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## **Association of Secretaries General of Parliaments**

### **CONTRIBUTION**

from

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To the general debate on

### **STANDARDS OF CONDUCT FOR MEMBERS OF PARLIAMENT AND PARLIAMENTARY STAFF**

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## **Introduction<sup>1</sup>**

Integrity is a concept of consistency of actions, values, methods, measures, principles, expectations, and outcomes. In ethics, integrity is regarded as the honesty and truthfulness or accuracy of one's actions. Integrity regards internal consistency as a virtue, and suggests that parties holding apparently conflicting values should account for the discrepancy or alter their beliefs.

The word "integrity" stems from the Latin adjective integer (whole, complete). In this context, integrity is the inner sense of "wholeness" deriving from qualities such as honesty and consistency of character. As such, one may judge that others "have integrity" to the extent that they act according to the values, beliefs and principles they claim to hold. Disciplines and fields with an interest in integrity include philosophy of action, philosophy of medicine, mathematics, the mind, cognition, consciousness, materials science, structural engineering, and politics.

Integrity is a necessary foundation of any system based on the supremacy and objectivity of laws. Such systems are distinct from those where personal autocracy governs. The latter systems are often lacking in integrity because they elevate the subjective whims and needs of a single individual or narrow class of individuals above not only the majority, but also the law's supremacy. Such systems also frequently rely on strict controls over public participation in government and freedom of information. To the extent these behaviors involve dishonesty, turpitude, corruption or deceit, they lack integrity. Facially "open" or "democratic" systems can behave in the same way and thereby lack integrity in their legal processes.

If the integrity of any legal system is called into question often or seriously enough, the society served by that system is likely to experience some degree of disruption or even chaos in its operations as the legal system demonstrates inability to function. No democracy, no rule of law can survive if the system lacks integrity and lacks mechanisms to avoid or fight corruption.

In this general debate we want to explore how different Parliaments and parliamentary services establish and enforce standards of conduct for both members of parliament and parliamentary staff. Are there written standards of conduct in your parliament, or is there an informal understanding about what conduct is

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<sup>1</sup> Partly based on Integrity, Wikipedia, the free encyclopedia.

and is not appropriate? Are the standards well-established, or subject to dispute? What is the procedure if complaints are made that the standards have not been followed? What can we learn from each other experiences, what lessons learnt do we want to share?

To open the debate I want to briefly sketch the situation concerning codes of conduct for parliamentarians and parliamentary staff in my country the Netherlands<sup>2</sup>.

### **The Netherlands as a parliamentary democracy**

Let me remind you that the Dutch parliament, which is called the States General (Staten Generaal) in the Constitution, consists of two chambers: the lower chamber is the House of Representatives or Second Chamber (Tweede Kamer) and the upper chamber is the Senate or First Chamber (Eerste Kamer) (article 51, Constitution). The House of Representatives or Second Chamber is composed of 150 members who are elected directly by Dutch citizens by proportional vote for a 4-year term (article 54, Constitution). The 75 members of the Senate are elected, also by proportional vote for a 4-year term, indirectly by the members of the provincial councils, who are themselves elected by the national residents of the provinces (article 55, Constitution). Members of the States General are expected to represent the entire people of the Netherlands and not the particular interests of their electors (article 50, Constitution). Members of the House are full time politicians. They receive a salary and compensations. Members of the Senate are parttime politicians. They earn only one quarter of the salary of a member of the House. This being so Senators very often fulfill other remunerated functions next to their membership of the Senate. In fact the membership of the Senate often is a function next to a main function elsewhere in society.

The main function of the chambers of the States General is to act as co-legislators and to check whether the government is carrying out its duties properly. The legislative function of the Senate involves approving bills that have been passed by the Second Chamber. Only then can a bill become a law. The Senate has no right to initiate or amend a bill and may ultimately only reject or approve it.

Candidates for the House of Representatives or the Senate must be Dutch nationals who have reached the age of eighteen and have not been disqualified

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<sup>2</sup> The description is based on the answers to a questionnaire from the Groupe of States against Corruption of the Council of Europe. The country report of the GRECO on the Netherlands will be published before the summer of 2013.

from voting (art. 56, Constitution). A person may be disqualified from voting if he or she has committed a criminal offense for which disqualification is a possible sanction, if he or she has been condemned to a custodial sentence of at least one year and if the court has imposed disqualification from voting as an additional sanction (art. 54, Constitution). A member of the States General would lose his or her mandate if he or she no longer meets one of the mentioned conditions for being eligible for membership and/or if he or she holds a position which is incompatible with membership. Loss or suspension of membership is not a sanction either the House or the Senate can impose as an ultimate sanction for breaking rules.

### **Ethical principles and rules of conduct**

Defining a code of conduct for parliament as a set of rules outlining the responsibilities or proper practices of individual parliamentarians established by parliamentarians themselves, regulating their own behaviour, I have to admit that in the Netherlands there is not a very specific code regulating the ethics and conduct expected from the members of the States General. In fact the Constitution, the Penal Code, administrative law and the Rules of Procedure of the House or Senate are the main sources that comprise rules that apply to members of parliament either directly, or because MPs are implied in the general norms that apply to wider ranges of public functionaries.

The Constitution includes articles requiring MPs to represent the interest of the general public and discharging their duties faithfully (article 50 and 60).

MPs swear an oath before the chamber, by which they state that they have not done anything which may legally debar them from holding office. They swear allegiance to the Constitution and that they will faithfully discharge their duties (article 60, Constitution). The text of that Oath is laid down in Section 2 of the Ministers and Members of the States General Swearing-In Act which reads as follows:

The oath:

'I swear (affirm) that in order to be appointed as a member of the States General I have not given or promised, directly or indirectly, any gift or favour under any name or on any pretext whatever.

I swear (affirm and promise) that I have not accepted and will not accept, directly or indirectly, any present or promise in exchange for doing or refraining from doing anything in this office.

I swear (promise) allegiance to the King, to the Charter for the Kingdom of the Netherlands and to the Constitution.

I swear (promise) that I will faithfully perform all the duties which my office lays upon me. So help me, Almighty God!’

### **Conflicts of interest**

There are no detailed rules governing conflicts of interest of parliamentarians. It is considered that ethical conduct is initially a matter for assessment by political parties when recruiting prospective MPs and is later judged by electors when casting their vote. Therefore, the main responsibility to decide on whether a conflict of interest exists in the performance of their duties is vested on the MPs themselves. Despite the absence of a formal advisory mechanism however, MPs may, in practice, seek advice within their political party or from experienced fellow MPs on the appropriateness of their actions.

There is no statutory provision barring an MP from taking part in a vote on a matter that concerns him/her personally, either directly or indirectly or in which he or she is involved as a representative. Therefore, the question of how a vote relates to any personal interests of an MP is, in principle, a matter for the person concerned to decide.

If an integrity issue occurs, an MP may continue to be a member of the chamber concerned as long as he has not been disqualified from voting in a penal case and does not hold a position that is incompatible with such membership. There are no examples in recent history that MPs have lost their membership because the loss of voting rights was imposed on them as an additional punishment by a court.

In practice, MPs almost always resign of their own initiative if an integrity issue occurs. The media play an important role in that regard. In 2012 a Senator resigned because a criminal investigation was started against him because of alleged corruption (accepting benefits from a project developer who had an interest in investments the town in which the Senator was an Alderman wanted to make). So far no criminal charges have been brought forward, but the Senator already lost his political job, because he (with approval of his party) considered it better that he stay at a distance of politics as long as the investigation was pending.

### **Prohibition or restriction of certain activities**

#### *Incompatibilities and accessory activities*

The Constitution establishes that no one may be a member of both chambers and that a member of the States General may not be a minister, state secretary, member of the Council of State, member of the Court of Audit, member of

the Supreme Court, Prosecutor General or Advocate General at the Supreme Court. A member of the States General may also not be national ombudsman or his/her deputy or deputy of the Prosecutor General at the Supreme Court (article 57).

The States General and European Parliament Act prohibits the holding of the following offices simultaneously with the membership of the Houses: Queen's Commissioner, member of the armed forces in active service, official at the Council of State, the Court of Audit or the office of the National Ombudsman, official at a ministry or at an agency, service or corporation that comes under a ministry, member of the Management Board of the Employee Insurance Agency or the Social Insurance Bank referred to in the Work and Income (Implementing Structure) Act, member of the supervisory committee referred to in section 64 of the Intelligence and Security Services Act 2002, and Kingdom representative.

An MP who holds one of these incompatible offices is automatically put on leave of absence, discharged from the duty of performing the incompatible office and ceases to perceive remuneration and allowances for that office. The leave lasts for the duration of his/her mandate, after which he or she resumes his/her former office.

The elected MPs or their agents, before taking up their duties, must file with the representative assembly a declaration disclosing all public offices held by them (section V 3 Elections Act).

If a member of either chamber holds an incompatible position within the meaning of article 57, paragraph 2 of the Constitution, his/her membership is terminated automatically (section X3, subsection 1 Elections Act). In other cases, the member concerned notifies the president of the assembly concerned that he or she no longer fulfils one of the requirements for membership. If the member concerned fails to give notice, the president of the assembly concerned informs him/her that, in his opinion, he or she no longer fulfils the membership requirements and thus ceases to be a member. If the member disagrees with the decision of the president, he or she may request the opinion of the chamber on the matter. A committee, composed of members, is then established to investigate the case. The chamber gives a final ruling on the case after the publication by the committee of its report (article 3, Rules of Procedure of the Second Chamber and article 5, Rules of Procedure of the Senate).

Aside from the incompatible offices mentioned above, there are no rules preventing MPs from engaging in accessory activities. On the contrary, such activities are often welcomed, as they demonstrate that MPs are involved in society.

For members of the House the financial gains they can make by accepting additional functions are limited. Additional income is largely skimmed when it goes beyond about 20% of the salary that is connected with the membership of the House. Sometimes nevertheless the ethical questions rises if an MP acts wise to involve in accessory activities which might easily cause conflicts of interest. There are no formal rules of conduct that deal with this problem. Members must finally decide themselves. They often will consult with colleagues in their Group or officials in their party.

For Senators who for a living are practically speaking forced to engage in other functions, the situation is somewhat different. The law puts no limit on what additional income a Senator may earn. The law only requires Senators to disclose their outside positions by depositing a statement at the office of the Secretary-General. The functions a Senator fulfils in society are published on the website of the Senate. So there is transparency on possible conflicts of interest. Sometimes the question rises if further regulation on the combination of membership with outside functions is desirable. There is a practice that Senators do not speak for their party in Senate debates in the field of interest of their main job. Sometimes there is speculation in the press that behind closed doors Senators are tempted to influence dossiers in which they have an interest from the perspective of their main function. The media of course are important watchdogs in detecting possible conflicts of interest. Everything that happens in the plenary is open and transparent. A Senator's input to the discussion of draft legislation or a budget proposal can be followed verbatim. When a possible integrity matter rises Senators too must finally decide themselves. They too may decide to consult with colleagues in their Group or officials in their party. In my view so far there has not been a clear need to further regulate conduct of Senators on this matter in a Code of Conduct. As with all regulation there first should be absolute clarity on what problem(s) one wants to solve with more extensive regulation.

#### *Gifts, including the offer of trips*

Members of the States General are not banned from accepting gifts. Members of the Second Chamber have to register gifts which have a value in excess of € 50 no later than one week after receipt of the gift (article 150a, Rules of Procedure of the Second Chamber). Members of the Second Chamber are also bound to report their foreign trips made at the invitation of third parties, no later than one week after their return to the Netherlands. The register of foreign trips is kept at the Office of the Secretary General of the Second Chamber. The Rules of Procedure of the Senate do not include such a reporting requirement for the members of the Senate. The College of Presiding Officers has deci-

ded that Senators have to report gifts with a value over € 50 at the Secretary-General's office. One could call this an unwritten rule of conduct.

### **Misuse of confidential information**

MPs are bound to respect the rules on confidentiality and secrecy of meetings and documents (Confidential Documents Rules and articles 143-147 of the Rules of Procedure of the Second Chamber, articles 81 and 85 of the Rules of Procedure of the Senate). If a member of the Second Chamber fails to do so, he or she can be barred from attending all meetings of one or more committees for not more than one month and/or barred from accessing to confidential documents for not more than the remainder of the session. Such a decision is taken by the Chamber, upon the proposal of the Presidium. A register of confidential documents received by the Second Chamber or by any of its committees is kept at the office of the Secretary General.

### **Misuse of public resources**

The Presidium of the Second Chamber may instruct a parliamentary political party that is in default on account of proven or suspected mismanagement, to release its books of account to an external auditor designated by the Presidium. The expenses of this audit are to be covered by the political party (article 8 of the Second Chamber Parliamentary Parties (Financial Assistance) Act). The Presidium also has the power to adopt additional rules. Furthermore, the audit department of the Ministry of the Interior and Kingdom Relations may, on its own initiative, obtain information from the auditor engaged to carry out the audit. If necessary, the Public Prosecution Service may institute an investigation. Misuse of public resources may also constitute a criminal offence. In this case, the MP does not enjoy immunity. A special procedure before the High Court applies for violations of law committed by MPs while in office.

### **Declaration of assets, income, liabilities and interests**

There is no prohibition or restriction to the financial interests MPs may hold. Members of the House are only subject to an obligation of declaration of their outside positions and interests and of the income they receive from them (Section 5 Remuneration (Members of the Second Chamber) Act and Section 3b, Remuneration (Members of the Senate) Act. Article 150a of the Rules of Procedure of the Second Chamber requires its members to report their outside positions and interests, income or expected income from these positions. This declaration is to be made yearly, no later than the first of April following the ca-



lendar year in which the income was perceived. Members of the Second Chamber, as mentioned, also have to declare gifts exceeding the value of € 50 and foreign trips made at the invitation of third parties. This information is entered on three separate registers kept at the office of the Secretary General. These registers are accessible to everyone and are published on the internet. The Secretary General also publishes twice a year the statements in the register of outside positions and interests. There neither are official sanctions foreseen for members of the House who fail to declare to the office of the Secretary General their outside positions and interests, their income or expected income from these activities, gifts they have received and their sponsored foreign trips. Of course if a negligence to declare comes to the open, the reputation damage can be considerable.

### **Criminal responsibility and immunity**

MPs, as well as ministers, state secretaries and other persons taking part in deliberations may not be prosecuted or otherwise held liable in law for anything they say during the sittings of the States General or of its committees or for anything they submit to them in writing (article 71 of the Constitution). MPs may be prosecuted for all other acts including violations of the secrecy rules and misuse of finances.

There is a special procedure for violations of law made while in office. Article 119 of the Constitution requires that present and former MPs, ministers and state secretaries be tried by the Supreme Court for offences committed while in office. Proceedings are instituted by Royal Decree or by a resolution of the Second Chamber. This procedure has never been used to date.

### **Behaviour in Parliament**

Both chambres of parliament have in their Rules of Procedure a limited number of rules concerning conduct in plenary (and committee) meetings.

Examples:

- If a person who has the floor strays from the subject of debate, the President shall call on him to return to the subject in hand.
- If a member or a Minister uses offensive language, causes a disturbance, violates his duty of secrecy, fails to observe confidentiality or signifies his approval of or incites the commission of unlawful acts, he shall be reprimanded by the President and given the opportunity to withdraw the words that have given rise to the warning.

- If a person who has the floor makes no use of the opportunity referred to above or continues to stray from the subject of debate, to use offensive language, to cause a disturbance, to violate his duty of secrecy, to fail to observe confidentiality as referred to or to signify his approval or incite the commission of unlawful acts, the President may order him to yield the floor.
- A member who has been ordered to yield the floor may no longer take part in the debate on the subject under discussion at that meeting.
- The President may exclude a member addressing the meeting to which the above has been applied and any other member who has been guilty of facts of the kind referred to from further attendance at the meeting on the day on which the exclusion occurs.
- No appeal to the House shall lie against decisions taken by the President pursuant the above.

In the Senate a source of unwritten norms is the General Introduction to Members of the Senate issued by the Secretary-General<sup>3</sup> at the occasion of a change of parliament after elections. Presidents of the Senate tend to maintain these rules with a high degree of acceptance by Senators:

Examples:

- No eating in the plenary meeting hall;
- No drinking of beverages in the MP's benches except for medical reasons (drinking of coffee, tea or water is only allowed at the President's rostrum and behind the government table); behind the benches Senators can only drink water;
- No telephone calls in the plenary hall; no use of computers with the exception of iPad;
- No handing over of objects or presents by debaters to the representative(s) of the government or others present without permission of the President.

## **Advice, training and awareness**

The main responsibility for informing MPs about integrity issues and the conduct expected from them is vested on the political parties that are represented in the States General. That said, I may add that, at the beginning of each new legislature, an introduction course is organised for new members by the staff of the parliament in which some experienced Senators also give lectures. Integrity issues have always formed part of this course. At the beginning of the current legislature the then President of the Senate gave me as Secretary-General the opportunity to address the whole Senate to introduce this course and highlight the written and unwritten rules and procedures in the Senate.

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<sup>3</sup> Algemene Introductie voor Leden van de Eerste Kamer der Staten-Generaal

## 2. Standards of conduct for parliamentary staff

Parliamentary staff is subject to specific legal provisions concerning their legal status. Many regulations are similar to the rules applying to government civil servants.

Nevertheless both Chambers of the States-General have a specific Integrity Code for parliamentary staff.

In our Chambers the codes of conduct<sup>4</sup> have been formulated by management and elected works council to elaborate on elements of integrity which they considered particularly important in the working environment of parliament.

The specific Integrity Codes of Conduct for parliamentary staff which actually exist in both chambers define the core values underlying integrity rules that exist and the existing arrangements based on them. The values listed in the Code of Conduct serve as a backdrop and touchstone for the conduct of parliamentary officials.

### Core values:

#### *Impartiality*

Because parliamentary officials represent the public interest, public must be able to have confidence that the civil servants are not prejudiced or biased. Parliamentary officials should be impartial and independent and must insure these qualities while executing their tasks. Tasks and activities must be carried out in a way that decisions are based on facts. Even the appearance of dependence, bias or conflict of interest must be avoided. Situations where personal interests or the interests of personal relationships interfere with the interests of parliament should be avoided.

#### *Reliability*

Reliability means that one must be able to trust that commitments are fulfilled. Parliamentary officials must be trustworthy and reliable. Expectations and requirements related to the task and job performance should not be confounded. This relates both to behavior and to the result of the work and it has to do with the credibility of parliament and the confidence the institution requires. This confidence also depends on the reliability of the individual civil servants.

#### *Care*

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<sup>4</sup> Gedragscode Integriteit Tweede Kamer der Staten-Generaal; Gedragscode Integriteit Eerste Kamer der Staten-Generaal

A parliamentary civil servant should carefully deal with information available to him/her by virtue of his function. This information may only be used for the purpose for which it has been provided and the nature of the information should always be taken into account (eg politically sensitive, privacy-sensitive or confidential). Information provided by parliamentarians, citizens, other organisations and colleagues should be carefully dealt with. Providers of information must be able to trust that the information is in good hands and will not be used for purposes other than for the ones for which they were obtained.

In addition, every decision must be carefully prepared, including a careful weighing of all relevant interests and based on a proper use of the formal competences. Means and resources provided by the organisation should be carefully utilized. A proper use should be made not only of equipment, office supplies and vehicles, but also of facilities like intranet, telephone and email. These instruments should only be used for the purpose for which they are provided. Financial resources provided must be used economically and efficiently and only for lawful purposes.

#### *Servitude and respectful treatment*

The parliamentary civil servant is at the service of all MP's and visitors of parliament. This requires a clear customer and service orientation. 'At your service' means readiness to do what is necessary. It is required to contribute to a positive working atmosphere where colleagues and visitors get a positive and correct treatment. Key words in behavior are: respect, decency, co-orientation, customer service and prevention of discrimination. The respectful treatment is not only aimed at humans, but also at the material environment. The means made available by parliament must at all times, be employed for the purposes of the execution of the tasks. An element of a respectful treatment is refraining from discrimination. This value which also has a strong legal basis implies that discrimination - in whatever form - must be avoided and where it occurs, should be combatted.

### **Specific rules, procedures and facilities**

#### *Preventing undesirable behavior*

Parliamentary civil servants are entitled to a safe and pleasant working environment. A pleasant cooperation requires that colleagues respect one another. The code elaborates on performance of duties without discrimination on grounds of religion, belief, political opinion, race, gender or other personal characteristics. Sexual harassment is seen as an expression of showing disrespect and a degradation of one's personal integrity.

There is a policy aimed at combatting 'inappropriate behavior' which includes all behavior including expressions which are disrespectful to the personal inte-

grity of employees. The rules clarify what can be done if there is unwanted behavior. The civil servant can consult an independent expert, the 'counselor undesirable behavior', and there is a complaint procedure.

#### *Gifts and Benefits*

The rules elaborate on the criteria under which the acceptance of a gift (with a maximum value of 45 euro) can be permissible.

#### *Ancillary activities*

In principle a parliamentary civil servant may carry out activities next to his main job. It should be prevented that as a result of ancillary activities conflicts or collisions of interests occur. That is why certain ancillary activities are prohibited, certain can not be carried out without permission; and others must be reported.

#### *Financial interests and transactions with securities*

Rules are aimed at avoiding conflicts of interest and abuse of price-sensitive information.

#### *E-mail, Intranet and Internet*

An extensive annex to the code of conduct deals with the use of email, intranet and internet. Limited personal use of these systems is permissible, provided that this does not disturb the daily activities and does not harm job performance.

#### *Social Media*

Rules are aimed at clearly separating private activities and the use of social media as part of the performance of official duties.

#### *Purchase of goods and services*

The rules are aimed at proper behavior in purchasing decisions within the reach of someone's function; observation of procurement rules etc.

#### *Revolving Construction*

To prevent unfair competition or apparent conflict of interest it is not allowed to hire a former parliamentary civil servant again within two years after his resignation. Exceptions to this rule require specific arrangements.

#### *Contacts with individual MPs*

The code elaborates on conduct towards MP's, a discrete use of information obtained from MP's, political neutrality and observance of secrecy.

### *Protection of “whistleblowers”*

Civil servants who in good faith report conjectures of abuses or wrongdoing are protected and may not experience adverse effects as a result of their notification.

### *Sanctions*

If an employee violates the rules of the Code or otherwise does not work with integrity he is guilty of dereliction of duty and a disciplinary penalty may be imposed on him or her. The regular legal rules of penal law and administrative law apply when sanctions are considered.

## **Epilogue**

Although the Integrity Codes of Conduct for Parliamentary Staff of both Houses of the Dutch Parliament provide a large number of handles, it can never be exhaustive in its scope. When the Code has no clues or answers it comes to the ability of the parliamentary civil servant to independently act in a responsible way in accordance with the spirit of the values and norms of the organization. Besides taking into account the various rules and core values, and consultation of management and colleagues, the individual civil servant should then rely on his /her own moral sense. Common sense is leading when concrete rules are absent or unclear. As is always the case in life.