Parliamentary **Assembly**
Assemblée parlementaire

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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

For debate in the Standing Committee — see Rule 15 of the Rules of Procedure

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Conflict of interest

Report
Committee on Rules of Procedure and Immunities
Rapporteur: Mr John GREENWAY, United Kingdom, European Democrat Group

Summary

The issue of financial interests of persons in a position of trust has become more important at European level. This is mainly due to the general trend towards greater openness and transparency.

The Committee on Rules of Procedure and Immunities proposes to introduce in the Rules of Procedure of the Parliamentary Assembly a provision relating to declarations of interest of members, according to which all Assembly members applying for a rapporteurship shall make obligatory declarations of relevant or conflicting professional, personal, financial or economic interest. Before speaking in committee or plenary session on a subject on which they have such interest, members are encouraged to make ad hoc declarations. A committee will have the right to remove a rapporteur who has failed to declare relevant or conflicting interest or has made an untruthful declaration.

A. Draft resolution

1. The Parliamentary Assembly underlines that transparency and accountability are the cornerstones of effective good governance and democracy at national and international level.

2. Public confidence in the way parliamentarians discharge their duties depends to a large extent on the presumption that they will not deal with matters in parliament in which they have a conflicting professional or personal interest. This applies also, *mutatis mutandis*, to international parliamentary institutions.

3. Therefore, before being appointed rapporteur in a committee, a member of the Parliamentary Assembly should disclose any professional, personal, financial or economic interest which might be considered relevant or conflicting with the subject of the report.

4. The Assembly also considers that members should be encouraged to make oral ad hoc declarations before speaking in plenary or in committee on a subject in which they have such interests. This would allow other members and the public not only to be informed of any conflicting interests but also be aware of the members' experience in relation to the matter.

5. In the case where a rapporteur fails to declare any relevant or conflicting professional, personal, financial or economic interest, or makes an untruthful declaration, the relevant committee should have the right to remove the person.

6. The Assembly considers that it is appropriate to include these points in the Rules of Procedure and the complementary texts to the Rules and consequently decides to:

6.1 insert in the Rules of Procedure a new Rule 12 worded as follows:

"Rule 12

Transparency and declaration of interest of members

12. The provisions governing Assembly members' declaration of interest shall be attached to these Rules of Procedure as a complementary text."

6.2. insert in the complementary texts to the Rules of Procedure the following provisions:

"Application of Rule 12 of the Rules of Procedure – Transparency and members' declaration of interest (see Resolution … (2007))

Article 1

1.1. All candidates for rapporteurship shall make an oral declaration of any professional, personal, financial or economic interests which might be considered relevant or conflicting at the time of appointment in committee.

1.2. This declaration shall be recorded in the minutes of the meeting.

Article 2

2.1. Before speaking in committee or in plenary session on a subject on which they have a professional, personal, financial or economic interest which might be considered relevant or conflicting, members are encouraged to make ad hoc declarations of interest.

2.2. This not only serves transparency and is relevant for other members; it also makes colleagues and the general public aware of the members' experience on the subject concerned.

Article 3

3. Committees shall have the right to remove a rapporteur who failed to declare such interests or who made an untruthful declaration."

7. The Assembly decides that these new provisions shall enter into force on the first day of its October 2007 part-session.

B. Explanatory memorandum by Mr John Greenway, Rapporteur

I. Introduction

1. Public confidence in the way members of parliament discharge their duties depends to a very large extent on a presumption that MPs will not deal in the course of their duties with matters in which they have a personal financial interest. The public expects that laws are passed, then applied, fairly and objectively, without any account being taken of personal interests. Any perceived conflicts of interest only serve to undermine public confidence in the integrity of the decision making process.

2. For its part the Parliamentary Assembly has no formal provisions concerning declarations of interest of members, although the issue has been considered on several occasions.

3. On 30 June 2006 the Assembly referred to the Committee on Rules of Procedure and Immunities a motion for a resolution on conflict of interest (Doc. 10830).

4. This report gives background information on the motion, defines the notion of conflict of interest and summarises the Assembly's earlier work on the subject. It also examines the situation in other parliamentary bodies and concludes by setting out the questions to be considered by the Assembly as a basis for further action.

II. Main contents of the motion

5. The motion suggests that the Rules of Procedure be modified to establish unconditional criteria for a member to become an eligible candidate for rapporteur, when the subject of the report concerns one or more specific member states.

6. Where this is the case, an Assembly member who is a candidate for the appointment as rapporteur should sign a statement (1) affirming that the member has no business interest in the country/countries concerned (2) or disclosing the business interests he or she has. If a member refuses to sign such a statement he/she shall not be eligible for appointment as rapporteur. If a signed declaration on business interests proves to be untrue, a member appointed as rapporteur should be removed from that function.

7. Furthermore, the authors of the motion propose that “provisions will be established for those who become rapporteurs before those new provisions are validated. The above stipulated declaration and sanction on business interests should apply to them as well.”

III. Definition and purpose of a declaration of conflict of interest

8. A conflict of interest is generally described as a situation in which someone in a position of trust, including politicians, has competing professional or personal interests. This may make it difficult for him or her to fulfil duties impartially.

9. If adopted the above-mentioned motion would limit the requirement for a declaration to those members who are appointed as rapporteurs for specific subjects concerning one or more member states only. The declaration would also be limited to business interests. The requirement would not relate to reports on all other subjects.

10. To appreciate more fully the general context of this issue it may be helpful to provide some background information on the way potential conflicts of interest are dealt with in the UK Parliament. All Members of Parliament are required to make a formal declaration of their business and financial interests. These declarations are then published in a formal public register which can also be accessed via the internet. Where a business or financial relationship is dependent upon the Member’s position as a Member of Parliament the Member is advised to reach a formal agreement with the relevant organisation that (a) the member will not engage in advocacy by means of any parliamentary speech or question and that (b) the Member’s primary interests and duty must always be towards his or her constituents.

11. Similarly Members by convention and as a courtesy to other colleagues refer to their declared interests when making any speech on subjects which relate to, or may be thought to relate to, their declared interests. Even previously held positions can often be relevant in these circumstances. Both the register and informal declarations also enable the public to be aware of a Member's financial interests, and to appreciate his or her relevant experience.

12. Other parliaments require members to make both oral and written declarations. In some respects the obligation to declare is wider than the obligation to register, embracing for example relevant past and future as well as present interests.

13. The main purpose of declarations of interests and any lists (registers) is to provide information of any pecuniary interest or other material benefit which a member receives which might reasonably be thought by others to influence his or her actions taken in his or her capacity as a member of parliament.

14 Through openness such declarations promote accountability. Whilst clearly the registration of an interest does not imply wrongdoing, a failure to declare might breach parliamentary rules and bring Members into disrepute.

15. It is proposed to consider as relevant for the purposes of this report professional, personnel, financial or economic interests of members.

IV. Past committee activities concerning financial interests of members and Assembly texts on this issue

16. The subject of financial interests has been raised in the past in the Committee on Rules of Procedure and Immunities and at Assembly level during debates on strengthening democracy and the fight against corruption.

17. In November 1986 a motion for a resolution on the declaration of financial interests of members was tabled in the Assembly (Doc. 5659). It proposed that before speaking in plenary sitting or in committee, a member of the Assembly with a direct interest in the matter being debated should declare it orally.

18. The motion was referred for report to the Committee on Rules of Procedure and Immunities which responded by publishing several memoranda. These analysed

- the situation in national parliaments with respect to declarations of interest and the various solutions found
- the desirability of introducing such declarations for Assembly members from the political, legal and sociological points of view (see in particular AS/Pro (40)2).

19. It was shown that in the then 21 member States

- 10 parliaments had a system of general declarations
- 1 parliament had an *ad hoc* system of declarations (members declare any specific personal interest when taking part in particular parliamentary activities)
- 4 parliaments had rules prohibiting members from voting or participating in debates on a subject in which they had a direct financial interest
- 6 parliaments had no rule or practice in the matter.

20. Whilst acknowledging that all parliaments and their members should set an example concerning transparency, the Committee on Rules of Procedure and Immunities at that time concluded that there would be problems in requiring Assembly members to declare financial interests, irrespective of whether there was a similar obligation in their national parliament.

21. The Committee examined two further solutions without however endorsing them:

(a) recommending to Assembly members to make oral ad hoc financial declarations
(b) inviting national parliaments always to append to the credentials of Assembly members a copy of any declaration they had made in their parliament; however in 1988 this would have only been relevant for eleven of the then 21 member states.

22. In October 1988 the Committee agreed to reconsider the matter again once all national parliaments of the member states had introduced financial declarations. However, no further action has been taken until the tabling of the new motion by Mr Eörsi (see paragraph 3 above).

23. When dealing with questions of democracy or the fight against corruption the Assembly has occasionally drawn attention to the need for parliamentarians to declare financial interests. In its Resolution 1353 (2003) on The Future of Democracy: Strengthening Democratic Institutions, the Assembly called on its members to ensure greater accountability for political decision-makers by defining rules concerning situations of conflict of interest. The competent Assembly committees also systematically invite new member states to accede to the Council of Europe GRECO Group (Group of States against corruption).

V. Present situation in national parliaments, international parliamentary assemblies and relevant work of other international bodies

i. National parliaments

24. A study made by the Inter-parliamentary Union on “the parliamentary mandate” (Geneva, 2000, p.57) found that there is an increasing tendency in national parliaments to request declarations of interests from their members. This is explained by the need to make public life more transparent and the fact that traditional instruments, such as rules on incompatibilities, ineligibility and the financing of political parties and electoral campaigns, are no longer sufficient.

25. However it is clear from the information in the Inter-parliamentary Union's "Parline" database that some parliaments in Europe still make no provision for declarations in the event of conflicts of interest.

26. In August 2006 the Secretariat of the Polish *Sejm* launched a questionnaire within the European Centre for Parliamentary Research and Documentation (ECPRD) on the disclosure of financial interests of persons performing public functions. Responses were received from 24 European parliaments and the parliaments of Israel and the United States. These responses showed that in 18 of these 24 parliaments members are required to disclose their financial interests. In Norway and Denmark the declarations are made on a voluntary basis. According to an ECPRD study of 2001 on parliamentary codes of conduct, which covered 43 European countries,

- members were required to disclose their interests in 31 parliaments
- in 5 parliaments there was no such need
- no information was available on the situation in seven parliaments.

ii. Interparliamentary institutions in Europe

27. Little progress has been made on matters concerning conflicts of interest since the end of the 1980s. As far as we know, only the European Parliament has a system of declaration of interests. Members of the European Parliament have an obligation to declare their financial interests upon taking up office, for inclusion in a register. Before speaking in the European Parliament or any of its bodies, or before being nominated as a rapporteur, any MEP with a financial interest in the matter is required to announce it orally. MEPs must also update their declarations every year.

28. The assemblies of the WEU, the OSCE and NATO, on the other hand, do not require such declarations.

iii. Work of other bodies

29. Whilst at the level of international parliamentary institutions the situation has not much changed there is a noticeable trend towards more transparency of members of parliament. This is also clearly shown by the work of several COE bodies.

30. The national evaluation reports of the COE Greco Group (Group of States against Corruption) regularly examine possible conflicts of interest. The reports of the first evaluation round included in several cases recommendations concerning financial interests of members of parliament. “Conflicts of interest” was one of the five key themes dealt with at the COE Octopus interface conference on corruption and democracy held in Strasbourg on 20 and 21 November 2006.

VI. What should the assembly do

31. The Committee on Rules of Procedure and immunities has examined the following questions:

- does the fact that certain parliaments do not yet have declarations of interest prevent the Assembly from adopting measures to achieve greater transparency concerning the interests of its members?

- should Assembly members before being appointed as rapporteurs on a subject concerning one or more specific member states be required to declare business interests in the country/countries ?

- should this be done orally or in writing?

- should such an obligation be extended to other reports, when a financial interest is involved?

- should in the mid-term a more comprehensive system of declaring financial interest be envisaged for members?

i. Adoption of measures concerning the interest of Assembly members

32. The Committee is of the opinion that whereas in 1987/88 the fact that not all COE member states had declarations of interest of members prevented the Assembly from agreeing appropriate action, this should no longer be an obstacle for the introduction of measures at Assembly level. There is a general move to combat corruption at all levels and the role of international parliamentary institutions as such has increased. Furthermore as Members of Parliament have different responsibilities in European Assemblies compared with their work in their national parliaments, it could be argued that reliance on any national registers of business interests of members is no longer sufficient. Reliance on national registers places the onus on other assembly members or the general public to check such registers in order to ascertain if a colleague has a relevant interest. The Committee has concluded that this is no longer an acceptable state of affairs.

ii. Oral declaration of interest before the appointment of a rapporteur

33. When a member prepares a specific report on one or more member states he/she has a special responsibility to act with total impartiality because of the likely influence of the report on the political situation in the country concerned. To avoid possible criticism of such a report it is vital that there can be no grounds for challenging or doubting the objectivity of the rapporteur. One key element for objectivity is that the rapporteur has no business interest in the relevant country (countries) or that if he does he has declared the fact. This and reasons of openness clearly argue in favour of a declaration of business interest of rapporteurs.

34. At this stage however the Committee is not convinced that such a declaration should be in writing. At the European Parliament such declarations are made orally and this appears to be satisfactory. The fact that a declaration of a member would be recorded in the minutes of the committee meeting would provide written proof that the Member had acted with all due propriety. The Member’s appointment as rapporteur would have been made by the relevant Committee with full knowledge of the interest concerned.

35. As indicated above (par. 15) the terms “interest” should for the purposes of this report, include all personal, professional, financial or economic interests of a member in an Assembly business.

36. A requirement for rapporteurs to make a declaration before producing reports on subjects concerning one or more specific member States would mean that less than one fifth of the reports presented to part-sessions would have the benefit of this new declaration procedure. So another question which arises is whether such a declaration should be required for “rapporteurships” on all possible subjects.

37. An extension of the obligation to declare interests to cover all reports may seem to some to be premature and unnecessary in an Assembly which is not directly elected. However, the Committee has agreed that a declaration of a relevant interest should be required for all subjects for which a rapporteur can be appointed, in the interests of transparency and openness and the need to avoid any possible suspicion that a conflict of interest may exist. This would only be applicable directly to rapporteurship at the level of the Assembly’s ten general committees. Rapporteurs appointed by the Bureau of the Assembly (e.g. the rapporteur for the Progress Report of the Bureau and the Standing Committee and rapporteurs of Bureau ad hoc committees) would not explicitly be covered by the proposed new Rule. However, nothing would prevent ad hoc committees, if appropriate, to also request a declaration before the appointment of a rapporteur.

iii. Ad hoc declarations in plenary and committee debates

38. Another question which the Committee has considered is whether by way of a rule or convention members should be encouraged to make ad hoc declarations in plenary and in committee before they speak on a matter where they have a relevant interest. Whilst this need not be mandatory it would ensure that other members and the public were aware of any such interest. Furthermore, such a courtesy would also make colleagues and the public aware of the member’s relevant experience. This would be more likely to add weight to the Member’s views rather than give rise to a perception that the member has a conflict of interest. Whereas initially diverging views had been expressed concerning such a recommendation to be enshrined in guidance to Assembly members, the Committee finally supported it.

39. Such encouragement is the right policy for the near future. Declarations of interest and codes of good conduct are increasingly introduced at all levels of society and the Assembly should not lag behind this development. In the longer term this guidance for Assembly members could be reviewed and, possibly, be strengthened as appropriate in the light of experience.

iv. Possible sanctions for members failing to declare a relevant interest

40. Finally, the Committee has examined what sanction would be appropriate if an oral declaration made by a candidate for “rapporteurship” proves to be untrue or if the candidate has failed to declare an interest which was clearly relevant to the subject of the report. The authors of the motion (see paragraph 5 and 6 above) have rightly suggested that in these circumstances the relevant committee should be entitled to remove the rapporteur. This sanction should be explicitly mentioned in any proposed new provisions on interest of Members.

41. It should be noted that in the European Parliament the catalogue of sanctions is wider even though MEPs have no national parliamentary mandate (see appendix I to the Rules of Procedure of the EP combined with Rule 147 of the EP’s Rules which is equivalent to Rule 20 of the Parliamentary Assembly’s Rules of Procedure on maintenance of order).

v. Insertion in the Rules of a new provision on interest of Members

42. The Committee proposes that a short new Rule on interest of members should be inserted at the end of the Rules’ chapter II on Representatives and Substitutes. A new Rule 12 could be worded as follows:

> “12. The provisions governing Assembly members’ declaration of interest shall be attached to these Rules of Procedure as a complementary text”.

43. Consequently, the detailed provisions would be included in an appendix to the Rules, following the example of other parliamentary institutions. These provisions would be:

- all rapporteur candidates shall make a declaration of any relevant professional, personal, financial or economic interests at the time of appointment in committee, this shall be recorded in the minutes of the meeting;

- the Assembly should encourage members who have such an interest concerning a subject discussed in plenary or in committee to make an oral ad hoc declaration before they take the floor;

- a committee should have the right to remove a rapporteur who has failed to declare relevant interests or made an untruthful declaration.

VII. Final remarks

44. The question of financial interests is becoming increasingly important because of the general trend in European affairs towards more openness and the desire of European political institutions to contribute to the fight against corruption.

45. Following the questions raised in paragraph 31 above the Committee has examined and agreed the elements for a reply provided in paragraphs 32 to 39. They are reflected in the draft resolution included in this report.

46. The Committee has unanimously adopted this draft resolution and decided to present the report to the meeting of the Standing Committee on 24 May 207. The proposed new provisions should enter into force on the first day of the Assembly's October 2007 part-session.

Doc. 11259

Reporting committee: Committee on Rules of Procedure and Immunities

Reference to committee: Doc. 10830, Reference No. 3258 of 30 June 2006

Draft resolution unanimously adopted by the Committee on 16 April 2007

Members of the Committee: Mr Andreas Gross (Chair), Mr Andrea Manzella (1st Vice-Chair), Mrs Maria Postoico (2nd Vice-Chair), Mr Erol Aslan Cebeci (3rd Vice-Chair), Mr Miloljub Albijanić, Mrs Edita Angyalová, Mr Birgir Ármansson, Mr Lars Barfoed, Mrs Anne Brasseur (alternate: Mr Norbert **Haupert**), Mr Jonas **Čekuolis**, Mrs Helen d'Amato, Mr Miljenko Dorić, Mr Vanghel Dule, Mr Herbert Frankenhauser, Mr John **Greenway**, Mrs Arlette Grosskost, Mr Attila Gruber, Mr Gerd Höfer, Mr Serhiy Holovaty, Mr Ali Huseynov, Mr Luchezar Ivanov, Mr Morgan Johansson, Mr Armand Jung, Mr Erik **Jurgens**, Mr Reijo **Kallio**, Mrs Mojca Kucler-Dolinar, Mrs Irine Kurdadzé, Mr Jan Filip **Libicki**, Mr Alan **Meale,** Mr Miloš **Melčák,** Mrs Ana Caterina Mendonça, Mr Peter Mitterer, Mr Nikolaos Nikolopoulos, Mr Alexey Ostrovsky, Ms Eli Sollied Øveraas, Mr Julio Padilla, Mr Christos Pourgourides, Mr Armen Rustamyan, Mr Yuri Sharandin (alternate: Mr Valeriy **Federov**), Mrs Rodica Mihaela Stănoiu, Mr Giuseppe Valentino, Mr Karim Van Overmeire, Mr G. V. Wright, Mr Blagoj **Zasov**

N.B.: The names of the members who took part in the meeting are printed in **bold**

Secretariat of the Committee: Mr Heinrich, Mrs Clamer