
Senate Code of Conduct on Integrity

in force from 11 June 2019

Senate Code of Conduct on Integrity

Article 1. General provision

Each member must act in accordance with the principles of integrity and reliability in compliance with the oath taken or affirmation made by him. This must be construed and accounted for in accordance with this Code of Conduct.

Explanatory notes on article 1

Integrity, in the widest sense of the word, means doing right, even if no one is watching. For members of the Senate, the duty of integrity starts when they take the oath or make the affirmation required of all members under article 60 of the Constitution and section 2 of the Ministers and Members of the States General (Swearing in) Act (*Wet beëdiging Ministers en leden Staten-Generaal*). Upon accepting office, they must take an oath or make an affirmation before the Senate that they have not done anything which may legally debar them from holding office, and must also swear or promise allegiance to the Constitution and that they will faithfully perform their duties. In discharging the oath or affirmation, the members are required to act in accordance with the principles of integrity and reliability. The purpose of this Code of Conduct is to flesh out these principles. The accountability provided for in this document is intended to provide a degree of transparency that society can reasonably expect from an elected representative of the people.

In 2014, the Temporary GRECO Report Committee mentioned exemplary, reliable and transparent action as elements of the concept of integrity.¹ Members must set a good example by treating each other respectfully in procedures and during debates, comply with established rules, agreements and deadlines and, in the course of their duties, be transparent about any positions they may hold besides membership of the Senate and any other interests they may have. See also the Temporary Committee on Senate Procedure in 2017.²

Members of the Senate are co-legislators and responsible for scrutinising the government. They represent the public interest, each member doing so on the basis of his or her own political ideology and beliefs. The members are not bound by any mandate or instructions when casting their votes (article 67 (3) of the Constitution). This is not to say that political principles and agreements have no role to play, but simply that members themselves ultimately decide how they vote. Members cannot be compelled to vote in a manner determined by their political or parliamentary party and cannot be suspended or forced to relinquish their seat in parliament.³ In this sense, their independence is (legally) guaranteed.

Where the desired independence of members of the Senate would be jeopardised by their holding certain other positions as well, such combinations of positions have been formally declared incompatible, either in legislation or in the Constitution. See article 57 of the Constitution and section 1 of the Incompatibility of Office (States General and European Parliament) Act (*Wet Incompatibiliteiten Staten-Generaal en Europees Parlement*). For example, members of the Senate cannot also be a government minister because their role is to assess draft legislation proposed by ministers and to scrutinise their policies. If these formal incompatibilities are to be expanded, this must be done in legislation or the Constitution. Under the Dutch constitutional system, this is not something that can be arranged in a Senate Code of Conduct on Integrity. However, a question that can be asked is whether there are certain 'material incompatibilities', that is to say positions in which members of the Senate perform acts and activities that appear to call into question their independence. In anticipation of the possible introduction of a formal incompatibility, the Guidelines on Judicial Impartiality and Positions besides Membership of the Senate (*Leidraad onpartijdigheid en nevenfuncties in de rechtspraak*)

¹ Parliamentary Papers I 2013/14, CX, A., p. 5.

² Parliamentary Papers I 2016/17, CXXIV, A, p. 7.

³ See also the Temporary GRECO Report Committee, Parliamentary Papers I 2013/14, CX, A, p. 7

currently discourage judges from being members of the Senate or the House of Representatives of the States General. Conversely, it can be noted that simultaneously being a member of the Senate and the judiciary is at odds with the desired separation of powers. Such a combination of positions is therefore also undesirable from the perspective of the Senate. GRECO therefore discourages this.

A separate case is the situation where members of the Senate perform consultancy work for the government. This may involve advising a minister, but also advising officials working directly under the minister's responsibility. A member of the Senate who is also a civil servant in a government ministry is automatically given leave of absence from that position (section 3 of the Incompatibility of Office (States General and European Parliament) Act). After all, it is undesirable for someone to be subordinate to a minister in one capacity and have to scrutinise that same minister in another capacity. This indicates that there may be a tension between consultancy work for the government and Senate membership, even if there is no formal incompatibility. It is crucial that members' consultancy work does not jeopardise their ability to scrutinise the actions of government independently. This will not usually be the case if a government minister informally consults a member of the Senate. However, if that minister or his ministry formally commissions a member of the Senate to act as consultant, it will be fairly hard for that member to maintain the appearance of being independent. This is particularly so if the advice is intended to result in legislative proposals which the person concerned will in due course have to assess in his or her capacity as member of the Senate. Members who are asked to perform consultancy work for the government, either personally or as a member of an advisory committee, are therefore discouraged from doing so.

Article 2. Dealing with interests

1. Each member must make allowance for the interests he has other than in his capacity as member of the Senate and must ensure that these interests do not result in the improper performance of his duties. A member must also refrain from acts and activities that indicate an apparent conflict of interest.
2. A member who submits a written contribution or addresses a meeting must disclose any interests that could reasonably be of relevance in the context of the discussion of the agenda item.

Explanatory notes on article 2

Members of the Senate are part-time politicians who generally hold other positions elsewhere in society, in addition to their membership of the Senate. They are therefore at the very heart of society and have a different perspective on legislative proposals and policies from members of the House of Representatives, who are full-time politicians. This partly explains the added value of the Senate. However, the other side of the coin is that it is precisely because they hold a variety of positions that members of the Senate may become involved in social discussions about actual or apparent conflicts of interest. *Having* certain interests is not in itself a problem; what is important that members of the Senate *deal with* such interests prudently and with integrity.

Paragraph 1 of article 2 of this Code of Conduct states that members must make allowance for the interests they have other than in their capacity as member of the Senate and must ensure that these interests do not result in the improper performance of their duties. Pursuant to the second sentence of paragraph 1, members must also refrain from acts and activities that indicate an *apparent* conflict of interest. The term 'improper' in paragraph 1 indicates that a conflict of interest requires more than merely having an interest in a general sense in certain decisions. In other words, members of the Senate also pay taxes and are entitled to social benefits, but that does not mean that they also have a particular interest in parliamentary decision-making on these subjects. It follows that there is no conflict of interest if members of the Senate only stand to benefit from certain decisions as a member of the general public or a broad category of people. A member of the Senate must really have a *specific individual interest*, which clearly exceeds that of other members of society.

In many cases, the specific interest mentioned above will be professional rather than personal. In other words, the interest will be linked to the position held by the person other than in his capacity as member of the Senate. If this could reasonably be thought to give rise to an apparent conflict of interest, a member should, in principle, refrain from dealing with a dossier, speaking at a meeting or

submitting a written contribution. This can pose a problem for small parliamentary parties; they should in any event act in accordance with paragraph 2 (see below).

If a member of the Senate – or the organisation for which the member works – stands to gain a material advantage from a particular decision-making process and the member is involved in that process, there is a greater likelihood that this will be assumed to create an apparent conflict of interest. However, there may also be an actual or apparent conflict of interest in relation to specific *intangible* interests. In accordance with the second sentence of paragraph 1, the question is always whether certain actions or activities of a member give rise to an apparent conflict of interest, regardless of what interests are involved, whether they be professional or personal, tangible or intangible.

An apparent conflict of interest as referred to in the second sentence of paragraph 1 of article 2 must be assessed by reference to the criterion of reasonableness. The English talk about a ‘reasonable member of the public’ in this context. Here, this would be a notional, critical observer of the actions and activities of members of the Senate. The question that members must always ask themselves is whether such a reasonably thinking person would judge that there is an actual or apparent conflict of interest in a specific case. The answer to that question will differ from case to case and from time to time. As the Temporary GRECO Report Committee noted previously, ‘What is or is not still morally acceptable cannot be decided once and for all by a central authority and should instead be the outcome of an ongoing debate.’⁴ Article 2 of this Code of Conduct therefore necessarily adopts an open standard, as is also the case in private law with criteria such as ‘reasonableness and fairness’ or ‘good employment practices’. Paragraph 2 of article 2 is about making known specific interests which could reasonably be judged of importance in the context of discussion of a particular subject. The provision is intended to encourage prudence in relation to private interests and to promote openness and accountability. If, for example, the organisation for which a member works has advised on a bill or been involved in it in some other way in its preliminary stage, it is advisable to report this in the written stage even if the member was not personally involved. After all, although the member concerned has disclosed his position with the advisory organisation in accordance with article 6 of this Code of Conduct, this does not in itself make clear that the organisation concerned played a role in the bill. Disclosure of interests in the written stage should take place in the committee meeting, so that this can be recorded in the list of decisions of the relevant meeting.

A disclosure of interests that could reasonably be deemed of interest in the context of dealing with the agenda item in question does not imply any kind of ‘confession’ about a conflict of interest. On the contrary, such a disclosure can indicate what the interests are and how they do not impinge on each other in this case. It should also be noted in this context that disclosing relevant interests is of particular importance in the case of small parliamentary parties. After all, where there is an actual or apparent conflict of interest, they often do not have sufficient members to designate another spokesperson to deal with a particular dossier.

Article 3. Dealing with third parties

Members of the Senate must guard against improper influence in their contacts with third parties. They must observe transparency with regard to these contacts.

Explanatory notes on article 3

Contacts with third parties (including lobbyists) are part and parcel of the work of members of the Senate. One of their essential duties is, after all, to take account of the views of the various groups in society and organisations that will be affected by future legislation. It is up to the parliamentary parties and individual members to decide with which third parties they wish to keep in contact. They must also decide as they see fit and on their own responsibility whether and, if so, how they will use the information they obtain from these contacts in their parliamentary work.⁵ Contacts with third parties are therefore certainly not discouraged. However, members of the Senate are not an extension of groups and organisations. They make their own decisions of their own free will, without being bound by instructions. This is certainly true as regards information that comes from

⁴ Parliamentary Papers I 2013/14, CX, A., pp. 9-10.

⁵ See also the Temporary GRECO Report Committee, Parliamentary Papers I 2013/14, CX, A, p. 15.

professional - and therefore paid - lobbyists (specialised lobbying firms or in-house staff of a company or civil society organisation).

Members of the Senate can also be expected to be transparent about their contacts with third parties. That does not mean that all these contacts must be registered and made public. Such a lobby register (active transparency) would not be feasible given the sheer number of members' contacts with third parties. However, it does mean that members, when asked, should be open about what contacts they have had with third parties about certain dossiers (passive transparency).

Article 4. Gifts

A register is kept at the Secretariat in which members must enter any gifts worth more than €50 received by them in their capacity as member of the Senate no later than one week after receipt of the gift. This register is available for public inspection.

Explanatory notes on article 4

The phrase 'in their capacity as member of the Senate' does justice to the fact that members of the Senate are not full-time politicians. It follows that gifts they receive in the course of their other activities, in other words other than as a member of the Senate, are not covered by the provision.

The term 'gift' should be interpreted broadly. This includes not only bottles of wine, books, Christmas hampers and bouquets of flowers, but also, for example, overnight hotel stays and dinners. No maximum amount has been set for such gifts; the only rule is that everything above €50 must be disclosed. It is up to the members themselves to judge what they still find justified. Members should also be alert to the fact that gifts (for example, from lobbyists) may create an apparent conflict of interest as referred to in article 2 of this Code of Conduct.

The gift register can be consulted on the Senate's website. Gifts received are also shown in the individual biographies of the members.

Article 5. Foreign travel

A register is kept at the Secretariat in which the members list any trips abroad made in their capacity as members of the Senate at the invitation and expense of third parties, at the latest one week after returning to the Netherlands. This register is available for public inspection. A trip abroad must be reported to the Secretariat, but will not be included in the public register if this might jeopardise the security of the member concerned.

Explanatory notes on article 5

This provision only concerns travel at the invitation and expense of third parties. It does not apply to journeys undertaken in the course of normal parliamentary work, such as trips connected with international parliamentary assemblies, interparliamentary meetings, working visits by the Senate and the like. It is precisely because these journeys are part of normal parliamentary work that they already receive ample publicity through reports on the Senate's website.

The travel register can be consulted on the Senate's website. Trips made are also shown in the individual biographies of the members. In exceptional cases, for reasons of security, it may be decided not to show a particular trip in the travel register. This trip must then be reported to the Secretariat. It is recommended that the confidential counsellor referred to in article 12 be consulted on such a matter.

Article 6. Disclosure of positions besides membership of the Senate and other relevant interests

1. In accordance with the Remuneration (Members of the Senate) Act (*Wet vergoedingen leden Eerste Kamer*), each member must disclose any positions besides membership of the Senate by submitting a list to the Secretariat. This list must also contain a brief description of the positions

which the member holds and the organisation for which the member works.

2. If the member works as a consultant, he must also specify the sector in which he provides the consultancy services.
3. When submitting the statement referred to in paragraph 1, the member must indicate whether the positions are remunerated or unremunerated.
4. In addition to paragraph 1, each member must also submit to the Secretariat a statement of interests that can reasonably be considered relevant, but cannot be designated as a position besides membership of the Senate. These interests must be disclosed in the same way, except where the security or privacy of the persons concerned dictates otherwise.

Explanatory notes on article 6

Section 3b of the Remuneration (Members of the Senate) Act (*Wet vergoedingen leden Eerste Kamer*) requires members of the Senate to disclose their positions besides membership of the Senate (i.e. business or employment activities unconnected to their duties as members of the Senate) by submitting a statement to the Secretariat. The listed positions are posted on the Senate's website. In many cases, however, simply listing the position provides too little information about what it entails. That is why paragraph 1 of this article provides that members, after listing the position, must also briefly describe their work and the organisation for which they work. In the case of consultancy work in particular, a member must state the sector in which he provides consultancy services (article 6, paragraph 2).

The brief description of the work and the organisation may be omitted only if the nature of the position is sufficiently clear from the job title. This exception must be narrowly interpreted; in principle, it is not sufficient for members to simply list the position.

Paragraph 3 obliges members to state whether their positions besides membership of the Senate are remunerated or unremunerated.

Paragraph 4 is a residual provision concerning interests that can reasonably be considered relevant, but cannot be regarded as positions besides membership of the Senate performed in addition to duties as a member of the Senate. It is desirable that they be disclosed on the same basis as such positions besides membership of the Senate, and it is for the members themselves to decide whether a specific interest can reasonably be considered relevant. There is no exhaustive list of such interests. For example, previous jobs, rights to reinstatement or substantial interests in a business may reasonably be considered relevant in certain circumstances. After all, such interests may sometimes create an apparent conflict of interest as referred to in article 2

Interests reasonably considered relevant are, in principle, made public in the same way as positions besides membership of the Senate. They are therefore posted on the Senate's website. An exception is made if this would jeopardise the security or privacy of those involved. Often this will be about the security or privacy of persons other than the members themselves, for example their partners or family members. Just as in the case of article 5, the circumstances must be determined objectively. If that is the case, the relevant interest will be reported to the Secretariat, but will not be made public. It is recommended that the confidential counsellor referred to in article 12 should be consulted on such matters.

Article 7. Secrecy with regard to plenary meetings held in private

1. Secrecy must be observed with regard to proceedings in plenary meetings held in private.
2. The secrecy must be observed by those present at the meeting and by all who have knowledge of the subject matter of the meeting or the documents, until such time as the Senate lifts the duty of secrecy.
3. The duty of secrecy may be lifted by the Senate at a meeting held in private.

Article 8. Secrecy with regard to committee meetings held in private

1. Secrecy must be observed with regard to proceedings in a committee meeting held in private, with the exception of matters stated by the committee in its report.
2. The secrecy must be observed by those present at the meeting and by all who have knowledge of the subject matter of the meeting or the documents, until such time as the committee lifts the duty of secrecy.
3. The duty of secrecy may be lifted by the committee at a meeting held in private.

Article 9. Confidential documents

1. Each member of the Senate must observe confidentiality about the content of a document which the Senate has classified as confidential or which is intrinsically confidential.
2. A register of confidential documents received by the Senate or by its committees is kept at the Secretariat.

Article 10. Compliance with the Code of Conduct

1. The Internal Committee oversees compliance with this Code of Conduct and rules on its interpretation.
2. At the request of one or more members of the Senate or on its own initiative, the Internal Committee may assess whether a member of the Senate has complied with articles 1 to 6 in a specific case. The Internal Committee may make recommendations in this regard.
3. The Internal Committee will make no ruling until it has given the member or members concerned the opportunity to be heard.
4. If the member or members concerned do not agree with the ruling of the Internal Committee, they may apply within two weeks, through the intermediary of the Committee of Senior Members, for a decision on the matter by the Senate. The Senate either upholds or dismisses the ruling of the Internal Committee. No deliberations are held on the ruling.
5. Once the ruling of the Internal Committee has become final, it will be made public.
6. If the assessment referred to in paragraph 2 concerns a member of the Internal Committee itself, this member will be replaced by the member who has the longest record of service in the Senate; if two or more members have the same length of service, the eldest in age will take precedence.

Explanatory notes on article 10

As already noted in the explanatory notes on article 1, members of the Senate should ideally do right even when no one is watching. Nonetheless, some form of supervision of compliance with this Code of Conduct is desirable. First of all, members may be expected to be amenable to being called to account for their actions by their fellow members, even if they are from other parliamentary parties within the Senate. In this way, integrity issues related to compliance with this Code of Conduct can in many cases be resolved within or among the parliamentary parties. This was also the view of the Temporary GRECO Report Committee in 2014.⁶ Second, it is only right that a body should be designated with formal task of supervision. That role is entrusted to the Internal Committee.

The Internal Committee consists of the President and the two Vice Presidents of the Senate (article 14 of the Rules of Procedure). As it is responsible for safeguarding the interests and reputation of the Senate as an institution, it is a suitable body for monitoring compliance with this Code of Conduct. Members may ask the Internal Committee for a ruling on their actions or those of other members as regards compliance with the rules and principles set out in articles 1 to 6 of this Code of Conduct, i.e.

⁶ Parliamentary Papers I 2013/14, CX, A, p. 18.

the general provision and the provisions on dealing with interests, dealing with third parties, travel, gifts and disclosure of positions besides membership of the Senate and other relevant interests. Generally, members who have in some way attracted negative publicity will themselves ask for a ruling. The chair of the parliamentary party to which such a member belongs may also do this. Where appropriate, the Internal Committee may, on its own initiative, give a ruling if it judges this to be necessary in the interests of the Senate and its reputation. The Internal Committee may, if desired, consult external experts on such matters. Paragraph 2 of article 10 does not preclude a member from asking the Internal Committee, in the interests of the Senate, to assess whether a member of another parliamentary party has complied with this Code of Conduct. In such a case, it is reasonable to expect the member making the request to have first raised such concerns with the member of the other parliamentary party personally. The latter is, of course, immediately informed if a request for a ruling is made.

The Internal Committee will make no ruling until it has given the member or members concerned the opportunity to be heard. It may issue recommendations with its ruling. The decision to have the Internal Committee make recommendations rather than impose sanctions was made deliberately. Formal sanctions such as full or partial suspensions or disqualification from membership of the Senate are incompatible with the free mandate of the members, as enshrined in the Constitution. Moreover, the main purpose of a ruling by the Internal Committee is to gain more clarity about the interpretation of the provisions of this Code of Conduct, which must necessarily use open standards on certain points. Making recommendations is better suited to this objective than imposing sanctions, which also, by the way, entail the risk of politicisation. A recommendation does not have to be limited to the member or members concerned; the Internal Committee may also find that the Code of Conduct is unclear or has gaps in some respects and recommend that the Senate remedy these problems.

Paragraph 4 enables the member or members concerned to request a decision from the Senate within two weeks on the ruling of the Internal Committee. This is done through the intermediary of the Committee of Senior Members, where it is still possible for the case to be resolved amicably. If the matter is nevertheless submitted to the Senate, it merely carries out a marginal review of the ruling. The Senate does not therefore deliberate; it simply upholds or overturns the ruling. The ruling of the Internal Committee may be overturned only if it is manifestly unreasonable.

When the actions of a member of the Senate attract negative publicity, it is important to clarify whether or not the member concerned has complied with this Code of Conduct. It follows that it is also important for the ruling of the Internal Committee on this matter to be made public. That is done pursuant to paragraph 5 once the ruling has become final, that is once the two-week appeal period has passed unused or after the Senate has reached its decision as referred to in paragraph 4; until then no communications are made about the ruling. The purpose of publication is to make clear not only to those directly concerned but also to the press and public whether there has been non-compliance with the Code of Conduct. The rulings of the Internal Committee can be publicised by posting them on the Senate's website. It is advisable to create a specific page on which all rulings can be easily consulted. Paragraph 6 contains a provision for cases where the assessment of whether there has been compliance with this Code of Conduct concerns a member of the Internal Committee itself. Such a member may not then participate in the assessment and must be replaced. Replacement takes place on the basis of length of service and thereafter possibly on the basis of seniority.

Article 11. Breach of secrecy

1. The Internal Committee may propose to the Senate that a member who does not observe the secrecy or confidentiality referred to in articles 7, 8 and 9 be excluded from all meetings of one or more committees for a maximum of one month.
2. The Internal Committee may also propose to the Senate that a member as referred to in paragraph 1 be excluded from accessing confidential documents for a period not exceeding the remainder of the parliamentary term.
3. A proposal as referred to in paragraphs 1 and 2 will not be made until after the Internal Committee has given the member concerned the opportunity to be heard.

4. A proposal as referred to in paragraphs 1 and 2 will be put to the vote at the start of the first meeting of the Senate after the day on which the Internal Committee has decided to make the proposal. No deliberations are held on this proposal.
5. A decision of the Senate made pursuant to this article must be notified by the chair to the member concerned without delay.

Article 12. Confidential counsellor

1. The Senate must appoint an independent confidential counsellor, on the recommendation of the Internal Committee, to advise members and parliamentary parties on the interpretation of this Code of Conduct and on what action should be taken in specific situations. The appointment is for a term of four years, after which the confidential counsellor is immediately eligible for reappointment.
2. The confidential counsellor may not be a member of the Senate or work in the Secretariat.
3. All parties involved must observe secrecy with regard to the talks with the confidential counsellor.
4. The confidential counsellor must report annually, on a confidential basis, to the Internal Committee on the extent to which his services are used.
5. The Internal Committee must make arrangements with the confidential counsellor about appropriate remuneration.

Explanatory notes on article 12

The purpose of the confidential counsellor is to advise individual members and parliamentary parties on integrity issues in a confidential setting. The confidential counsellor mainly acts as a sparring partner in such cases. A member who doubts whether his or her intended action is in compliance with this Code of Conduct may refer this matter to the confidential counsellor. Even a member who does have doubts but realises that others may take a different view may discuss the issue with the confidential counsellor. Whereas the purpose of the provisions of article 10 on compliance with the Code of Conduct is to make it possible to check retrospectively whether the Code of Conduct has been complied with in a specific case, the advice of the confidential counsellor is sought in advance. To ensure independence, the confidential counsellor may not be a member of the Senate or work in the Secretariat. There are, however, no objections to the appointment of a former member of the Senate, particularly since such a person will be familiar with the political culture and mores of the Senate. The appointment is for a term of four years, which is the same as the parliamentary term. Thereafter the confidential counsellor is immediately eligible for reappointment.

Talks with the confidential counsellor are intrinsically confidential. Neither the counsellor nor the members who use his services may comment on the content of the discussions. This means that what is said these talks cannot be used in a possible procedure as referred to in article 10 of this Code of Conduct. As the Senate must be able to gauge to what extent the services of the confidential counsellor are called upon, the latter reports this annually, on a confidential basis, to the Internal Committee. Naturally, the report does not deal with the subject matter of the talks.

The Internal Committee must make agreements with the confidential counsellor about appropriate remuneration for his work. If desired, the Internal Committee may also involve the confidential counsellor in the evaluation of this Code of Conduct.