

# ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

## PARLIAMENTARY ETHICS COMMITTEES

### QUERY

Can you help identify good practice in organising parliamentary ethics commissions?

### PURPOSE

Our National Assembly is adopting a code of ethics and asked for our help in setting up a parliamentary ethics committee.

### CONTENT

- 1 Parliamentary ethics: role and organisation of oversight bodies
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### SUMMARY

Parliaments have a key role to play in the fight against corruption and the duty to uphold to the highest standards of integrity. In recent years, many countries have established comprehensive ethics regimes to ensure that MPs perform their functions in an ethical manner, and that encompasses a code of conduct, specific ethic rules detailing the requirement to fulfil the code and a regulatory institution to enforce these rules.

The institution charged with monitoring and enforcing the code is a key contributing factor to its effectiveness. There are three major approaches to enforcement, including: self-regulation – the regulatory body is created within the legislature, such as in Poland and Ireland; external regulation – an external body, independent from the legislature, is created; a combination of both – elements of self-regulations are combined with an external, independent regulatory body, such as in France, the United Kingdom and the United States.

## 1 PARLIAMENTARY ETHICS: ROLE AND ORGANISATION OF OVERSIGHT BODIES

Parliaments have a key role to play in the fight against corruption. In most countries they have the constitutional mandate to oversee and hold government to account through their roles in legislation, representation, allocation of resources and oversight functions in sensitive areas such as budget processes. As such, parliaments have the duty and responsibility to set an example of incorruptibility to foster the legitimacy of and citizens' confidence in the institution and ensure that MPs perform their functions in the public interest instead of private or partisan political interests (The International Bank for Reconstruction and Development/The World Bank 2006).

The adoption of ethics codes can greatly contribute to the promotion of high standards of integrity in parliaments by establishing a standard for parliamentarians' behaviour, clarifying acceptable and unacceptable forms of behaviour, and creating an environment that is less likely to tolerate unethical behaviour (Pelizzo and Stapenhurst 2006). While the content of the ethics code provides guidance for parliamentarians on ethical conduct, an effective ethics regime also needs to include systems for enforcement and sanctions to deter potential offenders. Thus, comprehensive parliamentary ethics regimes usually comprise three key elements: 1) a code of conduct outlining expected behaviours of legislators; 2) formal and specific ethical rules detailing the requirements necessary to fulfil this code, including financial disclosure guidelines; and 3) a regulatory institution to enforce these rules and provide parliamentarians with advice on ethical conduct (National Democratic Institute 1999).

The institutionalisation of the code – in other words, which institution is in charge of sanctioning members violating the code – is a major factor affecting the effectiveness of the code of ethics (Pelizzo and Stapenhurst 2006). The key question in this regard is to determine whether parliaments can be trusted to police themselves through a special ethics committee or whether investigations should be handled by an external, independent body, such as the anti-corruption agency.

There are three major models for establishing the institution in charge of advising parliamentarians and enforcing the rules, with some variations across countries, including: 1) self-regulation; 2) external regulation; and 3) a combination of the two.

Irrespective of the approach, it is important to ensure that the institution in charge of enforcing parliamentary ethical standards is perceived as legitimate and that its procedures are transparent. In terms of resources, the funding allocated to an ethics committee or regulator are also essential to enable it to fulfil its role and ensure its independence. The budget should be stable and secure, with the flexibility to secure additional resources in periods where there are an unusually high number of investigations (OSCE 2012).

### Self-regulation

The first “self-regulation” model has been the preferred option in countries such as Greece, Ireland, Germany and Poland (Council of Europe 2009). This involves establishing a regulatory system within the legislature model, either through political groups or at the parliamentary assembly level.

This model typically involves the creation of a special ethics committee in charge of dealing with the reporting, investigations and sanctioning of MPs breaching the code and relies on the collective self-control of MPs (OECD 2011). Such standing committees typically include members or is even chaired by members of the opposition. The powers to summon and question parliamentarians varies greatly across countries (King Prajadhipok's Institute 2009).

Another form of oversight involves having the president of parliament or the house speaker to oversee the code, but this model is not widespread.

In the United States, for example, a special ethics committee comprised of parliamentarians oversees all aspects of ethics violations, from receiving the complaints to recommending appropriate sanctions. It has jurisdiction over members and officers of the House, can investigate allegations of unethical conduct, provides interpretary and advisory rulings and can impose sanctions, but refers the issue to the entire chamber for a final vote (National Democratic Institute 1999; Pelizzo and Stapenhurst 2006).

In Germany, the speaker of the parliament is charged with regulating minor matters (for example, conduct in the chamber, use of improper language or failure to obey the rules of procedures) while more severe breaches are handled by a dedicated committee (OSCE 2012).

Self-regulation may be an appropriate option in countries where the executive has a tendency to dominate parliaments, and has traditionally been the preferred option to protect parliaments' independence from the executive branch (OSCE 2012). In countries where the policies and principle of public accountability are already mainstreamed throughout the public sector, and institutions have reached a sufficient degree of professionalism, parliamentary ethics committees may be a viable option due to their knowledge of their field and stronger legitimacy.

The OECD recommends that self-regulation be supported by "real transparency" and long-term democratic practices of fair and free elections, suggesting that such an approach can best be effective and inspire confidence in the context of stable and democratic tradition, a trusted electoral system and a free media (OSCE 2012; OECD 2011).

However, the capacity of MPs to provide effective self-control is increasingly questioned as a model aimed at restoring public trust in politicians, as the idea of politicians regulating themselves is unlikely to retain public credibility. The model has also been criticised for turning legislators into investigators, judges and juries, rather than limiting their role to the ratification of a judgement reached by an impartial adjudicator (GOPAC 2009). As a result, recent years have seen a move towards external regulation, partly reflecting a loss of confidence in parliaments' ability to regulate themselves following a succession of scandals (OSCE 2012).

### External regulation

The second model is an external regulation system where an external body, independent from the legislature monitors and enforces compliance with the code. The body in charge of administering the code, oversees the conduct of parliamentarians and reports either to the legislature or a committee. This model can involve the creation of a judicial or quasi-judicial body in charge of enforcing the regulations.

In Scandinavian countries, the administration of the code is entrusted to autonomous bodies such as the ombudsman (Council of Europe 2009). For serious cases of fraud and corruption, cases can be referred to the courts, police and special investigation units, irrespective of the institution in charge of oversight. In any case, it is important to ensure that the institutions in charge enjoy reasonable protection against political or other undue interference (OCDE 2011).

External regulation by an independent oversight body or individual is perceived by many as more credible than oversight by an internal parliamentary committee as it limits the risks of politicisation (OSCE 2012; King Prajadhipok's Institute 2009).

In 2006, the OSCE parliamentary assembly recommended participating states to establish an "office of public standards to which complaints about violations of standards by parliamentarians and their staff may be made", specialised in parliamentary conduct or a general anti-corruption agency upholding standards in all areas of public office (OSCE 2012). Similarly, the OECD suggest that centralised bodies are more suitable for emerging democracies because they enable greater systematisation and professionalisation of oversight functions (OECD 2011).

A key question for external regulation remains to determine to whom external regulators should be accountable. If the body reports to the executive branch and/or has judicial powers, this could undermine the separation of powers and independence of the legislature (OSCE 2012).

However, with this approach, the challenge is that it breaches of the regulations subject to criminal proceedings and therefore may interfere with the provisions of rules of parliamentary immunity. In addition, as an externally-enforced regime, it is likely to limit the sense of ownership of the provisions by parliamentarians. If the ethics regime aims to build a culture of integrity across the institution and promote a collective acceptance of ethical norms and standards, it may make more sense to integrate it more directly into parliamentary culture (GOPAC 2009).

### Co-regulation

The third model combines elements of self-regulation with an independent commission. This is presented as an option that allows retaining some of the benefits of self-regulation while introducing elements of external regulation to inspire public confidence in the process (OSCE 2012).

Parts of the process are conducted by parliamentary bodies (the speaker, a standing committee or an ad-hoc committee), but the model involves the creation of an independent regulator usually appointed by and reporting to parliament. It can take the form of a parliamentary committee composed of members with an independent parliamentary commissioner or commission, such as in the United Kingdom (see

below). The regulator investigates cases and advises MPs on the application of the rules, but a parliamentary committee decides and imposes penalties (GOPAC 2009).

## 2 COUNTRY EXAMPLES

The examples below are of ethics committees using a co-regulation approach (United Kingdom, United States and France) and a self-regulation approach (Poland and Ireland) to monitoring.

### United Kingdom

The code of conduct for MPs of the UK is often referred to as good practice, covering most of the ethical issues concerning parliamentarians and providing an independent authority/office responsible for overseeing the code and for advising MPs on ethical issues (GOPAC 2009). The enforcement mechanism is well documented in the literature.

#### *Institutional set-up*

In the mid-nineties, the UK set up an internal standing Committee on Standards and Privileges, as well as an external commissioner for standards. The commissioner receives and investigates the complaints, and reports to the committee. This separation of investigations and adjudications aims to ensure the right to a fair trial (OSCE 2012).

The commissioner has the mandate to: 1) advise the House of Commons and individual members on matters of conduct; 2) oversee the maintenance of the Register of Members Interests; and 3) to receive, and investigate complaints against members for breaches of the code and rules. The commissioner reports on complaints and other aspects of his or her work to the Committee on Standards and Privileges.

The Committee on Standards and Privileges oversees the work of the commissioner. It advises the House on changes to the code and the rules on registering interests. It also adjudicates in cases reported by the commissioner and advises the House of Commons on appropriate penalties. It can disregard the commissioner's findings and conduct its own investigations (OSCE 2012)

Both the commissioner and the committee have emphasised prevention activities in recent years, providing written guidance and advice to members, arranging talks and workshops, and providing confidential advice to individual members.

### *Appointments*

The commissioner is expected to act independently and impartially. He or she is appointed by a resolution of the House for a five-year, non-renewable term.

The committee currently comprises of 10 elected and three lay members. The chair is, under the Standing Order, a senior opposition MP. Its members are not elected by other MPs but are appointed after discussion between the business managers of the various parties. The membership of the committee was set up to have no government majority and be drawn equally from the government and opposition parties to avoid partisanship. In January 2013, three lay members were appointed to the House of Commons Standards Committee. (House of Commons Committee on Standards 2015)

### *Handling complaints*

The commissioner for standards can only initiate an investigation after receiving a formal complaint (and cannot act if the complaint was made anonymously), although the Committee on Standards in Public Life has recommended that the commissioner be granted the power to initiate investigations ex officio (OSCE 2012).

Complaints may be lodged to the commissioner in writing and signed by other MPs or members of the public, including members of the press. On receiving a complaint, the commissioner decides whether it does in fact fall within his or her terms of reference. If a complaint involves an allegation of criminal activity, the commissioner encourages the complainant to refer the matter to the police or refer it him/herself to the competent authorities.

If the complaint merits further investigation, the commissioner conducts an enquiry. Although the commissioner has no formal investigative powers, members are expected to cooperate fully with the commissioner. The committee has power to send for persons, papers, and records and to order members or others to appear before it. A failure by a member to cooperate with an investigation is a breach of the code. The commissioner reports the outcome of the investigation to the committee.

The committee considers the report and considers what penalty to recommend for the House to impose. Approval is needed by the House as a whole and may include a formal reprimand by the House, forfeiture of the member's salary for a specified

period, the suspension of the member from the House for a specified period (which also involves loss of salary for that period), or expulsion of the member (Mawer 2006).

### Resources

Although resource allocations are a key element for the effectiveness of enforcement, it is difficult to quantify the resources needed for regulating parliamentary standards. In 2010 and 2011, the budget of the commissioner for standards amounted to approximately €717,000, of which 97.5 per cent represented staffing costs. The commissioner operates with two senior members of staff and five to eight support staff. Other costs are mostly printing related.

For more information please see: [Committee on Standards and Privileges in Public Life](#): and [Parliamentary Standards Authority](#).

## France

### Institutional set-up

In 2011, the French National Assembly established its first independent *déontologue* – the equivalent of a commissioner for ethical standards. He/she is charged with ensuring adherence to the principles set out in the parliamentary code of deontology. He/she has the mandate to: 1) collect and keep MPs' declarations of interest; 2) advise MPs on the code's principles 3) alert the Bureau of the National Assembly (parliament's executive body) in case of violations; and 4) prepare an annual report to the National Assembly providing recommendations on how to implement the code. He/she may also be tasked with conducting studies on ethics issues (OSCE 2012).

### Appointment

The *déontologue* is appointed by the bureau, composed of the president of the National Assembly, six vice-presidents, three questors and 12 secretaries, and requires three-fifths of the vote of the bureau plus the support of at least one opposition party. The mandate of the *déontologue* covers the duration of the legislature and is neither revocable nor renewable (Assemblée Nationale 2015).

### Handling complaints

In case of suspected violations of the code, the *déontologue* informs both the MP and the president of the National Assembly and initiates a contradictory procedure. He/she makes recommendations to the

MP to address the situation. If the bureau confirms the breach of the code, the *déontologue* makes its findings public and informs the MP who must take all necessary measures to rectify the situation and adhere to the code. The Bureau of the National Assembly can, in case of refusal of the MP to address the situation, make this situation public or decide on disciplinary actions such as reprimand, censorship, censorship with temporary exclusion, deprivation of parliamentary allowance (Assemblée Nationale 2015).

For more information please see: [Deontology at the National Assembly](#).

## United States

### Institutional set-up

The United States has moved away from internal regulation in recent years. Until 2008, the code was administered by the legislature through a Committee on Standards of Official Conduct (renamed Committee on Ethics in 2011). The Committee on Ethics had the mandate to: 1) administer travel, gift, financial disclosure, outside income, and other regulations; 2) advise members and staff; 3) issue advisory opinions and investigate potential ethics violations.

The committee had sole jurisdiction over the interpretation of the code of official conduct. As such, committee members acted as monitors and could recommend sanction, although the final sanction was referred to Congress in plenary session for voting. The committee was comprised of 10 legislators (OSCE 2012).

More information on the Committee on Ethics can be found [here](#).

In 2008, the House created the Office of Congressional Ethics (OCE), an independent and non-partisan entity within the House to accept complaints of wrongdoing from the public, review such allegations and submit recommendations to the Committee on Ethics. The OCE has a professional staff consisting primarily of attorneys and other professionals with expertise in ethics law and investigations. It is governed by an eight-person Board of Directors. Members of the OCE board are private citizens and cannot serve as members of Congress or work for the federal government.

More information of the OCE can be found [here](#).

The committee's responsibilities for training, guidance and investigations have grown in recent

years. During the 113th Congress, the committee started or continued fact-gathering in 89 separate investigations, resolved 58 matters without forming an investigative sub-committee and created four investigative sub-committees. The committee filed 10 reports with the House, totalling nearly 1,900 pages on various investigative matters

### *Appointments*

Staff members of the committee are required to be professional, non-partisan and demonstrably qualified for the position for which the individual is hired. Staff are appointed by an affirmative vote of a majority of the members of the committee. Such votes occur at the first meeting of the membership of the committee during each Congress and as necessary during the Congress.

### *Handling complaints*

In the US Congress, an investigation can be initiated if a complaint is made against a member of Congress by another member, or upon agreement of the most senior two members of the ethics committee. Citizens can also lodge a complaint directly to the ethics committees, but in practice, it is more common to go through members of Congress (OSCE 2012).

The committee rules and operating procedures can be found [here](#).

## **Poland**

### *Institutional set-up*

The ethical principles for deputies are enshrined in the resolution entitled Principles of Deputies' Ethics, which was adopted by the Polish Sejm in 1998. Deputies who fail to conform to the code of ethics have to answer to the Deputies' Ethics Committee, which is a standing committee of the Polish parliament provided for by the standing orders of the Sejm. This committee has the mandate to monitor observance by Sejm deputies of the Principles of Deputies' Ethics.

Any MP, parliamentary body or other entity can submit a complaint to the Deputies' Ethics Committee. The committee can also take up a matter on its own initiative. The committee decides whether to pursue a complaint or not, but must inform the complainant (OSCE 2012).

### *Handling complaints*

If the Sejm ethics committee finds that a parliamentarian has violated the code, it can impose a warning, a rebuke or a reprimand. The deputy is informed in writing and may immediately register an appeal. In case he or she does not, the decision is published in the official gazette (OSCE 2012)

Resolutions to admonish or reprimand a deputy must be passed by an absolute majority of votes in the presence of at least half of the number of the committee members.

The Polish system has taken steps to protect the rights of MPs targeted by a complaint. The ethics committee is required to: 1) share the complaint with the MP and other committee members; 2) inform the complainant whether or not the matter will be taken up by the committee; 3) inform the MP who is the subject of the complaints as to the time and place the complaint will be considered by the committee; and 4) inform the subject of the complaint if the matter is dismissed. The targeted deputy may present to the committee clarification on the matter.

## **Ireland**

Both Irish Houses have a Select Committee on Members' Interests. These standing committees are charged with performing the functions conferred on them by the Ethics in Public Office Acts 1995 and 2001. Briefly, these functions are:

- to draw up and publish to guidelines concerning steps to be taken by members to ensure compliance by them with the acts
- to draw up a code of conduct for members
- at the request of a member, to give advice to the member in relation to any provision of the legislation to ensure compliance with the acts
- where a complaint that a member has contravened the acts is referred or made to the committees, or the committees consider it appropriate to do so, they can carry out an investigation

These functions of the committee relate only to those members of the Houses who are not office holders. For office holders, an independent Standards in Public Office Commission is composed of six members and chaired by a former judge of the high court.

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