ethnic sensitivities, as well as the principle that, while a Parliament may have different rules for men and women, the regulations should not be more stringent with respect to one of the groups.
46. Non-discriminatory considerations should extend to parliamentary language as well, requiring from MPs to act in all situations with respect and courtesy, avoiding terms which might insult or disparage another person or a group, as well as offensive or otherwise inappropriate statements that may dishonour the Assembly⁴².
47. Finally, whilst it should be noted positively that overall, the Draft Code uses gender neutral terminology, several provisions, however, still refer to the male forms “him/his” instead of “him or her”/“his or her”. Established international practice requires legislation to be drafted in a gender neutral/sensitive manner⁴³. It is recommended that, whenever possible, the reference to post-holders or certain categories of individuals be adapted to use a gender neutral word, whenever possible. Alternatively, the plural form of the respective noun could be used instead of the singular (e.g., [...]) or it is recommended to use both male and female words, for instance “[...]/[...]” or “[...]/[...]”.

RECOMMENDATION D.

To strengthen the provisions of the Draft Code on equality and non-discrimination by focusing on behavior that constitutes sexual misconduct and chauvinist language and paying particular attention to creating a gender-sensitive parliament, as well as by using gender-neutral terminology throughout the text of the Draft.

4.2.3. Conduct at the Plenary Sessions and Sessions of the Working Bodies

48. The Draft Code would benefit from adding a reference to the conduct in parliament of MPs in relation to voting procedure (in case this is not subject to regulation by the Rules of Procedure of the Parliament), specifically to regulate the practice of ‘ghost-voting’, whereby votes are cast on behalf of members of parliament who are not physically present at the plenary session. The practice is facilitated where voting is electronic and requires only the push of a button. Members of the same party often agree to perform

⁴² The provisions of the Code of Ethics of MPs in Montenegro could serve as an inspiration in this respect, indicating that: "*In mutual communication, as well as in communication with other persons and public, MPs are obliged to act in all situations with respect and courtesy, avoiding terms which might insult or disparage another person or a group [...]*". "MPs are obliged, in any occasion, not to damage the reputation of other MPs and reputation of the Parliament, through conduct, written and spoken word [...]" . In Latvia, the Code of Conduct of the Parliament is worded similarly: "*An MP avoids using words, gestures and other actions that can be insulting and does not use offensive or otherwise inappropriate statements that may dishonour the Saeima.*", see *the Code of Ethics for Members of the Saeima of the Republic of Latvia*, Article 1, available at: <https://www.saeima.lv/en/legislative-process/rules-of-procedure> (last visited on 11 November 2021).

⁴³ See e.g., ODIHR, *Comments on the Law on the Assembly and the Rules of Procedure of the Assembly from a Gender and Diversity Perspective* (2020), pars 105-107; and *Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation* (2017), page 63. See also *the UN Economic and Social Commission for Western Asia (ESCWA), Gender-Sensitive Language* (2013); European Parliament, *Resolution on Gender Mainstreaming* (2019); Council of the European Union, '*General Secretariat, Inclusive Communication in the GSC*' (2018); and European Institute for Gender Equality's *Toolkit on Gender-sensitive Communication* (2018).

ghost votes for one another, but members of opposing parties can also cast ghost votes which run counter to the beliefs of the absent MP, implying both political and legal consequences. Prohibiting/sanctioning of or warning against “dishonest voting” may be considered, also taking duly into account the need to ensure more flexible and family-friendly parliament. It is, therefore recommended, to consider **adding a reference to the conduct in parliament of MPs in relation to voting procedure.**

RECOMMENDATION E.

To add reference to the conduct in the Assembly of MPs in relation to voting procedure, specifically to regulate prevent the practice of ‘ghost-voting’, whereby votes are cast on behalf of members of parliament who are not physically present in the parliament.

49. The draft also states that *“the MP supports and promotes freedom of expression, taking care not to turn it into “hate speech”. He / she does not act or speak in a way that may provoke hatred, intolerance and / or violence on a personal, ideological, religious, national, ethnic, gender or racial basis.”*. Given the fundamental importance of the freedom of parliamentary debate in a democratic society, it is worth highlighting that pSs have very limited latitude in regulating the content of parliamentary speech. Rules about behavior in parliament may restrict political expression in ways that go against civil rights; they also may apply to the ways political opponents can be treated, in parliament and out of parliament. Even though an elected official must in this respect accept restrictions that do not apply for an active politician who has not been elected to political office, such restrictions also must have limits – Parliament is an essentially political institution and overly restricting behavior in chamber therefore can be a danger to democracy itself.
50. Even though some regulation may be considered necessary in order to prevent forms of expression such as direct or indirect calls for violence, being subject to certain “restrictions” or “penalties” established by the internal rules of the parliaments, a final ruling on the compatibility of such measures with freedom of expression enshrined in Article 10 of the European Convention on Human Rights may vary depending on particular context of each case⁴⁴.
51. In this context it is important whether parliament can adequately address inappropriate behavior as a betrayal of trust and credibly take steps to exclude its reoccurrence. The drafters may thus consider indicating that **the Code supports and promotes freedom of expression, especially with respect to political and/or plenary debate, unless it provokes hatred and intolerance on any ground, direct or indirect calls for violence or in another way abuses the public trust and integrity. In this respect it would be also advisable to give clearer criteria with references to the respective legal framework and/or conditions under which particular forms of expression should be considered as undermining the trust in the parliament as an institution.**
52. According to the draft Code, the MP should speak and act with attention and respect for the person and reputation of each individual and take care not to damage the reputation of other MPs and the reputation of the Assembly. *“He/she is careful not to present data and assessments from the personal or family life of the MPs and other holders of public*

⁴⁴ See ECtHR, *Karácsony and Others v. Hungary* (GC), (Applications nos. 42461/13 and 44357/13, judgment of 17 May 2016), para. 139.

office with which he/she may damage their honor and reputation". It should be kept in mind, however, that the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual. Without calling into question that the exercise of the freedom of expression may be subject to formalities, conditions and restrictions that are necessary to protect the reputation of others, including of politicians as well (even when they are not acting in their private capacity), in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.

53. Furthermore, a qualified privilege permits an MP to make a statement that, even being offensive or derogatory in nature, would not necessarily be considered to be defamation given particular circumstances. However, if the statement is made with actual malice, then the speaker will no longer be entitled to the qualified privilege. In line with this broad concept of the right to freedom of expression, the protection under Article 10 of the European Convention on Human Rights also extends to sharing of information that is strongly suspected to be untruthful. The ECtHR case-law does not prohibit discussion or dissemination of information received even if it is strongly suspected that this information might not be truthful⁴⁵. To suggest otherwise would deprive persons of the right to express their views and opinions and would thus place an unreasonable restriction on the freedom of expression. While noticing the good intention of the provisions of the Draft Code related to defamation, it is still advisable **to eliminate or substantially revise them in the text given the above considerations and the fact that the respective restrictions could be misused and/or to a different extent stifle the freedom of parliamentary debate.**
54. The aforementioned recommendations with respect of certain standards of parliamentary language should be also applicable in the context of behavior during parliamentary sessions (see para 45 above).

4.3. Regulation of Private Life of Members of Parliament

55. The Draft Code does not pursue to regulate the private life of the MP, except when *"his/her private life significantly violates the integrity and public trust in the MP and in the Assembly"*.
56. While there is nothing wrong with establishing rules of behavior for MPs to observe while in parliament (given that they are not too far reaching and do not unreasonably impede political expression as mentioned above), the credibility of the institution requires the focus to be on the issue of betrayal of public trust. The former is about general norms of behavior and shared values, but not about what kind of conduct is appropriate where.
57. As regards Article 8 of the European Convention on Human Rights, the ECtHR case-law defines its object as essentially protecting the individual's private life against arbitrary interference by public authorities. It should be recalled, however, that the protection of private life has to be balanced against the freedom of expression guaranteed by Article 10 of the Convention, i.e. the fair balance has to be struck between the competing interests of the individual and of the community as a whole. Indeed, the public has the right to be informed, which is an essential right in a democratic society that, in certain special

⁴⁵ ECtHR, *Salov v. Ukraine* (Application no. 65518/01, judgment of 6 December 2005), para. 113.

circumstances, may even extend to aspects of the private life of public figures, particularly where politicians are concerned.⁴⁶

58. The main question in this respect is then how a line should be drawn between aspects of private life that MPs can decide to keep private, and those aspects that should be considered as of public relevance, and possibly be regulated by some explicit rules or codes instituted by parliament. Keeping in mind that those boundaries cannot be given a comprehensive and concluding definition (as with other matters relating to integrity, boundaries between what is private and what should be public are vague and constantly changing, reflecting at any given time both cultural and political context), the Draft Code seems not to define which kind of the behavior of MPs constitutes a betrayal of public trust involving a possibility to disproportionately interfere with the private life of MP. At the same time, it is even more difficult or almost impossible for an MP to clearly comply with the Draft Code in his/her behavior as it is open to interpretation based on personal moral convictions and the general concept of ethical significance respectable in a particular society.
59. Bearing the above in mind the Draft Code may benefit from making **clearer criteria with references to the respective legal framework and/or conditions under which the regulation of the private life of the MP would be acceptable by the rules of the Draft Code**. This will allow securing from an unjustified interference with the private life of parliamentarians.

RECOMMENDATION F.

To revise the provisions of the Draft Code introducing guarantees on the right to freedom of expression, especially during political and/or plenary debate, unless it provokes hatred or intolerance on any ground, direct or indirect, calls for violence or in another way abuses public trust and integrity and to revise those related to regulation of MPs private life in order to safeguard the freedom of parliamentary debate and prevent unjustified infringement with private life of parliamentarians

5. PREVENTION OF CORRUPTION

5.1. Employment and Post-Employment Restrictions, Conflict of Interest and Lobbying

60. According to the Draft Code, after the end of the mandate, the MP will not accept employment with an employer with whom he/she was in close cooperation or possessed information that could put him/her in a privileged position in relation to the other candidates. It also states that *“The MP will not provide consulting services for matters closely related to the parliamentary function for at least 1 year after the end of the mandate.”*
61. It should be noted, however, that the existing formulation *“closely related to parliamentary function”* seems to be too vague to exclude a possible conflict of interest. In this respect, it could be worth specifying, for example, that MP will not have

⁴⁶ ECtHR, *Von Hannover v. Germany* (Application no. 59320/00, judgement of 24 September 2004), para. 64 and *Karhuvaara and Italehti v. Finland* (Application no. 53678/00, judgment of 16 February 2005), para. 45

contractual relations or any other commercial or individual work contract with the Parliament or with any official institution over which they had power of supervision during their mandate.. It would be also advisable to clarify the regulation of situations when an MP participated directly in a matter that concerns a specific entity: whether it would be appropriate for him/her to refrain from accepting engagements with the relevant entities involved for some period following termination of office? Even though the draft Instruction sheds more light on the issue at stake and gives some explanation as to what kind of engagements are not permissible after the end of the mandate, the references to the respective legislation in this respect would benefit the draft.

62. Furthermore, to eliminate any perception of unethical conduct, **the Draft Code could mention standards based on the respective domestic legislation concerning MPs close relatives' engagement with organisations/institutions over which an MP had exercised considerable authority/supervision during the performance of his/her mandate.**
63. At the same time, it would be essential to evaluate the provisions of the Draft Code and Draft Instruction on post-employment restrictions vis-à-vis Article 27 of the Law on Prevention of Corruption, requiring from an official to inform the State Commission for Prevention of Corruption (hereafter "SCPC") within three years after the end of office about establishing a trade company or starting business in the field in which he/she used to work. Article 28 of the same Law forbids an official during his/her term of office or within three years after its termination to acquire shares or rights in an entity over which he/she has exercised supervision, except by way of inheritance.
64. It should be also mentioned that the Law on Lobbying⁴⁷ prohibits elected officials from lobbying until one year after they have ceased to receive a salary.
65. **The respective provisions of the Draft Code should be, therefore, considered in light of the domestic anti-corruption legislation and the one governing the work of parliament and Members of Parliament to avoid possible ambiguity and contradictions.**
66. The Draft Law determines that during his / her term of office the MP shall respect the rules for incompatibility of a function he/she performs with other functions or activities in accordance with the provisions of the Law on Members of Parliament. In this respect, the drafter could **consider clarifying the distinction between public and private sector positions, and their incompatibilities implications, as well as assess whether private sector interest might be made acceptable under requirement of disclosure.**
67. The Draft Code falls short of prescribing specific conduct for various situations of conflicts of interest (i.e. withdrawal from a committee, discussion, vote), though the Draft Instruction gives more examples in this respect. In the event of a possible conflict of interest, an MP is obliged to take all necessary measures to prevent the influence of private interest and inform the SCPC in accordance with the Law on Prevention of Corruption and Conflict of Interest. According to the draft, the MP who participates in the legislative process, in case of a conflict of interests that may jeopardize the objective decision-making on a particular issue, i.e law, may, for moral reasons, on his/her own initiative, refrain from legislative activities in the debate and decision-making in Assembly or when electing and appointing an official. As already mentioned above, it is indeed essential that the Draft Code reiterates the obligation of MPs to obey and respect the domestic legislation in this respect.

⁴⁷ *Law on Lobbying of the Republic of North Macedonia*, No. 08-2647/1 of 1 June 2021, Official Gazette of the Republic of Macedonia", nos.106/08 and 135/11, available at: https://dsk.mk/wp-content/uploads/2021/06/Adopted-Law-on-Lobbying_en.pdf (last visited on 11 November 2021).

68. As to lobbying, the draft requires MPs in contacts with lobbyists and lobby organizations to consistently respect the Law on Lobbying, being guided by the principles of integrity and transparency. At the same time, the Draft Code could also be more specific as regard the MPs' relations with other third parties who may not be professional lobbyists (advocacy bodies, foreign authorities, clubs representing national or business interests)⁴⁸, including contacts outside of the meetings of the Parliament and its commissions, from the perspective of the MP's openness and transparency.
69. The Draft Code also includes a provision requesting that an "*MP [...] does not succumb to party pressures and promises*" as a measure preventing conflict of interest. While acknowledging the importance of MPs commitment to the public interest, democratic values and impartiality, this provision might be problematic in terms of enforceability and thus, rendered unworkable. Moreover, it seems to contradict with the principle of internal party autonomy offering political parties a general freedom from the state interference with their right as free associations to autonomously manage internal affairs⁴⁹. All political parties, to ensure their ability for collective action, have some disciplinary measures in place and provide for arrival to a united political party stance, while generally democratic organizations also include a clear procedure for voicing dissenting opinions. Such qualifications would be important to make sure that the Code is workable and applicable to real life, practical situations. Similarly, making campaign promises is part of a political struggle. **Thus, although undue pressure on MPs should be prevented, it is nevertheless recommended to revise the Draft Code in order to respect a political party's internal autonomy.**

RECOMMENDATION G.

To revise the Draft Code's provision considering as conflict of interest concerning MPs succumbing to party pressures and promises, as this may contradict the principle of internal party autonomy.

70. Finally, in relation to all provisions on employment/post-employment restrictions, conflict of interest and lobbying, it is essential to ensure that the appropriate provisions of the draft Code and draft Instruction do not duplicate and/or contradict with the primary legislation on the said issues. Whilst acknowledging the value of the respective restrictions necessary for safeguarding public trust and integrity, the voluntary adherence nature of the draft Code could be in contradiction with the respective imperative provisions imposing sanctions that do not seem to be within the realm of the provisions of the Code of Ethics.

5.2. Use of Public Assets and Funds

71. With respect to the proper management of the public funds, the Draft Code requires MPs to respect the budgetary and financial discipline during exercise of the function and to refrain from receiving any compensation for extra-parliamentary activities.

⁴⁸ In the recent progress reports GRECO noted absence of any new development or let alone concrete proposals to implement this recommendation, which pursues the specific objective of providing a set of rules for the conduct of MPs when they have contacts with lobbyists and other third parties.

⁴⁹ ODIHR Venice Commission *Guidelines on Political Party Regulation* 2nd edition (2020), para 151.

72. Draft Code also addresses the issues of MP's involvement in election campaign, requiring that this only possible after working hours. It should be noted, however that being political party representatives, MPs are involved in political work constantly. Whilst his requirement could have a common sense for civil servants, it is unrealistic for MPs. Moreover, in the case of MPs, different politicians and parties will have different schedules for campaigning and different understanding of what campaigning involves. Informing the voters about MP's performance (and the work which the individual has done as an MP) is as much of a constituency engagement as campaigning.

RECOMMENDATION H.

To revise the provisions of the Draft Code on participation in election campaigns avoiding overreach into political life and activities of a MP, while regulating use of public resources, such as transportation, staff or equipment for furthering electoral goals.

73. Finally, it should be recalled that the parliamentary resources, parliamentary staff as well as the property belonging to the Parliament, should be used for parliamentary purposes only. Though the Draft Code stipulates this in a quite clear manner, the implementation of this rule might not always undisputed when it comes to the usage of parliamentary infrastructure for private activities or the employment of family members with public money. In this respect codes of conduct for parliamentarians are one way to raise awareness of appropriate behaviour with respect to public funds.⁵⁰ The employment of family members as assistants, secretaries or researchers in parliament might raise concerns that MPs are using public money to boost family income. Although this is common practice in some parliaments (where staff are not drawn from the civil service), a few countries have started to regulate the employment of family members, so as to prevent nepotism⁵¹. The Draft Instruction mentions in this respect that in case an employee in the professional service of the Assembly marries an MP, the former may remain in his / her position, but without receiving a promotion for the duration of the mandate of his / her spouse. The above provisions of the draft Instruction should correspond to the respective domestic legislation regarding nepotism. At the same time **the Draft Code could benefit from providing standards in this respect that shall comply both with the primary legislation on the issue at stake and with the explanatory Instruction. It is also advisable to highlight in the draft that MPs should not place parliamentary staff in a position which would conflict with or call into question staff's political impartiality, or which could give rise to criticism that people paid from public funds are being used for party political purposes.**

RECOMMENDATION I.

To consider defining standards on the employment of MPs family members in the Assembly .

⁵⁰ [ODIHR Venice Commission Guidelines on Political Party Regulation](#) 2nd edition (2020), para 129

⁵¹ In Austria, it is forbidden for MPs in the Lower House to employ close relatives as personal assistants whose salaries are paid from public funds. In the UK, family members can be employed by MPs, but this must be declared.

6. MONITORING AND SANCTIONING

74. Given the status of the Draft Code as a promoter of ethical and moral behavior of MPs, it should be under permanent interpretation, application and debate, i.e. it has to be a living organism that forms a platform where discussions and agreements about the acceptable and ethical conduct of MPs take place. This will not be possible, however, in the absence of a reporting and monitoring mechanism, through which citizens, media, officials and general public whom MPs serve can maintain debate about acceptable behavior, raise their concerns and report wrongdoing.
75. Even though the Draft Code indicates that its monitoring and application are mandatory and requires every MP to be familiar with the content of the Code, as well as imposes sanctions in case of its violation, no review mechanism is foreseen in this respect. In case such mechanism is not also envisaged by the Rules of Procedure of the Assembly, it would be advisable to consider its elaboration. There are usually three essential elements to this process: an initial complaint about the conduct of one or more MPs; an investigation to establish the facts and enable a decision as to whether rules or norms have been breached; and, where misconduct is found to have occurred, the imposition of appropriate sanctions⁵².
76. Whilst there are various approaches⁵³ to debating, monitoring and sanctioning of potential breaches of codes of conduct/ethics by MPs⁵⁴, overall the relevant mechanism should provide for:
- clear procedure for lodging complaints about suspicions of MPs' breach of the Code;
 - clear timelines in accordance to which such complaints should be reviewed;
 - clear mechanism for presentation of the argumentation from the side of the member whose conduct is being reviewed;
 - ensuring equal voices for MPs from opposition parties and their representation in the mechanism and its bodies to avoid any possibility of using the respective procedures against political opponents;
 - clear decision mechanism on sanctioning;
 - clear sanctions ranging from mild – oral warning to more severe – exclusion from participation in a number of plenary sessions.
77. **Given the above, to ensure that the Code of Ethics is a living, evolving and practical document guiding the conduct of MPs, a clear and simple complaint and monitoring mechanism needs elaborating. Similarly, a clearly applicable and varying degree sanctioning mechanism should be agreed on and include either in the Draft Code or in the Rules of Procedure.**

⁵² See OSCE/ODIHR, *Background Study: Professional and Ethical Standards for Parliamentarians*, (Warsaw, 2012), page 60.

⁵³ For instance, in the UK parliament, the Committee on Standards and the Parliamentary Commissioner for Standards can conduct and inquiry in the alleged breach of the Code of Conduct by the MP. If they conclude that the Code of Conduct has been breached, the following can be recommended: a) a written apology; b) an apology on the floor of the House by means of a point of order; c) an apology on the floor of the House by means of a personal statement; d) for non-Members, withdrawal of Parliamentary passes, either indefinitely or for a fixed period; e) suspension from the service of the House for a specified number of sitting days (during which time the Member receives no salary and must withdraw from the precincts of the House; f) in cases of very serious breaches – expulsion, see *the Code of Conduct for Members of Parliament*, prepared pursuant to the Resolution of the House of 19 July 1995, Article 1, available at: <https://publications.parliament.uk/pa/cm201719/cmcode/1882/188201.htm> (last visited on 11 November 2021).

⁵⁴ Ibid. pages 64-74

RECOMMENDATION J.

To expand provisions of the draft Code on mechanisms for monitoring the application of the Draft Code and on confidential counselling to avoid creating ambiguities and potential undermining non-partisan enforcement.

78. Furthermore, an efficient collaboration between the Assembly and the SCPC in implementing and enforcing relevant legislation on conflict of interest, lobbying, assets declaration would be crucial for the effectiveness of the whole public integrity system.
79. Although the Draft Code makes reference to but does not enumerate monitoring and sanctioning mechanism, it nevertheless provides for a “body in charge of confidential counseling” for resolving potential ethical dilemmas that an MP might have, as well as suggests that the necessity to undergo “confidential counseling” can be applied as a “corrective measure”. In this context special attention should be paid to the composition of this body, taking into account the process of nomination of its members securing its independence/impartiality; what should be the measures to maintain confidentiality and prevent any leaks of information in its work; what is the accountability and/or reporting mechanism of such body. The latter, for instance, could include an annual report indicating the number of cases (having been processed and those under consideration) concerning violation of the Code’s regime. The annual report should summarize the activity of the body since its establishment and then annually, as well as propose decision points for the Assembly as a result the body’s work over this period that should be discussed and voted according to the established procedure.
80. Given the sensitivity of the public position of an MP, both the public interest, general immunity that MPs enjoy and transparency considerations, an option of more open mechanism could be recommended. In such setting, the opinions of the public can be heard and the respective MPs the conduct of which is under review have the right to present and defend their case.
81. As stressed by the GRECO evaluations with respect to the Republic of North Macedonia, the Assembly needed to show proactivity in addressing integrity and ethics matters in-house. Even where a code of conduct/ethics provides initial guidance, access to on-going advice and training to help MPs manage their official actions and/or personal and professional interests in a variety of situations is considered as a good practice and included in most of GRECO recommendations. The purpose would be thus to ensure that the Code is a living document being a part of a broader integrity framework with an institutional framework for implementation, awareness-raising and advice, as well as strong enforcement.
82. Therefore, the Assembly could take responsibility for Public Counselling/Reporting to promote a culture of parliamentary ethics among the general public. This calls for measures specifically targeting media and watchdog organisations, and the ethical challenges they investigate and report. The relevant measures may include press briefings, training for media, establishing a permanent source of information for interested public.

83. It is thus, **advisable to consider adding specific provisions dealing with ethical awareness-raising and advice to MPs, for example including:** a) Induction at the start of the parliament's term which includes mentoring and experience-sharing activities involving both new and experienced MPs; b) Making the Code available to all MPs and to the political parties represented in parliament; c) Hold, at least once a year, a consultative meeting with CSOs, media and academia on the application of the code.

RECOMMENDATION K.

To consider adding specific provisions dealing with ethical awareness-raising and advice to MPs enforcement.

[END OF TEXT]
