Warsaw, 30 December 2024
Opinion-Nr.: CORR-UKR/524/2024 [NS]

PRELIMINARY OPINION ON THE DRAFT LAW "ON AMENDMENTS TO CERTAIN LEGISLATIVE ACTS OF UKRAINE REGARDING THE RULES OF ETHICAL CONDUCT OF MEMBERS OF PARLIAMENT OF UKRAINE (CODE OF ETHICS)"

UKRAINE

This Opinion has benefitted from contributions made by **Ms. Lolita Cigane,** Member of the ODIHR Core Group of Experts on Political Parties and **Mr. Radivoje Grujić**, International Democratic Governance Expert.

Based on an unofficial English translation of the Draft Law provided by the Parliament of Ukraine.

OSCE Office for Democratic Institutions and Human Rights
Ul. Miodowa 10, PL-00-251 Warsaw
Office: +48 22 520 06 00, Fax: +48 22 520 0605
www.legislationline.org

EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Institutional and individual integrity of parliament and parliamentarians and public accountability have been increasingly recognized as core aspects of political life and good governance. Parliamentary codes of conduct/ethics, which seek to guide the behaviour of members of parliament (MPs), are critical instruments for upholding parliamentary integrity. While it is not uncommon in the OSCE region to incorporate ethical principles in legally binding instruments, such as parliamentary rules of procedure or legislation regulating the status of MPs, the goal of parliamentary codes of ethics often goes beyond clear-cut legally binding rules prescribing or prohibiting particular acts. They are rather of a self-regulatory nature and intend to express common values, promote ethical and moral conducts, and reflect fundamental principles to maintain and enhance public trust both in the parliament itself and in representative democracy more generally.

At the same time, to become truly operational and trigger a real change of the institutional culture, the development of an ethical framework for MPs should ideally stem from a process driven by ownership of the document by the parliament and MPs and recognized gaps in the existing integrity system. Such framework should also be supported by a proper institutional mechanism ensuring independent, impartial, continuous and proactive monitoring and enforcement of the rules with adequate human and financial resources for their effective implementation in practice. Ethical standards, values and rules may need to be regularly reviewed and updated to address new challenges and evolution of society. Therefore, it is important that ethics-related provisions are not too difficult to amend.

The discussions on the development of a Code of Ethics for parliamentarians of the Verkhovna Rada (Parliament) of Ukraine – called upon by several international and regional organizations – have been ongoing for a long time, involving political factions and other stakeholders. Several attempts to adopt a parliamentary ethical framework did not succeed. This new legislative initiative, the Draft Law "On Amendments to Certain Legislative Acts of Ukraine Regarding the Rules of Ethical Conduct of Members of Parliament of Ukraine (Code of Ethics)" (hereinafter "Draft Law"), is thus welcome in principle, as it aims at enhancing integrity and accountability of MPs and the Parliament, and ultimately public trust in this institution.

The Draft Law proposes amendments to three different laws which regulate the functioning of the Parliament, its bodies and status of MPs, respectively. The approach to amend three laws which are vital to the functioning of the Parliament as the highest legislative body in the country demonstrates the importance the drafters give to parliamentary ethics. The Draft Law introduces certain provisions that a code of ethics/conduct would normally address, including principles of ethical behaviour, rules on the use of public funds and conflict of interest, interaction with colleagues and voters, monitoring and complaint mechanism, including an oversight body, as well as appeal procedure. It enshrines values that should guide the behaviour of MPs and aims to deter conduct that is not necessarily illegal but could, nonetheless, be considered unethical. At the same time, the laws which are being amended by the Draft Law also naturally include

legally binding obligations that result in a set of provisions that are in nature binding, not aspirational.

It is understood that the aim of the legal drafters is to consolidate all provisions related to MPs' ethics and conduct in one legal instrument, which may be useful to provide a comprehensive source of guidance and more clarity for MPs as well as to offer the public and the media an easy reference document to assess the behaviour of parliamentarians. At the same time, it appears that a number of fundamental integrity-related matters are not mentioned or cross-referenced under the provisions aiming to comprehensively address the rules on parliamentary ethics, including asset and interest declarations, the acceptance of gifts, interactions with lobbyists or post-employment restrictions. In addition, since the proposed amendments tend to reiterate existing legal provisions on prevention of corruption, status of MPs, lobbying and others, it is important to avoid overlaps and potential contradictions, while providing for a clear mechanism to determine how the parliamentary ethics body deals with such cases and interacts with the oversight and enforcement mechanisms provided by other laws.

Finally, the ethical framework should be strengthened to address and prevent discrimination on any grounds, as well as sexual harassment and other forms of violence against women and marginalized groups. This enhancement is crucial to fostering a parliamentary culture that upholds inclusivity, equity, and respect.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to further strengthen the provisions regulating the conduct and ethics of parliamentarians in accordance with international standards and good practices:

A. In general:

1. to assess the feasibility of consolidating all the provisions related to MPs' ethics and conduct into a single, comprehensive document, embedded as a separate section in one of the laws proposed for amendment or as an annex to it, while incorporating necessary changes or cross-references into the other laws, to ensure harmonization and proper implementation of the code; [para. 26]
2. to supplement the framework on parliamentary ethics with other rules that constitute standard components of an integrity framework, including or cross-referencing relevant provisions on asset and interest declarations, gift regulation, post-employment and engagement with lobbyists and other relevant anti-corruption legislation; [para. 31]
3. to ensure that the institutional mechanism in charge of overseeing the implementation of the ethical framework is allocated adequate human and financial resources to fulfil its tasks, beyond the savings resulting from the reduction of the benefits and financial entitlements of MPs who violate parliamentary ethics rules; [para. 30]
4. to consider more clearly separating the provisions embedding legally binding requirements and behavioural prescriptions for MPs to ensure orderly conduct of parliamentary proceedings from provisions offering aspirational principle-led ethical guidance for MPs; [para. 27]
5. to systematically reflect an inclusive, gender- and, diversity-mainstreamed perspective, while ensuring that the ethical framework effectively prevents,

addresses and sanctions discrimination on any grounds, harassment and violence against women and marginalized communities; [para. 33]

B. To provide for a clear mechanism for how the parliamentary ethics body deals with violations of obligations provided in other pieces of legislation and interacts with the oversight and enforcement mechanisms provided by other laws; [para. 35]

C. Regarding equality and non-discrimination:

   1. to reconsider some of the content-based restrictions on MPs' forms of expression in accordance with international human rights standards, while ensuring that the respective limitations are not misused and/or do not stifle the freedom of parliamentary debate; [paras. 54-57]

   2. to include specific provisions to strengthen the legal and ethical framework to prevent and protect against violence against women in politics, including by providing for the development of a comprehensive parliamentary workplace policy for combating sexism, sexual harassment and violence in parliament, with adequate allocation of budget and resources, adequate training of MPs and parliamentary staff, support and counselling services, effective independent complaints-handling mechanisms ensuring safety, confidentiality and expediency of the complaint process, remedies and disciplinary sanctions, while assessing whether rules and procedures for lifting parliamentary immunities should be revised to not unduly limit cases of criminal prosecution against gender-based violence; [paras. 53 and 62]

D. To consider introducing a deadlock-breaking mechanism for the adoption of the Ethics Committee's decisions, or at least clarify the consequences of a tie vote, while more generally elaborating clear and effective decision-making mechanisms, including quorum requirements; [paras. 72 and 76]

E. To consider introducing an internal mechanism/procedure for confidential counselling, as well as mentoring and experience-sharing activities, to support both new and experienced MPs who may seek guidance regarding potential violations of ethical rules; [para. 92]

F. To further elaborate in the Draft Law on the structure and content of the Ethics Committee's annual report by:

   1. ensuring the inclusion of anonymized and sex-disaggregated data about complaints relating to violence against women with information about the complaint mechanism, investigations, outcomes of investigations and sanctions; [para. 93]

   2. presenting the annual report in a more comprehensive and meaningful format, enabling MPs to gain a thorough understanding of the state of the parliamentary ethics and conduct; [para. 98]

   3. ensuring that sufficient time is allocated during the discussions on the annual report to facilitate meaningful exchanges among MPs on these important topics; [para. 98]

G. Regarding the Enforcement Mechanism and Sanctions:

   1. to further elaborate in the Draft Law the procedure for appealing the Ethics Committee's decision to sanction an MP for violating the rules of parliamentary ethics to ensure that all parties to the process have sufficient

time and opportunity to present their arguments, whether in support of or in opposition to the case; [para. 112] and

2. to elaborate a more detailed classification of the different types of violations depending on their nature and gravity, and the extent of damage they may cause to the reputation of the VRU, with graduated sanctions proportionate to the harm they may cause. [para. 103]

ODIHR developed this preliminary analysis of the Draft Law and initial recommendations with a view to support the process of adoption of an ethical framework for the Verkhovna Rada of Ukraine, and stands ready to present and discuss these preliminary findings, as well as to revisit or fine-tune the recommendations in the Final Opinion, if deemed necessary following the exchange of views with all relevant stakeholders.

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

TABLE OF CONTENT

I. INTRODUCTION

1. On 26 September 2024, the Chair of the Parliamentary Working Group on the preparation of comprehensive legislative proposals on amendments to the laws of Ukraine in the field of parliamentary law sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") a request for a legal review of the Draft Law of Ukraine "On Amendments to certain legislative acts of Ukraine regarding the rules of ethical conduct of Members of Parliament of Ukraine (Code of Ethics)" (hereinafter "Draft Law").
2. On 1 October 2024, ODIHR responded to this request, confirming the Office's readiness to prepare a legal opinion on the Draft Law, to assess its compliance with international human rights standards and OSCE human dimension commitments. Given the importance of the reform and the differing perspectives among national stakeholders on how to address the matter, ODIHR decided to prepare a preliminary analysis of the compliance of the Draft Law with relevant international standards and good practices, and formulate initial recommendations. ODIHR stands ready to present and discuss the preliminary findings and recommendations with all relevant stakeholders to gain a better understanding of the local context and challenges. The main findings and recommendations from the Preliminary Opinion would then be revisited and fine-tuned in the Final Opinion based on the information thus collected.
3. This Preliminary Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.[1]

II. SCOPE OF THE PRELIMINARY OPINION

4. The scope of this Preliminary Opinion covers only the Draft Law submitted for review. Thus limited, it does not constitute a full and comprehensive review of the entire legal and institutional framework regulating the status of MPs, parliamentary rules and standards, and public integrity in Ukraine.
5. The Preliminary Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements than on the positive aspects of the Draft Law. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States (hereinafter "OSCE pSs") in this field. When referring to national legislation, ODIHR does not advocate for any specific country model but rather focuses on providing clear information about applicable international standards while

1 In particular, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, OSCE, 29 June 1990, Section III, para. 26; *Declaration on Strengthening Good Governance and Combating Corruption, Money-Laundering and the Financing of Terrorism*, 19th OSCE Ministerial Council, Dublin, 6-7 December 2012, where OSCE participating States recognized "*that both the development of and adherence to codes of conduct for public institutions are critical to reinforcing good governance, public-sector integrity and the rule of law, and to providing rigorous standards of ethics and conduct for public officials*"; see also OSCE, *Decision No. 5/14 on the prevention of corruption*, 21st OSCE Ministerial Council, Basel, 4-5 December 2014; and *Decision No.4/16 on Strengthening Good Governance and Promoting Connectivity*, Hamburg 2016.

illustrating how they are implemented in practice in certain national laws. Any country example should be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

6. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women[2] (hereinafter "CEDAW") and the 2004 OSCE Action Plan for the Promotion of Gender Equality[3] and commitments to mainstream gender into OSCE activities, programmes and projects, the Preliminary Opinion integrates, as appropriate, a gender and diversity perspective.

7. This Preliminary Opinion is based on an unofficial English translation of the Draft Law provided by the Parliament of Ukraine, which is annexed to this document. Errors from translation may result. Should the Opinion be translated in another language, the English version shall prevail.

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

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. Relevant International Human Rights Standards and OSCE Human Dimension Commitments

9. The importance of institutional and individual integrity of parliament and parliamentarians and of public accountability has been increasingly recognized as core aspects of political life and good governance. The international community of parliaments and parliamentary support organizations have successfully elaborated international standards or benchmarks for parliament as an institution.[4] At the same time, less progress has been made towards developing clear rules on the conduct and ethics of individual MPs. While standards and guidance have been developed at the international and regional levels regarding codes of conduct for public officials more generally,[5] it is

2 See the *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Ukraine acceded to the Convention in March 1981.

3 See the *OSCE Action Plan for the Promotion of Gender Equality,* adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.

4 The Inter-Parliamentary Union (IPU) adopted the Universal Declaration on Democracy in 1997, which in addition to outlining the key elements of democracies, notes that democracy "*requires the existence of representative institutions at all levels and, in particular, a Parliament in which all components of society are represented and which has the requisite powers and means to express the will of the people by legislating and overseeing government action*.". Since that time, many regional parliamentary associations, including the Commonwealth Parliamentary Association (CPA) and the Assemblée Parlementaire de la Francophonie (APF), have adopted benchmarks or criteria for democratic parliaments, which describe the key characteristics of a democratic parliament; see CPA, *Recommended Benchmarks for Democratic Legislatures* (2006, revised and updated 2018); and APF, *La réalité démocratique des Parlements : Quels critères d'évaluation ?* (2009). The Declaration on Parliamentary Openness (2012) (endorsed by over 180 civil society parliamentary monitoring organizations from over 80 countries, as well as an increasing number of parliaments and parliamentary associations) has become an important reference point for parliaments that wish to become more open and transparent. See also e.g., Inter-Parliamentary Union (IPU), in coordination with the Commonwealth Parliamentary Association (CPA), Directorio Legislativo Foundation, Inter Pares / International IDEA, National Democratic Institute (NDI), United Nations Development Programme (UNDP), UN Women and Westminster Foundation for Democracy (WFD), Indicators for Democratic Parliaments (2023); UNDP, *Benchmarking and Self-Assessment for Democratic Legislatures* (2010); World Bank, *Benchmarking and Self-Assessment for Parliaments* (2016).

5 See e.g., the *International Code of Conduct for Public Officials* contained in the annex to General Assembly resolution 51/59 of 12 December 1996. See also GRECO, *Codes of conduct for public officials - GRECO findings & recommendations*, Strasbourg, 20 March 2019.

only more recently that specific guiding documents have been developed to address the ethics of individual MPs (see below).

10. Relevant legally binding documents at the UN level include in particular the *United Nations (UN) Convention against Corruption* (hereinafter "UNCAC")[6] concerning corruption of public officials, including those holding a legislative office, whether appointed or elected,[7] hence parliamentarians. Particularly, Article 8 of the UNCAC provides that States Parties "*shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system*" (para. 1) and "*shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions*" (para. 2). The UN Office on Drugs and Crime (hereinafter "UNODC") *Legislative Guide for the Implementation of UNCAC* further elaborates the measures needed to implement Article 8 of the Convention in terms of mandatory requirements and other optional measures that states may consider, including in relation to the development of codes of conduct.[8] The principles related to the accountability and integrity of public officials, such as those reflected in the UN General Assembly Resolution 51/59 "Action against Corruption", which outlines "*a model international code of conduct for public officials*", also serve as useful guidance at the international level.[9]

11. In addition, the *International Covenant on Civil and Political Rights* (hereinafter "ICCPR"),[10] particularly its Articles 17 and 19, has to be respected as important guarantees of parliamentarians' rights, especially their rights to respect for private and family life and freedom of expression.

12. Since Ukraine is a Member State of the Council of Europe (hereinafter "CoE"), the European Convention on Human Rights and Fundamental Freedoms (hereinafter "ECHR"),[11] the developed case law of the European Court of Human Rights (hereinafter "ECtHR") and other CoE instruments, such as the Criminal Law Convention against Corruption,[12] are also of relevance. The importance of the right to freedom of expression, as guaranteed by Article 10 of the ECHR, especially for members of parliament has been consistently emphasized by the ECtHR in its case-law.[13] At the same time, the Court also acknowledged the principle of parliamentary autonomy, which implies a parliament's ability to regulate its own internal affairs, including to ensure the orderly conduct of parliamentary proceedings and to enforce the relevant rules, although a balance must be achieved to ensure the fair and proper treatment of people from minorities and avoid abuse of a dominant position by the majority.[14] Politicians also have the right to respect for private and family life as guaranteed by Article 8 of the ECHR.[15] However, this should be balanced with the right of the public to be informed, considering in particular to what extent an infringement of their privacy could be justified in light of the

6 See *United Nations (UN) Convention Against Corruption*, adopted by the General Assembly of the United Nations on 31 October 2003. Ukraine signed the UNCAC on 11 December 2003.
7 See Article 2 (a) of the UNCAC which defines a "public official".
8 See UN Office on Drugs and Crime (UNODC), *Legislative Guide for the Implementation of the UN Convention against Corruption* (2nd revised edition, 2012), paras. 71-97..
9 UN, *General Assembly Resolution 51/59 on Action against Corruption*, New York, 12 December 1996.
10 See the *UN International Covenant on Civil and Political Rights,* adopted by the UN General Assembly by the Resolution 2200A (XXI) of 16 December 1996. Ukraine ratified to the Covenant on 12 November1973.
11 The ECHR was, signed on 4 November 1950, and entered into force on 3 September 1953.
12 See *CoE, Criminal Law Convention on Corruption* (Strasbourg, 27 January 1999).
13 See e.g., ECtHR, *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, 17 May 2016, para. 137, emphasizing "*the importance of freedom of expression for members of parliament, this being political speech par excellence*".
14 *Ibid.*, paras. 137-147 (ECtHR, *Karácsony and Others v. Hungary* [GC]).
15 See e.g., ECtHR, *Karhuvaara and Iltalehti v. Finland,* no. 53678/00, 16 February 2005, para. 42.

contribution to a debate of general interest to society and taking into account their public function/power/profile as relevant criteria.[16]

13. At the OSCE level, human dimension commitments on democratic institutions recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions.[17] In the 1990 Paris Document, OSCE pSs affirmed that *"[d]emocracy, with its representative and pluralistic character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially*".[18] In the 1999 Istanbul Document, they followed up with the pledge to strengthen their efforts to "*promote good government practices and public integrity*" in a concerted effort to fight corruption.[19] This implies that, further to building democratic institutions and ensuring public accountability and integrity of parliaments, it is also important to ensure that public officials adhere to certain professional and ethical standards.[20] In this regard, the OSCE Parliamentary Assembly (OSCE PA) in its 2006 *Brussels Declaration*,[21] after recognizing that good governance, particularly in national representative bodies, is fundamental to the healthy functioning of democracy, encouraged all parliaments of OSCE pSs to:

- develop and publish rigorous standards of ethics and official conduct for parliamentarians and their staff;
- establish efficient mechanisms for public disclosure of financial information and potential conflicts of interest by parliamentarians and their staff; and
- establish an office of public standards to which complaints about violations of standards by parliamentarians and their staff may be made.

14. Furthermore, the Resolution on a Code of Conduct for Members of the OSCE Parliamentary Assembly[22] notes a code of conduct as a significant step towards enhancing the institutional framework that supports transparency, accountability and integrity.

15. In addition, a number of other international and regional documents provide additional guidance, recommendations and examples of good practice in democratic governance, including basic principles to uphold the integrity of the parliament and foster public trust, while requiring MPs to act in such a way as to not bring the institution into disrepute.[23] Among others, the *ODIHR Background Study: Professional and Ethical Standards for Parliamentarians* (2012), ODIHR Study *Parliamentary Integrity: A Resource for Reformers (2022)* and *ODIHR Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (2023) provide detailed analysis and concrete examples of good practices on how to build and reform systems that set professional and ethical standards for MPs

16 See e.g., ECtHR, *Von Hannover v. Germany*, no. 59320/00, 24 September 2004; and *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, 16 February 2005.
17 OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE,* Copenhagen 5 June – 29 July 1990), para. 26.
18 See the *Charter of Paris for a New Europe*, Paris, 19 - 21 November 1990.
19 See the *1999 OSCE Istanbul Document*, 19 November 1999.
20 ODIHR, *Background Study: Professional and Ethical Standards for Parliamentarians,* Warsaw, 2012, p. 8.
21 OSCE Parliamentary Assembly, *Brussels Declaration of the OSCE Parliamentary Assembly and Resolutions* , Brussels, 2006, paras. 32-33.
22 *Resolution on a Code of Conduct for Members of the OSCE Parliamentary Assembly,* adopted on its 29th annual session in Birmingham on 2-6 July 2022, para. 2.
23 See, for example, *Westminster Foundation for Democracy, Handbook on Parliamentary Ethics and Conduct: A Guide for Parliamentarians (2009)*, which was produced under the auspices of the Global Task Force on Parliamentary Ethics of the Global Organization of Parliamentarians Against Corruption (GOPAC).

and regulate their conduct to ensure that those standards are met.[24] A number of other resource documents have been developed at the CoE level and constitute soft law instruments which are advisory in nature but may serve as useful reference documents from a comparative perspective,[25] particularly the CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023). The recommendations provided by the CoE Group of States against Corruption (GRECO), in particular during its Fourth Round Evaluations, focusing *inter alia* on MPs, ethical principles and rules of conduct, conflicts of interest and lobbying, serve as useful reference.[26]

2. BACKGROUND AND GENERAL COMMENTS

16. In its Fourth Round Evaluation Report on Ukraine adopted on 23 June 2017,[27] GRECO recommended to develop and adopt a code of conduct for MPs with the participation of MPs themselves and ensure its accessibility to the public. GRECO also advised that this code of conduct be coupled with detailed written guidance on its practical implementation (e.g., prevention of conflicts of interest when exercising the parliamentary function, ad-hoc disclosure and self-recusal possibilities with respect to specific conflict of interest situations, gifts and other advantages, third-party contacts, etc.). In its Interim Compliance Report of March 2023, GRECO recalled that this recommendation has not been implemented: it noted that no code of ethics had been adopted so far, as several legislative initiatives did not succeed, and no detailed guidance had been developed.[28] At the same time, GRECO also concluded that the institutional mechanisms to promote and raise awareness on integrity matters in Parliament are in place and are working efficiently, as recommended in the 2017 Fourth Round Evaluation Report on Ukraine.[29]

17. The Draft Law has been prepared by a working group of the Verkhovna Rada (Parliament) of Ukraine (hereinafter "VRU"), which includes representatives of different parliamentary factions and groups, with the assistance of the National Agency on Corruption Prevention of Ukraine. The Explanatory Note accompanying the Draft Law states that its purpose is to modernize the norms of parliamentary ethics and establish an effective system for their implementation, ultimately aiming at increasing public trust in the VRU and strengthening democratic governance. In justifying the need for the Draft Law, the initiators highlighted the media coverage of MPs' behaviour and frequent discussions of scandalous cases in the public domain, which they argue tarnish the reputation of the VRU. It is further asserted in the Explanatory Note that scandals and the lack of consequences for MPs who violate rules and standards contribute to a distrust level of 75 percent, according to various opinion polls.

---

24 See ODIHR, *Background Study: Professional and Ethical Standards for Parliamentarians* (Warsaw, 2012); ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022)*; and *ODIHR Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (December 2023).

25 See, for instance, CoE Committee of Ministers, *Resolution (97) 24 on the Twenty Guiding Principles for the Fight against Corruption*,, especially Principle 15, which states: "*to encourage the adoption, by elected representatives, of codes of conduct";* Parliamentary Assembly of the CoE (PACE), Resolution 1214 *(2000) on the Role of Parliaments in Fighting Corruption*; CoE Congress of Local and Regional Authorities, *Resolution 316 (2010)1 Rights and duties of local and regional elected representatives: the risks of corruption*; and the CoE Committee of Ministers, *Recommendation CM/Rec(2017)2 on the legal regulation of lobbying activities* in the context of public decision making and explanatory memorandum.

26 Available at: <Fourth Evaluation Round / Quatrième Cycle d'Evaluation - Group of States against Corruption>.

27 GRECO *Fourth Round Evaluation Report on Ukraine*, adopted by GRECO at its 76th Plenary Meeting (23 June 2017).

28 GRECO, *Interim Compliance Report Ukraine*, adopted by GRECO at its 93rd Plenary Meeting (Strasbourg, 20-24 March 2023), paras. 46-49.

29 *Ibid.* GRECO, *Interim Compliance Report Ukraine*, 2023, paras. 73-74.

2.1. Regulatory Approach

18. Despite of the title which refers to a "Code of Ethics", the Draft Law does not constitute a separate, stand-alone Code of Ethics. Rather, it consists of a number of amendments to three laws:

- the Law on the Status of People's Deputies of Ukraine;[30]
- the Law on the Committees of the VRU (hereinafter "Law on Committees");[31]
- the Law on the Rules of Procedure of the VRU (hereinafter "RoP").[32]

19. The legislative amendments proposed by the Draft Law define principles and rules of MPs ethics, include provisions on the use of public funds, conflict of interest, a range of sanctions in case of breaches, establish a monitoring body to oversee MPs' compliance with the ethical rules, a complaint mechanism, including the responsible body, as well as regulate the appeal process. These reflect fundamental aspects that would traditionally be addressed in a code of ethics/conduct. The approach to amend three laws which are vital to the functioning of the parliament as the highest legislative body in the country demonstrates the importance the drafters give to parliamentary ethics. At the same time, it is not a unified document but rather a set of ethical rules of conduct and ethics embedded in several legally binding pieces of legislation.

20. There is no "right" way of setting or enforcing ethical rules and it is not possible to prescribe a single, one-size-fits-all solution for improving standards of parliamentary integrity.[33] A variety of approaches have been followed across the OSCE region,[34] also depending on the risks that are identified as the greatest as well as the challenges deemed the most severe in a given country context.[35] Systems for regulating and enforcing standards should ultimately be home-grown and tailored to each country's individual constitutional machinery and political culture.[36]

21. The Draft Law enshrines values that should guide the behaviour of MPs and aims to deter them from conduct that is not in all cases illegal but could, nonetheless, be considered unethical. The laws being amended by the Draft Law also naturally include legally binding obligations, which at times results in a text that appears overly formalistic rather than aspirational and encouraging good conduct in the wider positive sense.[37] It is not uncommon in the OSCE region to incorporate ethical principles in legally binding instruments such as the rules of procedure or legislation regulating the status of MPs, for instance as an annex or in a separate section on ethical standards.[38] This formalization is generally recommended to ensure more effective enforcement and accountability regime of the Code.[39] If the Ukrainian legal drafters conclude it is necessary to incorporate such ethical rules and systems into legally binding instruments to enhance compliance and

30 Available at: <On the status of the people's deputation... | dated 17.11.1992 No. 2790-XII>.
31 Available at: <On the Committees of the Verkhovna Rada... | dated 04.04.1995 No. 116/95-VR>.
32 Available at: <On the Rules of Procedure of the Verkhovna Rada... | dated 10.02.2010 No. 1861-VI>.
33 See e.g., ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* pp. 15 and 30;
34 *Ibid.* pp. 38-41.
35 *Ibid.* p. 95.
36 See ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* p. 25.
37 See e.g., ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* p. 43; ODIHR, *Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (December 2023), p. 18; CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023), p. 8.
38 See ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* pp. 39-41; ODIHR, *Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (December 2023), p. 17.
39 ODIHR, *Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (December 2023), p. 17.

facilitate enforcement in light of the country culture and context, this approach is also possible.

22. That said, incorporating ethical provisions in primary legislation means that these rules may be more difficult to change. A code of conduct or ethics should generally be a living document that is periodically reviewed and can be updated as necessary to address new challenges.[40] Also, the purpose of ethical principles or norms is to provide general rules, recommendations or standards of good behaviour that guide the activities of MPs. Given their nature, they are often drafted in broad and aspirational terms that do not fulfil the requirement of legal certainty and foreseeability of legislation, meaning that a person should be able to foresee, to a reasonable degree, the consequences that their conduct could entail.[41] In this regard, some of the terminology used to describe the principles and rules of parliamentary ethics (draft Articles 8^1 and 8^2 of the Law on the Status of People's Deputies of Ukraine)[42] appears rather broad or will be hard to enforce (see Sub-Section 3 *infra*).

23. At the same time, certain of the conducts described, especially under the Sub-Section on "Prevention of Violence and Discrimination", may amount to administrative or even criminal offences. Pursuing these offenses may be hindered by the parliamentary immunity granted to deputies. In this respect, as specifically recommended at the international level, to ensure a safe working environment and a parliament free of sexism and sexual harassment, it is fundamental to review immunity rules which afford immunity from prosecution to MPs for sexual harassment and violence against women and should include exceptions from non-liability in such cases[43]. At the same time, code of ethics should address behaviours, which may not amount to a criminal or illegal act, but is nevertheless unworthy of the status of MP.

24. Furthermore, ethical principles and norms should be distinguished from the disciplinary rules and behavioural prescriptions for MPs that are aimed at ensuring the orderly conduct of parliamentary proceedings and functioning of the Parliament. The ECtHR has acknowledged that disciplinary rules inevitably include an element of vagueness and are subject to interpretation in parliamentary practice although given their professional status, MPs should be able to foresee the consequences of their conduct[44] (see also Sub-Section 4.4. *infra* on Sanctions).

25. As will be mentioned in greater detail below, placing ethics-related provisions in three different laws results in fragmentation of the relevant issues. For example, sanctions for violation of the ethical rules are mentioned in the Law on the Status of People's Deputies of Ukraine, but also in the Law on the Committees, along the provisions on the role and responsibilities of the designated ethics body, i.e., the committee responsible for overseeing discipline and compliance with parliamentary ethics. Furthermore, while the complaint mechanism is proposed to be defined by the Law on Committees, the appeal procedure against the decisions of the ethics body is placed in the RoP. Consequently, important structural elements of the ethics mechanism, in case of adopting the Draft Law, will be scattered across several documents instead of being organized together in a logical

40 ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* p. 11.
41 See ODIHR, *Opinion on Certain Provisions of the Draft Law on the Status, Conduct and Ethics of the Members of Parliament of the Republic of Moldova* (26 March 2024).
42 For instance, the references to "responsibility" before the people of Ukraine, "own dignity" and "dignity of others", "transparency to society", "diligently", "taking measures to deepen their knowledge and improve practical skills", among others.
43 See Parliamentary Assembly of the Council of Europe (PACE), *Parliaments free of sexism and sexual harassment*, p. 5. See e.g., PACE, *Resolution 2274 "Promoting parliaments free of sexism and sexual harassment"*, 2019, Article 8.2. See also See ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* pp. 26-27.
44 See e.g., ECtHR, *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, 17 May 2016, para. 126.

and technically effective manner, which may ultimately result in ambiguity and confusion for MPs. It is generally recognized as a good practice to collate all ethics-related rules and obligations in one document to provide a comprehensive source of guidance and more clarity for MPs as well as to offer the public and the media an easy reference document to assess the behaviour of parliamentarians.[45] GRECO has sometimes criticized the approach of scattered regulations of ethical rules, noting the added value of bringing together the legal and regulatory obligations of MPs in a single document.[46]

26. As underlined above, the discussions on the development of a parliamentary code of ethics for parliamentarians - called upon by several international and regional organizations – have been ongoing for a long time and the Draft Law under review is thus welcome in principle. At the same time, to enhance the effectiveness of addressing parliamentary ethics and conduct and taking into consideration GRECO recommendations, **the legal drafters should assess the feasibility of consolidating all the provisions related to MPs' ethics and conduct, combining rules and values along with the institutional framework for implementation, into a single, comprehensive document, embedded as a separate section in one of the laws proposed for amendment or as an annex to it. Necessary changes or cross-references should also be incorporated into the other laws, to ensure harmonization and proper implementation of the code.** This ethical framework should in any case be accompanied by the development of additional documents, such as guides, manuals, templates or handbooks that explain different aspects of the code in greater detail and provide clear examples of expected conduct, which can significantly contribute to an easier understanding of the code and its consistent enforcement.[47]

27. Furthermore, part 1 of Article 8^2 regarding the use of the status of an MP, resources and information contains a blend of general principles and specific elements that are only briefly mentioned rather than thoroughly developed. **Some of these aspects are further elaborated in other pieces of legislation, and a cross-reference should be made to the specific applicable provisions**. Other issues addressed under Article 8^2 (1) are of a more aspirational nature. Combining ethical rules with legal obligations may lead to confusion as they place on an equal footing two sets of rules of a very different nature and having different root and legal basis. It is thus recommended **to consider more clearly separating the provisions embedding foundational legally binding requirements as well as behavioural prescriptions for MPs to ensure orderly conduct of parliamentary proceedings, from provisions offering aspirational principle-led ethical guidance for MPs.**

2.2. Financing of the Monitoring and Enforcement Mechanism

28. The drafters assert that implementing the Draft Law will not require additional financial resources, suggesting that the costs of establishing the Committee responsible for monitoring compliance with discipline and standards of deputy ethics (hereinafter "Ethics Committee" or "ethics body") and maintaining a complaint mechanism will be offset by savings from reducing the benefits and financial entitlements of MPs who violate parliamentary ethics rules. However, this justification may have unintended

45 See ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* pp. 38-39; CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023), p. 8.
46 See e.g., GRECO, Reports on the Fourth Evaluation Round for Croatia (paras. 34-35), Albania (para. 32) and Portugal (para. 47).
47 ODIHR, *Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (December 2023), pp. 23-24.

consequences and should be carefully considered, as it may lead to unwillingness to adopt the Draft Law as such.

29. Firstly, if MPs as well as the general public perceive the Draft Law as primarily punitive, there is a genuine risk that they will fail to grasp its broader purpose and value. This could also hinder the aspirational nature of the ethics-related provisions, which are typically designed to explain and promote ethical behaviour through soft and guiding language, rather than imperative one. Second, securing adequate resources is an important starting point, yet it is often challenging to obtain additional funding for a new parliamentary body and relying on anticipated violations by MPs and penalties to finance the Committee's work is not a sustainable solution.

30. This approach introduces significant risks, particularly if no violations are recorded. Should the Committee's funding depend solely on penalties from MPs, its operations could be jeopardized even before it begins functioning. In this respect, it is important to note that GRECO has been critical of instances in which an institutional mechanism to oversee the implementation of ethical rules was in place but not provided with sufficient resources or powers to fulfil its task.[48] **It would thus be highly advisable to reconsider the proposed modalities of financing the work of the Committee while ensuring that adequate human and financial resources, based on a proper assessment of the needs, are allocated to support the ethics body's work effectively.** In this respect, it should be kept in mind that to perform its functions, the Committee will need a dedicated annual allocation from the parliament's budget to carry out its new responsibilities as an ethics body. This is particularly important given the range of time-intensive tasks it must undertake, such as establishing procedures for reviewing complaints, investigating and considering them, as well as providing training for the Committee members and staff to carry out its new tasks in addition to training for MPs and VRU staff more generally (see also paras. 53, 101 and 108 *infra*).

2.3. Other Comments

31. Since it is understood that the aim of the legal drafters is to consolidate all provisions related to MPs' ethics and conduct in one legal instrument, it would appear that there may be some gaps in the proposed ethical framework, especially with respect to integrity-related matters. While some important elements of corruption prevention among MPs are addressed in the Draft Law,[49] other critical areas, such as **asset and interest declarations, gift regulation, relations with lobbyists**[50] **and post-employment,**[51] **are not mentioned in the Draft Law, whereas they constitute standard components of** any integrity framework.[52] These are otherwise addressed in other pieces of legislation,

48 See e.g., ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* pp. 78 and 89.

49 For instance, Article 82(1)(7) requires MPs to report any conflict of interest in accordance with the laws "On Prevention of Corruption" and the RoP.

50 See e.g., ODIHR Study: *Parliamentary Integrity: A Resource for Reformers* (2022), Sub-Section 2.3.6; and CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023), Sub-Section 2.4.7.

51 As noted by ODIHR, *"[a] particularly controversial area concerns the careers of parliamentarians once they leave office, in their post-public employment. [...] plans for their future career can influence how they act while in parliament. [They] might abuse their power to favour a certain company, with a view to ingratiating themselves and gaining future employment. Alternatively, once working in the private sector, they might influence former colleagues to favour their new employer*"; see ODIHR, *Parliamentary Integrity: A Resource for Reformers (2022),* p. 72. In this respect, an appropriate so-called "cooling" period or "revolving door", which is becoming an established practice to prevent corruption and conflict of interest could be considered; for example, former commissioners of the EU are banned from lobbying two years after expiration of their mandate, while Norway bans former MPs to get employed in private sector for six months after mandate expiration. Some countries decide to cover this aspect in shape of advice and recommendation, as is the case in Ireland or Slovakia. See also ODIHR Opinion on the Code of Ethics of Kyrgyz Republic, paras. 56-57.

52 See ODIHR, *Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (December 2023), pp. 20-21; see also ODIHR Study: *Parliamentary Integrity: A Resource for Reformers* (2022); and CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023).

such as the Law on Prevention of Corruption[53] (asset declarations, acceptance of gifts, conflicts of interest), Law on Lobbying,[54] Law on the Status of People's Deputies of Ukraine (incompatibilities, handling of confidential information), etc. In particular, it is important to note the recent adoption of the Law of Ukraine on Lobbying that will enter into force from January 2025 onwards;[55] such rules should be referred to in the Draft Law, and MPs should be informed about them prior to their start of mandate. **If the purpose of the ethical framework is to consolidate to the extent possible all relevant rules and principles in one place, they should also be mentioned under draft Article 8[2] of the Law on the Status of People's Deputies of Ukraine together with cross-references to applicable legislation**.[56] Indeed, such aspects and rules constitute effective provisions to prevent conflict of interest and corruption and are generally part of codes of ethics/conduct for MPs.[57]

32. Additionally, the ethical framework should clarify the roles of other institutions involved in the prevention of corruption and outline parliament's interactions with them in order to ensure information sharing and avoid loopholes or duplication of work. Those aspects could be further enhanced in the Draft Law (see also para. 35 *infra*).

33. Finally, **the Draft Law could be further enhanced by more systematically including an inclusive, gender- and diversity-mainstreamed perspective**,[58] **using gender-sensitive language, while ensuring that the rules of conduct and ethics of MPs effectively prevent, address and sanction discrimination on any grounds, harassment and violence against women and marginalized communities** (see further comments in paras. 52-53 and 59-62 *infra*).

RECOMMENDATION A.

1. To assess the feasibility of consolidating all the provisions related to MPs' ethics and conduct into a single, comprehensive document, embedded as a separate section in one of the laws proposed for amendment or as an annex to it, while incorporating necessary changes or cross-references into the other laws, to ensure harmonization and proper implementation of the code.
2. To supplement the framework on parliamentary ethics with other rules that constitute standard components of an integrity framework, including or cross-referencing relevant provisions on asset and interest declarations, gift regulation, post-employment and engagement with lobbyists, and other relevant anti-corruption legislation;
3. To ensure that the institutional mechanism in charge of overseeing the implementation of the ethical framework is allocated adequate human and financial resources to fulfil its tasks, beyond the savings resulting from the

53 Available at: <On Prevention of Corruption | dated 14.10.2014 No. 1700-VII>.
54 Available at: < About lobbying | dated 23.02.2024 No. 3606-IX>.
55 Available at: <About Lobbying | dated 23.02.2024 No. 3606-IX>. In its latest report, GRECO had recommended the introduction of rules on how MPs engage with lobbyists and other third parties who seek to influence the legislative process, see GRECO Second Interim Compliance Report, May 2023, para. 16.
56 Articles 23 (as amended in September 2023) and 24 of the Law of Ukraine on the Prevention of Corruption provide restrictions on the receipt of gifts, including by Deputies of the VRU, and regulate the treatment of unduly received gifts; its Article 26 provides employment restrictions after the termination of activities related to the performance of functions of the state and of local self-government; Articles 45-47 regulates the declarations of assets.
57 See e.g., ODIHR Study, *Parliamentary Integrity: A Resource for Reformers* (2022), p. 18 and sub-sections 2.3.2, 2.3.4, 2.3.6 and 2.3.7. See also CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023), Sub-Sections 2.4.4 and 2.4.7.
58 See e.g., ODIHR, *Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (December 2023), p. 19.

reduction of the benefits and financial entitlements of MPs who violate parliamentary ethics rules.

4. To consider more clearly separating the provisions embedding foundational legally binding requirements as well as behavioural prescriptions for MPs to ensure orderly conduct of parliamentary proceedings, from provisions offering aspirational principle-led ethical guidance for MPs.
5. To systematically reflect an inclusive, gender- and, diversity-mainstreamed perspective, while ensuring that the ethical framework effectively prevents, addresses and sanctions discrimination on any grounds, harassment and violence against women and marginalized communities.

3. PRINCIPLES AND RULES OF PARLIAMENTARY ETHICS

34. The Draft Law proposes to introduce new Articles 8^1 and 8^2 into the Law on the Status of People's Deputies of Ukraine, with firstly listing ten "principles" of parliamentary ethics, and secondly elaborating on the "rules of parliamentary ethics". However, the linkage between these principles and rules is not entirely clear. The distinction between the two articles seems to lie in their purpose. Article 8^2 reflects legally binding requirements and behavioural prescriptions for MPs aimed at ensuring orderly conduct in the parliament, use of public resources, proper relations with other MPs, parliamentary staff and external actors, as well as avoiding conflict of interest (Article 8^2). In contrast, Article 8^1 seems to provide aspirational, principle-based ethical guidance for MPs, which may not lead to legal consequences. At the same time, some of the rules in Article 8^2 might be more appropriately categorized as principles. For instance, Article 8^2(1)(1) states that an MP "*makes decisions based solely on the interests of the Ukrainian people*". This would align more closely with Principle 3 in Article 8^1, which asserts that an MP "*is responsible for his or her decisions and actions to the people of Ukraine.*"

35. Notably, some rules proposed by Article 8^2 of the Draft Law seem to partially repeat or overlap with the principles listed in Article 8^1. Moreover, Article 8^2 (1)(8) of the Draft Law, which deals with conflicts of interest, refers to the Law on Prevention of Corruption and to the RoP. In these cases, it would be beneficial **to cross-reference specific articles of applicable legislation to ensure clarity and avoid possible inconsistencies or confusion.**[59] Indeed, ethical rules aim to deter conduct that is not only unethical but also illegal. Ethics codes or frameworks do sometimes reiterate existing legal provisions (for example on bribery, conflict of interest, gifts or asset and interest declarations), but these provisions - establish their own oversight and enforcement mechanisms. It is important **to provide for a clear mechanism of how the parliamentary ethics body deals with such cases and interacts with the oversight and enforcement mechanisms provided by other laws**.[60]

36. Of note, several provisions of the Draft Law mention "citizens" exclusively. When referring to the electorate, this may be understandable. When referencing principles such as equality, non-discrimination, and respect for human rights more broadly, it is advisable to avoid referring exclusively to "citizens". Instead, the term "individuals" should be

59 See also *ODIHR Opinion on the Draft Code of Ethics for Members of Parliament of the Assembly of the Republic of North Macedonia*, 6 December 2021, paras. 33-35.
60 CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023), Section 2.5.3.

used to emphasize that guarantees of fundamental rights and freedoms, and of equality and non-discrimination, as well as principles like respect, apply to all persons, not only to its citizens.[61]

RECOMMENDATION B.

To provide for a clear mechanism for how the parliamentary ethics body deals with violations of obligations provided in other pieces of legislation and interacts with the oversight and enforcement mechanisms provided by other laws.

3.1. Principles of Parliamentary Ethics

37. As mentioned above, the Draft Law proposes to introduce ten principles of parliamentary ethics into the Law on the Status of People's Deputies of Ukraine, i.e., the principles of integrity; dignity; responsibility; transparency to a society; leadership; adherence to the rule of law; respect to the VRU; inclusiveness; patriotism; professionalism.

38. Overall, most of these principles tend to mirror the core principles or values underpinning other similar codes of ethics/conduct,[62] though acknowledging that the definition of ethical principles and values should lie primarily within the state and is very much dependent on a country's historic and political context.

39. **Principle 1 ("Integrity")** entails that "*[a]n MP shall avoid any unlawful influence on his/her activities related to the status of an MP*" and should not use this status for his/her own benefit. This would seem to rather encompass conducts amounting to conflict of interest or abuse of office. However, it is important to note that the concept of integrity extends beyond merely being free from unlawful influence or to use powers associated with their privileged parliamentary position to achieve personal gain.[63] Even legal means of influence, such as lobbying, could in fact lead to an unethical conduct and result in violation of integrity standards. Therefore, **this principle would benefit from a broader definition**.

40. **Principle 3 ("Responsibility**") further states that "*MP is responsible for decisions and actions to the people of Ukraine*". While this is a political statement that should normally apply to all representatives elected by the people, it is particularly relevant for MPs, who are directly elected and evaluated by citizens in subsequent elections. At the same time, this formulation should not be interpreted as limiting the potential responsibility of an MP and preventing legal scrutiny of MPs' actions. In any case, MPs may be directly accountable to internal control mechanisms for issues such as expenses, office use, insults in plenary debates, absenteeism, etc.[64] and may also be held liable under certain circumstances, when his/her conduct does not fall within the scope of the parliamentary immunity. The provision could be supplemented to clarify that this should not prevent liability in such cases.

61 See ODIHR-Venice Commission, *Joint Opinion on the Draft Constitution of the Kyrgyz Republic* (2021), para. 127.
62 CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023), Section 2.3. See also the *European Code of Conduct for all Persons Involved in Local and Regional Governance* (hereinafter "the European Code") adopted at 35th session of the Congress of Local and Regional Authorities on 7 November 2018; and *Code of conduct for members of the Parliamentary Assembly of CoE*, Compendium of provisions in force on 1 July 2019.
63 Integrity may be defined as being honest and adhering to strong ethical principles and values; see CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023), Section 2.3.2.
64 CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023), Section 2.3.4.

41. **Principle 4 ("Transparency to Society")** encompasses, among other, openness to the media, which is commendable. In addition, an openness to parliamentary monitoring organizations (hereinafter "PMOs"), which play a crucial role in exercising external oversight over parliamentary activities, serving as a bridge between the broader public and the parliament itself, could also be added here. Good practices suggest regular meetings and exchanges between such organizations, the media and relevant parliamentary committees on various topics.[65] Principle 4 also provides that "*A Member of Parliament provides public explanations of their decisions and limits information only when national security interests clearly require it.*" This provision should not impose excessive requirements on MPs since, in practice, it is disproportionate and not possible for them to give detailed grounds for all their decisions.[66]

42. **Principle 7 is entitled "Respect for the VRU"** and entails that MPs should respect their colleagues, regardless of political affiliation, as well as VRU as an institution. It is rather common to establish "respect" as a guiding principle for parliamentary behaviour, although generally extending not only to fellow MPs and the parliament as such, but also to parliamentary staff as well as citizens and individuals in general.[67]

43. **Principle 8 ("Inclusiveness")** entails that in their activities, MPs "*adhere to the principles of respect for human rights and the culture of diversity, non-discrimination, and equality*", requiring them also to promote "*the establishment of equality among citizens in exercising their powers*". In general, this principle is welcome,[68] although since it also pertains to the concepts of equality and non-discrimination, it could be more appropriately titled as "Inclusiveness and Non-discrimination". The elaboration of this principle could go further in terms of strong commitment towards equitable, non-discriminatory and violence/harassment-free parliament, working environment and treatment of all individuals,[69] also partly reflected in Article 8^2(2) (see Sub-Section 3.2.2 *infra*).

44. The list of principles also includes **Principle 9 ("Patriotism"),** which entails that an MP should be "*committed to the idea of a free, independent, and united Ukraine and does everything to protect its independence and territorial integrity*". It is noted that the essence of this principle is reflected in the oath that MPs take and sign before assuming office as prescribed by Article 79 of the Ukrainian Constitution.[70] As underlined above, an ethical framework is very context-dependent. The ongoing war caused by the Russian Federation's invasion of Ukraine explains the inclusion of this principle. It is common for codes of ethics/conduct to contain references to fundamental principles and values that are significant for the state concerned and its population, which generally also have a unifying function. That said, when such principles are broad and may be subject to various interpretations, they should not be misused as a ground to unduly restrict the right to freedom of expression, for instance to prevent the expression of opinion or political

65 World Bank, *Benchmarking and Self-Assessment for Parliaments* (2016), Chapter 8 on the Role of Parliamentary Monitoring Organizations.
66 CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023), p. 17.
67 CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023), p. 18.
68 Criteria for democratic parliaments | Inter-Parliamentary Union (IPU), which in its criteria for democratic parliaments, refers to representative parliaments that are "*both socially and politically inclusive*", allowing their members to carry out their mandates freely, "and their hallmarks include: free and fair elections; the presence of women and men; open and democratic systems within political parties; and guaranteed rights".
69 See Parliamentary Assembly of the Council of Europe (PACE), *Parliaments free of sexism and sexual harassment*, p. 5.
70 See Constitution of Ukraine, Article 79: "*I swear allegiance to Ukraine. I commit myself with all my deeds to protect the sovereignty and independence of Ukraine, to provide for the good of the Motherland and for the welfare of the Ukrainian people*".

views that are critical of the government or its polices, or may imply discussing autonomy, administrative or territorial organization of the country.[71]

45. One of the key arguments for codifying ethics in parliaments is to enhance the **professionalism of MPs**. Therefore, it is commendable that Principle 10 "Professionalism" is included in the ethical framework, requiring an MP to "*act as a professional in his/her field*". It would be also beneficial to elaborate on the statement that an MP "*takes measures to deepen his/her knowledge and improve practical skills*". In this respect, it is important that the Parliament invests in the capacity development of MPs, including on various ethical aspects but also role as an MP. This approach would support MPs development into more professional elected representatives.

3.2. Rules of Parliamentary Ethics

46. The proposed new Article 8^2 of the Law on the Status of People's Deputies of Ukraine introduces new rules of parliamentary ethics, divided into the following three sections: (1) Use of the Status of MPs, Resources, and Information; (2) Prevention of Violence and Discrimination; (3) Interaction with Colleagues and Voters.

3.2.1. Use of the Status of MPs, Resources and Information

47. Part 1 of Article 8^2 deals with the use of the status of an MP, resources and information. For instance, it addresses issues ranging from "*an MP making decisions solely based on the interests of the Ukrainian people*" (Article 8^2 (1)(1)) to rules regarding property and funds allocated for the exercise of their parliamentary functions (Article 8^2 (1)(2)), as well as the handling of restricted information (Article 8^2 (1)(3)), prevention of corruption and conflict of interest (Article 8^2 (1)(4-7)). Article 8^2 (1)(6) further states that an MP "*does not influence the decisions of other MPs, officials of the Secretariat of the Verkhovna Rada of Ukraine, state authorities or local self-government bodies on employment of the MP's close persons"*, which is an important safeguard against nepotism, i.e., providing privileges to people due to their family, friendship and dependency ties with the person in a position of power instead of merit (achievement) based employment. At the same time, it is not clear what the wording "close person" encompasses and whether this refers to "close relatives" as defined under Article 37 (2) of the Law on the Status of People's Deputies of Ukraine[72] or "close persons" as defined in the Law on the Prevention of Corruption.[73] **It is important that this provision clearly indicates the group of "close persons" or "family relatives" that is concerned**. **This rule could also be further expanded in the Draft Law to reflect the growing practice of completely banning the employment of MPs' family members in the Parliament and the potential use of benefits**.[74]

48. Article 8^2 (1)(3) stipulates that an MP must not disclose information with restricted access or use such information obtained while performing their duties for personal gain or the

71 See e.g., ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, 2 October 2001, para. 97. See also ODIHR, *Comments on the Criminalization of "Separatism" and Related Criminal Offences* (2023), Executive Summary and paras. 22 and 50.

72 i.e., parents, wife (husband), children, siblings, grandfather, grandmother, grandchildren.

73 i.e., husband, wife, father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, stepdaughter, siblings and cousins, brother and sister of the wife (husband), nephew, niece, uncle, aunt, grandfather, grandmother, great-grandfather, great-grandmother, grandson, great-granddaughter, great-granddaughter, son-in-law, daughter-in-law, father mother-in-law, father-in-law, mother-in-law, father and mother of the wife (husband) of the son (daughter), adoptive parent or adoptee, guardian or trustee, person who is under the guardianship or guardianship of the specified subject.

74 See e.g., ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022)*, pp. 10 and 67-68. In Austria, for example, it is forbidden for MPs in the Lower House to employ close relatives as personal assistants whose salaries are paid from public funds. In the UK, family members can be employed by MPs, but this must be declared.

benefit of close associates. Such a provision somewhat overlaps and/or duplicates Article 19 of the Law on the Status of People's Deputies of Ukraine and relevant provisions of the Law of Ukraine on State Secrets.[75] As recommended above, it would be advisable to cross-reference existing legal obligations regarding the protection of sensitive information, to avoid potential overlaps and unclarities.

49. Draft Article 8^2 (1)(4) and (7) provides certain rules that are related to the prevention of corruption and conflict of interest. In particular, it states that an MP "*does not use his/her powers, mandate and status as an MP to obtain unlawful benefits for himself/herself or other persons*" (Article 8^2 (1)(4)). According to Article 8^2 (1)(7). MPs shall not demand or receive any benefit in exchange "*for voting for any decision of the VRU or its committees, temporary investigative commissions, temporary special commissions, other bodies of the Verkhovna Rada, registration of amendments and proposals to draft laws, registration of draft laws, resolutions, other acts of the Verkhovna Rada, proposals for adoption of procedural and other decisions, registration of deputy inquiries and appeals*".

50. Robust regulation of professional ethics/conduct for MPs are fundamental to help to prevent abuse of office and other forms of corruption and it is important that these aspects are addressed in a code of ethics.[76] At the same time, to avoid overlaps and diverging interpretations, **it is advisable to reference all relevant legislation that regulates various anti-corruption measures in the Draft Law**. Typically, these aspects should be further clarified through examples elaborated and detailed in separate written guidance or manual on practical implementation of the ethical rules, as also recommended by GRECO.[77]

51. Another rule in Article 8^2(1)(5) states that "*an MP does not file inquiries and appeals on issues of no public interest"*. While the intention of this clause to prevent MPs from using their status and privileges to gather information in someone else's (not public) interest is in line with their expected role as elected representative, this raises the question about what constitutes "public interest". Moreover, such wording is potentially conflicting with Articles 15-16 of the Law on the Status of People's Deputies of Ukraine that address the issue of MPs' appeals and inquiries and do not contain a requirement to relate to "public interest". It is unclear whether this could be interpreted as a ground to limit potential inquiries or appeals, which may potentially be misused given the vagueness of the term. It is, therefore, advisable to reconsider this provision as part of the Draft Law, although this could feature as part of an ethical, aspirational framework or guidance materials for MPs.

3.2.2. Equality and Non-discrimination

52. Article 8^2(2) addresses the restriction on so-called "hate speech", discrimination, sexual harassment, and other forms of harassment in the behaviour and public appearances of MPs. In particular, it requires an MP not to use "*humiliating, offensive or discriminatory statements in oral or written form based on a person's belonging to a certain group on the grounds of race, skin colour, political, religious or other beliefs, gender, age, disability, ethnic and social origin, citizenship, marital and property status, place of residence, or other grounds (hate speech)*" (Article 8^2(2)(1)). It additionally requires an MP to refrain from "*any actions, including gestures or statements, which are intended to*

75 Available at: <On State Secrets | dated 21.01.1994 No. 3855-XII>.
76 See See e.g., ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022)*, p. 20.
77 GRECO, *Interim Compliance Report Ukraine*, adopted by GRECO at its 93rd Plenary Meeting (Strasbourg, 20-24 March 2023), paras. 46-50.

violate or lead to violation of the dignity of a person or group of people on the basis of their race, skin colour, political, religious or other beliefs, gender, age, disability, ethnic and social origin, citizenship, marital and property status, place of residence or other characteristics" (Article 8^2(2)(2)). It also specifically provides that an MP "*does not engage in sexual harassment, meaning actions of a sexual nature expressed verbally (threats, intimidation, inappropriate remarks) or physically (touching, patting), that humiliate or offend individuals in a subordinate labor, official, material, or other relationship with the Member of Parliament*". Moreover, it also states that an MP "*does not publicly use profanity, discriminatory or offensive language, either orally or in writing*" (Article 8^2(2)(8)).

53. The inclusion of such provisions conveys the objective to promote a more professional, respectful and non-discriminatory behaviour of MPs, also expressly referring to key manifestations of violence against women in politics, which is in principle welcome. At the same time, they are unlikely to yield to result if not accompanied by the **development of a comprehensive parliamentary workplace policy for combating sexism, sexual harassment and violence in parliament, with adequate allocation of budget and resources, adequate training of MPs and parliamentary staff, institutional framework in place together with support and counselling services, complaints-handling mechanisms, remedies and disciplinary sanctions.**[78] **Relevant legislation should be supplemented in this respect**. It is also noted that Article 8^2(2)(1) does not refer to some of the **protected grounds** that are included in international and regional treaties,[79] EU legally binding instruments[80] and evolving caselaw of the ECtHR.[81] **It is recommended to expand the list by also expressly referring to other protected grounds such as gender identity, sexual orientation, health status, association with a national minority and migrant or refugee status**.

54. Article 8^2(2) includes several references to certain oral or written statements that should not be made by MPs. At the outset, it is important to underline that MPs enjoy an elevated level of protection of their freedom of expression guaranteed under Article 19 of the

78 ODIHR, *"Addressing Violence against Women in Parliaments - Tool 2" for guidance to parliaments on preventing violence against women in parliaments,* 2022; and IPU, *Guidelines for the elimination of sexism, harassment and violence against women in parliament* (2019), p. 9.

79 Especially Articles 2 and 6 of the ICCPR referring to "*race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*"; Article 14 of the ECHR and Protocol 12 to the ECHR mentioning "*sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*"; Article 5 of the Convention on the Rights of Persons with Disabilities (CRPD), ratified by Moldova on 21 September 2010; Article 4(3) of the CoE Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), ratified by the Republic of Moldova on 31 January 2022, which refers to "*sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status*". The UN Committee on Economic, Social and Cultural Rights has explicitly recognized gender identity as among the prohibited grounds of discrimination (Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights* (Art. 2, par 2), UN Doc E/C.12/GC/20, 2009, para. 32).

80 Article 21 of the EU Charter of Fundamental Rights, which refers to "*sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation*"; Employment Equality Directive (2000/78/EC), limited to the field of employment and occupation, covering the grounds of religion *or belief*, disability, age and sexual orientation.

81 The ECtHR has clarified that the prohibition of discrimination extends to "*sexual orientation*" and "gender identity"; see ECtHR in *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, 24 January 2017, para. 61, "*Article 14 prohibits differences based on an identifiable, objective or personal characteristic, or "status" by which individuals or groups are distinguishable from one another*" (discrimination grounds), underlying that the list of discrimination grounds is "an illustrative and not exhaustive" (thus open) list and noting that the words "other status" have generally been given a wide meaning and their *"interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent";* ECtHR, *A.M. and Others v. Russia*, no. 47220/19, 6 July 2021, para. 73, which states that "*the prohibition of discrimination under Article 14 of the Convention duly covers questions related to gender identity*". The ECtHR also held that *"[t]he reference to the traditional distribution of gender roles in society cannot justify the exclusion of men […] from the entitlement to parental leave" and that "gender stereotypes, such as the perception of women as primary child-carers and men as primary breadwinners, cannot, by themselves, be considered to amount to sufficient justification for a difference in treatment, any more than similar stereotypes based on race, origin, colour or sexual orientation*" (*Konstantin Markin v. Russia* [GC], no. 30078/06, 22 March 2012, para. 143).

ICCPR and Article 10 of the ECHR, given the fundamental importance of parliament as a unique forum for debate in a democratic society.[82] As a consequence, states generally have very limited latitude in restricting the content of parliamentary speech.[83] Any limitation to the right to freedom of expression must be "prescribed by law", pursue one or more legitimate aims listed in international instruments (Article 19 of the ICCPR and Article 10 of the ECHR), be "necessary in a democratic society" and non-discriminatory. The ECtHR also stated that "*the rules concerning the internal operation of Parliament should not serve as a basis for the majority to abuse its dominant position vis-à-vis the opposition*", noting that "*a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids abuse of a dominant position*".[84]

55. In this respect, it should be underlined that international human rights law recognizes a limited number of types or content of expression which States must prohibit or render punishable (by law),[85] providing that the legal provisions are clearly defined and strictly interpreted in accordance with international freedom of expression standards, especially when dealing with "incitement" to acts of violence.[86] Such prohibitions should apply to MPs.

56. It is noted that Article 8^2(2) mentions some types of expression that could potentially fall within the scope of the prohibitions provided by international human rights instruments with respect to incitement or advocacy of hatred providing they reach of certain threshold to amount to direct or indirect calls for violence interpreted in accordance with

---

82 See e.g., ECtHR, *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, 17 May 2016, para. 138 and 140; and ECtHR, *A. v. United Kingdom*, no. 35373/97, 17 December 2002, para. 79. See also CJEU, *Janusz Korwin-Mikke, v. European Parliament*, Case T-352/17, 31 May 2018, para. 45, underlining that "*in a democracy, Parliament or such comparable bodies are the essential fora political debate. Very weighty reasons must be advanced to justify interfering with the freedom of expression exercised therein*", and para. 47, which provides "*freedom of expression of members of parliament must be afforded greater protection in the light of the fundamental importance which Parliament plays in a democratic society*".

83 In its case-law, the ECtHR distinguishes between, on the one hand, the substance of a parliamentary speech – underlining that states have very limited latitude in regulating such content, and, on the other hand, the time, place and manner in which such speech is conveyed; see e.g., ECtHR, *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, 17 May 2016, para. 140.

84 See e.g., ECtHR, *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, 17 May 2016, para. 147.

85 These include: "*direct and public incitement to commit genocide*", which should be punishable as per Article III (c) of the Convention on the Prevention and Punishment of the Crime of Genocide, which Ukraine ratified on 15 November 1954; the "*propaganda for war*" and the "*advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*", which should be prohibited as per Article 20 (1) and (2) of the ICCPR; "*all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as […] incitement to [acts of violence] against any race or group of persons of another colour or ethnic origin*", which should be an offence punishable by law according to Article 4 (a) of the ICERD; "*public provocation to commit acts of terrorism*", when committed unlawfully and intentionally which should be criminalized (see UN Security Council *Resolution 1624 (2005)*). International recommendations also call upon States to enact laws and measures, as appropriate, "*to clearly prohibit and criminalize online violence against women, in particular the non-consensual distribution of intimate images, online harassment and stalking*", including *"[t]he threat to disseminate non-consensual images or content*", which must be made illegal; see UN Special Rapporteur on violence against women, its causes and consequences, *Report on online violence against women and girls from a human rights perspective* (18 June 2018), A/HRC/38/47, paras. 100-101. *General Policy Recommendation No. 7* of the European Commission against Racism and Intolerance (ECRI) recommends to make it a criminal offence to publicly incite to violence, hatred or discrimination, or to threaten an individual or group of persons, for reasons of race, colour, language, religion, nationality or national or ethnic origin where those acts are deliberate. See also Council of Europe Committee of Ministers, *Recommendation CM/Rec(2022)16 on combating hate speech*, adopted by the Committee of Ministers on 20 May 2022, para. 11. On 18 October 2022, the Sixth Committee (Legal) in the U.N. General Assembly, approved a resolution on "Crimes against humanity" without a vote to open a space for a substantive exchange of views on all aspects of the draft articles on the Prevention and Punishment of Crimes against Humanity, which Article 3 explicitly prohibits justifications of crimes against humanity.

86 Regarding the prohibition of incitement to discrimination, hostility or violence (Article 20 of the ICCPR and Article 4 of the ICERD), it is also subject to the strict conditions of Article 19 of the ICCPR, see UN Human Rights Committee (CCPR), *General Comment no. 34 on Article 19: Freedoms of opinion and expression*, 12 September 2011, para. 11 and CERD, *General recommendation No. 35* (2013), paras. 19-20. Such forms of expression would only be prohibited and punishable by law when: (1) the expression is intended to incite imminent violence; and (2) it is likely to incite such violence; and (3) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence; taking into account a number of factors to determine whether the expression is serious enough to warrant restrictive legal measures including the context, speaker (including the individual's or organization's standing), intent, content or form, extent of the speech, and likelihood of harm occurring (including imminence); see CERD, *General recommendation No. 35* (2013), paras. 13-16; see also the *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*, in the Report of the United Nations High Commissioner for Human Rights on the prohibition of incitement to national, racial or religious hatred, United Nations General Assembly, 11 January 2013, Appendix, para. 29; and International Mandate-holders on Freedom of Expression, *Joint Declaration on Freedom of Expression and Countering Violent Extremism* (2016), para. 2(d).

international freedom of expression standards.[87] However, some of the terms used in Article 8^2(2), such as "*humiliating", "offensive", "profanity"* or *"violation of the dignity"* are vague and potentially subject to various interpretation. While the provisions of Article 8^2(2) would feature well in an aspirational, ethical framework to clarify the types of behaviours that would be expected of MPs during parliamentary debates and when exercising their functions, they would not appear appropriate to feature in a law, as a ground for potentially prohibiting or regulating the content or substance of expression by MPs. Moreover, a qualified privilege permits an MP to make statements that, even if being offensive or derogatory in nature, are protected by the right to freedom of expression. The protection under Article 10 of the ECHR also extends to sharing of information that is strongly suspected to be untruthful.[88] With respect to the encroachment on the honour, dignity and professional reputation of MPs or insults, it must be reiterated that the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual, with the former inevitably and knowingly having accepted to be subject to close scrutiny by both journalists and the public at large, and hence expected to display a greater degree of tolerance.[89]

57. Even though some regulation may be considered necessary to prevent forms of expression such as direct or indirect calls for violence or other expressions prohibited under international human rights law, **it is recommended to reconsider some the above-mentioned content-based restrictions envisaged in draft Article 8^2(2) given the above considerations, although they could partly be retained as part of an ethical, aspirational framework for MPs to guide them**.

58. The proposed draft amendments to the current Article 51 of the RoP envisage the removal of the first two paragraphs, which contain restrictive provisions regarding MPs' behaviour in the chamber. Specifically, it aims to eliminate the prohibition on bringing materials "*not intended to support legislative activities into the plenary hall and using them during the plenary session"*, as well as the ban on MPs to "*interfere with presentations or speeches (by shouting, applauding, standing up, talking on a mobile phone, etc.), using offensive language and obscene words, or calling for illegal actions"*. Such provisions generally reflect behavioural prescriptions for MPs found in other countries to ensure orderly conduct of parliamentary proceedings, and which may lead to some forms of disciplining in order not to cause serious disorder or disruption of parliamentary debate. If the purpose it to consolidate the provisions related to MPs' ethics and conduct into one single document, such provisions should also be added there while cross-referencing applicable legislation and avoiding inconsistencies between the respective provisions.

59. The newly proposed Article 8^2(2)(3) of the Law on the Status of People's Deputies of Ukraine contains rules regarding sexual harassment, i.e., "*actions of a sexual nature, expressed verbally (threats, intimidation, indecent remarks) or physically (touching, patting) that humiliate or insult persons who are in a relationship of labour, service, material or other subordination with the MP*". First of all, the reference to humiliating or insulting persons is rather subjective whereas the focus should be on whether such actions were expressed without the other person's consent. Furthermore, **the prohibition of sexual harassment should not be limited to those acts committed against parliamentary staff or service providers or other employees of an MP but should**

87 See footnote 97 above.
88 See e.g., ECtHR, *Salov v. Ukraine*, no. 65518/01v, 6 December 2005, para. 113.
89 See e.g., ECtHR, *Lingens v. Austria*, no. 9815/82, 8 July 1986, para. 42.

extend to those committed towards other MPs and more generally anyone in parliament.[90]

60. Furthermore, it requires MPs to refrain from any form of discrimination in its activities, in particular "*in relation to employees of the Secretariat of the Verkhovna Rada of Ukraine and employees of the patronage service of the Verkhovna Rada of Ukraine, as well as voters and other persons*" (Article 8^2(2)(4)). Finally, it addresses the issue of "mobbing", again against staff of the Secretariat and patronage service of the VRU (Article 8^2(2)(5)). **It would be beneficial, however, to also clearly apply such rules to interactions among MPs, not only staffers**.

61. In case of an MP's involvement in sexual harassment or other forms of sexual violence, an effective complaint mechanism shall be accessible to all MPs, parliamentary employees and other victims, guaranteeing safety, confidentiality and expediency of the complaint process along with a well-defined and independent investigation process and provide for effective sanctions proportional to the gravity of the case.[91] It is essential that **a safe and effective complaint mechanism that is independent from MPs and parliamentary staff, and involving experts on violence against women, be in place, ensuring safety, confidentiality and expediency of the complaint process along with a well-defined and independent investigation process with effective and deterring sanctions when misconduct is detected**.[92]

62. The drafters should also assess whether in the country context, non-liability protection granted to MPs' statements has been misused to avoid being prosecuted for "*dissemination of ideas based on racial superiority*", "*advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*", sexual harassment, violence against women or other crimes.[93] In particular, it is important that parliamentary immunity does not apply in cases of criminal prosecution against gender-based violence.[94] If this is the case, **clear, balanced, transparent and enforceable procedures for waiving parliamentary immunity** in such cases should be introduced to ensure a functioning parliamentary integrity system.[95] The Draft Law should be supplemented in this respect.

RECOMMENDATION C.

1. To reconsider some of the content-based restrictions on MPs forms of expression in accordance with international human rights standards, while ensuring that the respective limitations are not misused and/or do not stifle the freedom of parliamentary debate.

90 ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* p. 63.

91 For example, *the Code of Conduct for Members of the Scottish Parliament* states that "*Complaints from staff of bullying or harassment, including any allegation of sexual harassment, or any other inappropriate behaviour on the part of members will be taken seriously and investigated*", p. 49.

92 See ODIHR Document: *Parliamentary Integrity: A Resource for Reformers* (2022), p. 63. See also ODIHR, "Addressing Violence against Women in Parliaments - Tool 2" for guidance to parliaments on preventing violence against women in parliaments, 2022, pp. 22-26.

93 See e.g., Parliamentary Assembly of the Council of Europe, *Resolution 2274 "Promoting parliaments free of sexism and sexual harassment"*, 2019, Article 8.2. See ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* pp. 26-27.

94 IPU, *Guidelines for the elimination of sexism, harassment and violence against women in parliament* (2019), p. 26. See also UN Special Rapporteur on violence against women, its causes and consequences, *2018 Report on violence against women in politics*, para. 84 (d), where national parliaments are encouraged to "*fight against the impunity of members of parliament in respect of violence against women in political life and review the rules of immunity, which should in no case protect the perpetrators of such violence*."

95 See OSCE Parliamentary Assembly, *Resolution on Limiting Immunity for Parliamentarians in Order to Strengthen Good Governance, Public Integrity and the Rule of Law in the OSCE Region* (2006).

2. To include specific provisions to strengthen the legal and ethical framework to prevent and protect against violence against women in politics, including by providing for the development of a comprehensive parliamentary workplace policy for combating sexism, sexual harassment and violence in parliament, with adequate allocation of budget and resources, adequate training of MPs and parliamentary staff, support and counselling services, effective independent complaints-handling mechanisms ensuring safety, confidentiality and expediency of the complaint process, remedies and disciplinary sanctions, while assessing whether rules and procedures for lifting parliamentary immunities should be revised to not unduly limit cases of criminal prosecution against gender-based violence.

3.2.3. Interaction with Colleagues and Voters

63. Article 8^2(3) requires MPs, regardless of political affiliation and position, to respect the honour and dignity of other MPs, employees of the Secretariat and patronage service of the VRU, and all citizens of Ukraine, as well as to "*show courtesy and adhere[s]to a high culture of public communication and public speaking*", which is commendable as part of an aspirational ethical framework.

64. According to Article 8^2(3), MPs should not use "*the language of states whose activities are recognised by the Verkhovna Rada of Ukraine as an aggressor state (occupying state) or poses a threat to the national security and constitutional order of Ukraine*", as well as states "*that are terrorist against Ukraine*".

65. First, it does not appear entirely clear whether the term "language" in Article 8^2(3) refers to a system of communication used by a particular country or community (foreign language) or to specific statements, ideas and opinions that are broadcasted, published, or in some other way spread by a particular foreign state to promote a political cause or point of view. In any case, **this provision would benefit from a clear reference to the specific legal act** that prohibits using such language in the public domain along with the consequences of violating this rule, as well as legislation which provides a definition of the "aggressor state (occupying state)", state which "poses a threat to the national security and constitutional order of Ukraine", as well as state which is "terrorist against Ukraine".

66. It should be further noted that according to Article 2(3) of the RoP of the VRU, the working language of the Parliament, its bodies and officials is the state language, i.e., Ukrainian, while a foreigner or stateless person may speak at meetings of the Parliament and its bodies in another language. Furthermore, in accordance with Article 9(1) of the Law of Ukraine "On Protecting the Functioning of the Ukrainian Language as the State Language", all MPs, along with other state officials, are requested to know the state language and to use it during the performance of official duties. Violation of this rule entails the imposition of fines.[96] To avoid confusion and possible inconsistencies, it is recommended to include a cross-reference to the applicable legislation regarding the use of Ukrainian by the Deputies of the VRU.

96 A fine from two hundred (UAH 3,400) to four hundred (UAH 6,800) tax-free minimum incomes of citizens or a warning, if the violation is committed for the first time. A repeated violation within a year entails the imposition of a fine of five hundred (UAH 10,200) to seven hundred (UAH 13,600) tax-free minimum incomes of citizens in accordance with Article188 (52) of the Code on Administrative Offences of Ukraine.

3.2.4. Right to Respect for Private and Family Life of MPs

67. The Draft Law proposed to amend Article 8 of the Law on the Status of People's Deputies of Ukraine by providing that "*the norms of parliamentary ethics apply to the conduct of an MP in public space, including during the exercise of their parliamentary powers and in public speeches or statements in the media and on the Internet"*. It further states that the norms of parliamentary ethics do not apply to the conduct of an MP in his or her private life (Article 8(2)).

68. As mentioned above, politicians have the right to respect for their private and family life as guaranteed by Article 8 of the ECHR.[97] However, this should be balanced with the right of the public to be informed, considering, in particular, to what extent an infringement of their privacy could be justified in light of the contribution to a debate of general interest to society and taking into account their public function/power/profile as relevant criteria.[98] In particular, the right to freedom of expression and access to information, as guaranteed by Article 19 of the ICCPR, includes the freedom "to seek, receive and impart information and ideas of all kinds". In this respect, MPs' activities within the Parliament, like attendance, speaking and overall behaviour of MPs at plenary sessions and sessions of parliamentary bodies should be open to scrutiny.

69. The question is where to draw the line and what kind of outside activities might impact MPs' public duties, performance and integrity, and the reputation of the Parliament, or public trust, more generally, knowing that MPs are under constant scrutiny of the public and the media. At the same time, even a public figure like an MP should legitimately expect that his or her private life, and those of family members, will be protected.[99] While acknowledging that it is not generally appropriate to regulate the private behaviour and personal lives of MPs, it may also happen that MPs' behaviour in their private lives affects the integrity of the Parliament or could create a reputational damage for the Parliament as an institution.[100] Hence, it is important **to define clear criteria with references to the respective legal framework and/or conditions under which the regulation of certain aspects of the private life of MPs would be justifiable in the public interest, to protect the Parliament as an institution**.[101]

4. MONITORING, ENFORCEMENT AND SANCTIONING

4.1. Status, Structure and Functions of the Ethics Committee

70. The Draft Law defines the composition and tasks of the Ethics Committee, by introducing relevant amendments to the Law on Committees. It should be noted that this Law contain

97 See e.g., ECtHR, *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, 16 February 2005, para. 42.
98 See e.g., ECtHR, *Von Hannover v. Germany*, no. 59320/00, 24 September 2004; and *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, 16 February 2005.
99 See e.g., ECtHR, *Von Hannover v. Germany* (no. 2) [GC], paras. 50-53 and 95-99.
100 See ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022)*, p. 25. See also e.g., UK Committee on Standards, *Report on the conduct of the Rt Hon Christopher Pincher MP*, 6 July 2023.
101 In several OSCE participating States parliaments have adopted Codes of conduct with provisions prohibiting discrimination, violence and sexual harassment. In Albania, for example, it states that "*The Deputy is prohibited from any behaviour of a sexual nature that affects the dignity of anyone and that is considered unwanted, unacceptable, inappropriate or offensive to the other person, as well as creates a disturbing, unstable, hostile and intimidating work environment. For the purpose of this article, the conduct of the deputy includes and is not limited to physical actions, words, gestures or any kind of virtual communication*." See ODIHR Document: *Parliamentary Integrity: A Resource for Reformers (2022)*, p. 25. For example, the Lithuanian Code of Conduct for State Politicians in this respect have provision that states: "*The conduct or personal features of a state politician that are related to certain circumstances of their private life and that are likely to have influence over public interests shall not be considered private life*". See *"Law on the Approval, Entry into Force and Implementation of the Code of Conduct for State Politicians"*, Republic of Lithuania, Vilnius, 2006. See also: Committee on Standards publishes report on the conduct of Christopher Pincher - Committees - UK Parliament.

general rules applicable to all committees within the VRU, without specifying any particular committee, while the Draft Law would introduce specific provisions regarding the Ethics Committee. Notably, the list, composition and jurisdictions of the committees of the VRU are defined anew by a parliamentary resolution for each new convocation.[102] Therefore, in case of possible future changes in the structure of the Parliament and its bodies, especially with respect to the name of the committee in charge of parliamentary ethics and its specific tasks, this could require amending the Law on Committees again.

71. The Draft Law proposes to amend Article 5 of the Law on Committees to provide that the Ethics Committee shall consist of an even number of persons. The proposed amendment to Article 6(2) of the Law on Committees would provide that the number of MPs representing the majority in the Ethics Committee shall be equal to that representing the opposition, which is specific to the composition of this Committee. The proposed amendments to Article 6 (new part 7) further provides that the chair of the Ethics Committee shall always be from the opposition and the secretary of the Committee – from the majority. It is generally recognized as a good practice to ensure the representation — or even leadership — of MPs from opposition parties in self-regulating monitoring mechanisms, as well as ensuring that procedures are not used to target members of the opposition unfairly or disproportionately.[103]

72. The even number of committee members and decision-making mechanism that is envisaged may lead to deadlock, and stall the work of the Committee by blocking its decision-making process and rendering it inoperative. GRECO's recommendations focus on the effectiveness of the system in place, while recognizing that states may choose their particular enforcement system; when the policy makers have chosen to externalize such mechanism, GRECO also noted that this may only function if such mechanism is provided with adequate powers and resources and if MPs and the Parliament work together with such mechanism.[104] It is thus paramount **to consider introducing a deadlock-breaking mechanism in the Draft Law to ensure that the Ethics Committee may take decisions and function effectively or at least clarify the consequences of a tie vote**.

73. **Moreover, it is advisable that the Draft Law provides more detailed criteria for membership in the Committee**. The proposed new Article 33^3 of the Law on Committees requires the parliamentary factions (parliamentary groups) to nominate to the Committee MPs who "*have high moral standards, authority, and respect from their colleagues*". Apart from the fact that the relevant criteria appear to be quite vague and should be better defined, the Draft Law should also aim for a composition that is balanced in terms of gender and diversity. While the proposed amendment to Article 33^3 of the Law on Committees stipulates that at least one-third of the Ethics Committee members should be women, it should be emphasized that the latest General Recommendation No. 40 of the CEDAW Committee on equal and inclusive representation of women in decision-making systems adopted on 23 October 2024 promote the objective of parity (50:50).[105] To achieve greater gender balance in the composition of the Ethics Committee, **nomination criteria and modalities could also be designed to take this objective into account,** for instance by requiring that two nominees be proposed by the nominating factions, one woman and one man, and that the nominee from the under-

102 See, for example, the relevant resolution for the 9th convocation.
103 See ODIHR, *Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (December 2023), p. 27.
104 See ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* p. 78.
105 CEDAW Committee, *General Recommendation No. 40 of the CEDAW Committee on equal and inclusive representation of women in decision-making systems*, 23 October 2024, para. 47 (b).

represented gender within the Committee will be selected.[106] The legal drafters could also discuss modalities to ensure greater diversity among members of the ethics Committee.

74. Furthermore, consideration could be given to involving civil society representatives as external actors, providing that this would be compliant with the Constitution, or at least observers of the Committee's work, provided that they are appointed in a transparent and fair manner,[107] while ensuring clarity regarding the necessary skills, selection criteria and the procedure for appointment to avoid possible misuse and partisan action.[108]

75. The draft new Article 33^3 proposed to be added to the Law on Committees further outlines the duties and responsibilities of the Ethics Committee, which include organizing training sessions for MPs and VRU staff on compliance with the norms of parliamentary ethics; consideration of complaints regarding ethical violations by examining circumstances and facts, summoning witnesses, and engaging experts; establishing procedures for reviewing complaints; deciding on violations; and publishing its decisions. Additionally, the Committee is tasked with providing recommendations and clarifications on compliance with parliamentary ethics, either on its own initiative or upon request. It is also expected to report annually on compliance with ethical standards, assess the impact of these standards after parliamentary elections, as well as to establish an appeal procedure for decisions related to MP liability for ethical violations. At the same time, such procedure seems to be already envisaged by the proposed amendment introducing new Article 51^1 to the RoP (see also para. 109 *infra*). Moreover, the power of the Ethics Committee to develop and approve the procedure regulating its own work appears to contradict Article 2 of the Law on Committees, which suggest that the organization, powers and order of work of parliamentary committees are determined by the Constitution of Ukraine, the Law on Committees, the Law on the Status of People's Deputies of Ukraine, other laws of Ukraine and resolutions of the VRU.

76. Moreover, **to ensure that the Ethics Committee's work is not impeded, clear and effective decision-making mechanisms should be established in the Draft Law, including quorum requirements and, as mentioned above, considering introducing mechanisms to resolve ties**. The Committee could also be required to develop a manual on ethical conduct and values, which could be distributed among MPs at the beginning of each convocation.

77. Finally, to enhance public awareness on the topic of parliamentary ethics and integrity, the Ethics Committee should prioritize regular engagement with the public, both directly and through media outlets and parliamentary monitoring organizations. This could include press briefings, media training sessions, and other outreach initiatives. **It is recommended to envisage such responsibilities of the Ethics Committee in the Draft Law**.

RECOMMENDATION D.

To consider introducing a deadlock-breaking mechanism to ensure that the Ethics Committee may take decisions and function effectively or at least clarify the

106 See ODIHR, *Comparative Note on Gender Equality Laws Across the OSCE Region*, 2024, para. 93 and footnote 188.
107 ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* p. 82.
108 See ODIHR, *Opinion on Certain Provisions of the Draft Law on the Status, Conduct and Ethics of the Members of Parliament of the Republic of Moldova*, 26 March 2024

consequences of a tie vote, while more generally elaborating clear and effective decision-making mechanisms, including quorum requirements.

4.2. Monitoring and Complaint Mechanism

78. As underlined above, addressing cases of sexual harassment or violence and other violence against women may require the setting up of **a safe and effective complaint mechanism that is independent from MPs and parliamentary staff, and involving experts on violence against women, to ensure safety, confidentiality and expediency of the complaint process.** The legal drafters may consider establishing an advisory group of experts that the Committee could involve as required. With respect to other breaches of parliamentary conduct or ethics, to be effectively implemented, institutions and procedures are needed to monitor and enforce parliamentary standards.[109]

79. Insufficient or poorly designed enforcement mechanisms and a lack of due process guarantees may render the ethical framework ineffective. This may also potentially contribute to the abuse of the complaints process by individuals or groups, either inside or outside of the parliament, seeking to unfairly criticize or intimidate specific MPs or to prevent them from freely expressing their views during parliamentary debate.[110] Therefore, it is important that the Draft Law contains safeguards to ensure that the rules on conduct are not applied in a way that may lead to misuse or unduly restrict parliamentarians' right to debate and express their views freely.[111]

80. The proposed new Article 33^3(4) on the Committees defines that a complaint about a violation of the rules of deputy ethics may be filed by an MP, by a group of MPs or by an employee of the Secretariat of the VRU. It is not **uncommon to grant the right to file a complaint to the general public or even to provide for a right to initiate an investigation *ex officio* to the specific body within the parliament.**[112] **The legal drafters could consider to broaden the scope accordingly**.

81. The Draft Law outlines the procedure for filing a complaint, specifying the deadline of 60 days from the date of the violation. **It would be beneficial, however, to envisage also a deadline for submitting a complaint starting from the moment when an individual becomes aware of the violation, particularly if the misconduct was deliberately hidden or not witnessed directly**.

82. In accordance with the Draft Law, during the review, both the complainant and the person against whom the complaint was filed may provide explanations, testimonies, and involve additional witnesses and experts, without specifying the timeline and procedure for those important elements. Both parties shall be informed of the progress of the review, although the draft amendment does not specify how frequently or in what format this information will be provided.

83. The amendment states that complaints will be addressed according to the Law on Committees and the Law on the Status of People's Deputies of Ukraine, based on a procedure approved by the Committee. However, there is no further elaboration on what this approved procedure would entail, or which procedural aspects and principles will be applicable. For example, draft Article 33^3(4) of the Law on Committees states that "*Upon*

109 See ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* Part 3.
110 *Ibid.* p. 78.
111 For instance, certain sanctions leading to suspension could be abused to banish MPs from the chamber in order to distort the natural majority, thus, in some countries, such as Austria, suspended members retain their right to vote; see *ibid.* p. 86.
112 *Ibid.* p. 76.

consideration of the complaint, the Committee shall make a decision to reject the complaint, or a decision on the MP's liability for violation of the rules". **It is important, however, to indicate in the law the procedure for adopting such a decision by the Committee, including with respect to the quorum for making such a decision and the number of votes required to adopt these decisions, unless general rules apply**.

84. **The Draft Law would, therefore, benefit from further elaboration with respect to the procedure for reviewing complaints, including on the quorum and voting thresholds, and outlining the roles, duties and rights of the parties involved, including clear rights and responsibilities of the Committee in this respect.** Additionally, the relationship between the Committee and the Speaker of the VRU regarding the application of sanctions should be clearly defined, along with the procedures to be followed in these cases (see Sub-Sections 4.3. and 4.4. *infra*).

85. Draft Article 33^3(5) of the Law on Committees outlines the conditions for the complaint procedure when the complainant is an employee of the VRU Secretariat. In this case, according to the Draft Law, the Ethics Committee shall authorize two persons from its own staff to consider complaints relating to the violation of the norms of parliamentary ethics. One of the authorized persons must be a member of the majority, and another – of the opposition. If the complaint of an employee of the VRU Secretariat is found substantiated, such authorized persons shall register the complaint on their own behalf and act as a complainant.

86. Firstly, it does not appear to be clear which requirements the complaint should comply with in order to be identified as "substantiated". Moreover, the Draft Law does not clarify against whom these complaints by the staffers may be filed. While Article 33^3(5) states that an employee of the Secretariat shall apply to such authorized persons if s/he fears pressure from an MP, it is not clear whether an employee of the Secretariat can also raise a complaint against another staffer. **It is advisable to specify this in the Draft Law**.

87. Furthermore, the Draft Law fails to detail the procedures for complaints made by groups of MPs. This lack of clarity may result either in the dismissal of relevant complaints due to the absence of a developed procedure or in applying the procedure designated for staff's complaints to group complaints by MPs. Thus, **it is essential that this procedure for complaints made by groups of MPs is explicitly specified in the Draft law**.

88. Draft Article 33^3(4) of the Law on Committees states that "complaints regarding violations of parliamentary ethics are not anonymous", implying that anonymous complaints are inadmissible. Although it is common for many codes of ethic/conduct to require the complainants to identify themselves, in cases of sexual harassment or violence, it is important to ensure confidentiality and necessary protection for those plaintiffs fearing retribution/retaliation. **Thus, exclusion of anonymity for submitting complaints should be balanced by effective mechanisms of confidentiality for sexual harassment- and sexual violence-related complaints** (see also paras. 61 and 78 *supra*).

89. In such cases, as recommended above, an alternative procedure could be envisioned in the form of a separate, effective and independent complaint-handling mechanism. This could consist, for instance, of providing that all complaints be handled by a specialized, trained independent sexual violence adviser, who would serve as a single point of ongoing contact and advocacy for complainants or establishing a dedicated reporting mechanism (composed of, e.g. three members - two MPs and a representative from the parliamentary administration), who would evaluate the merits of such complaints and

ascertains if they are well-grounded and contain sufficient basis for further investigation.[113]

90. In fact, as mentioned above (see para. 86 *supra*), draft Article 33^3(5) of the Law on Committees already envisions a separate complaints mechanism with respect to complaints from employees of the VRU Secretariat allowing so-called "authorised persons" to register the complaint on their own behalf and act as a complainant. The legal drafters could consider expanding the mechanism of "authorized persons" (one from the majority, one from opposition, one person representing a parliamentary administration) to deal with complaints about instances of physical, economical, psychological, or sexual violence for persons who might be in subordinate or dependency relations with the perpetrator.

91. Draft Article 33^3(6) of the Law on Committees states that the Committee meetings are generally open to the public, while outlining specific situations where meetings may be closed, for instance when "*the complainant and the person whose behavior is being challenged do not reach an agreement on whether the complaint should be reviewed in a closed meeting of the committee, and the committee decides to review the complaint in a closed meeting*" (Article 33^3(6.2). In this respect the Committee's voting rules to decide to hold a closed session should be further elaborated in the Draft Law.

92. Additionally, the practice of confidential counselling has emerged over the past decade as a valuable resource for MPs, allowing them to seek guidance on issues related to their conduct. Various parliaments utilize different models for providing this counselling, whether internal or external, ensuring that MPs can consult confidentially and receive professional advice. Therefore, **specific provisions introducing an internal mechanism/procedure for confidential counselling, as well as mentoring and experience-sharing activities, to support both new and experienced MPs who may seek guidance regarding potential violations of ethical rules could be considered**.

4.3. Reporting

93. Proposed Article 53^1 of the RoP regulates the publishing of the annual report by the Ethics Committee - its content, procedure for consideration and amendments. Such reporting is commendable and serves as an important tool for regular monitoring of compliance and enforcement of the ethical framework. It stipulates that the responsible Committee must prepare an annual report, which should be published and submitted to the VRU no later than 1 July every year. The Parliament will then have two weeks to consider the report. The report is required to include the following: the total number of complaints and appeals submitted, categorized by the subject of submission and the subject matter, the results of complaint considerations, and any identified shortcomings along with proposals for their resolution. The information is provided for the 12 months preceding the date of publication of the report. It is unclear whether the subject of submission refers to a named individual or a category of persons, e.g., parliamentary staff, MPs, service providers or other individuals. In any case, it is important that **data about complaints relating to violence against women be anonymized and that sex-disaggregated data is collected and published about the complaint mechanism, investigations, outcomes of investigations and sanctions, accompanied by**

113 See ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* pp. 63-64.

independent assessments to monitor and evaluate the effectiveness of the mechanism.[114] **The Draft Law should be supplemented in this respect.**

94. While statistical data is a valuable starting point, the report should not be a simple extrapolation of this data. A report of the ethics body can serve as a useful mechanism for developing ideas, highlighting issues, and addressing the environment in which MPs operate, as well as identifying emerging trends that should be encouraged or curtailed. Only well-elaborated and structured reports presented effectively to MPs can achieve their intended goal of fostering an understanding of ethics and conduct issues, ultimately encouraging MPs to implement ethical principles in their future work.

95. Additionally, the draft amendment outlines the procedure for the VRU's consideration of the report as follows:

- the Ethics Committee presents the report in up to ten minutes;
- representatives of each parliamentary faction have up to two minutes for their speeches;
- a question-and-answer session lasts up to fifteen minutes;
- closing remarks by the Ethics Committee representative are limited to five minutes.

96. After the discussion, the Committee's representative can propose that MPs vote on solutions aimed at addressing the shortcomings identified during the process of assessing compliance with the norms of parliamentary ethics.

97. However, the timeframe envisaged for each of the abovementioned stages looks insufficient for meaningful presentation and dialogue, particularly regarding shortcomings and potential solutions. The report should be treated as a substantial item on the agenda of the VRU, deserving thorough consideration rather than a rushed overview, lacking the opportunity for in-depth discussion. Thus, the sessions should not be too short and overly formalistic, but should rather provide MPs with the time needed to engage deeply with the issues and express their position.

98. It is, therefore, advisable **to further elaborate the structure and content of the Ethics Committee's annual report, ensuring that is presented to the VRU in a more comprehensive and meaningful format, enabling MPs to gain a thorough understanding of the state of compliance with parliamentary ethics and conduct. Additionally, the procedure for adopting the report and the time allocated for each of its stages should be reconsidered to facilitate meaningful exchanges among MPs on these important topics**.

99. Draft Article 53[1](5) also indicates that *"[b]ased on the discussion of the report on compliance with parliamentary ethics, the representative of the committee responsible for overseeing discipline and compliance with parliamentary ethics may propose a vote on recommendations to address deficiencies identified in the process of implementing parliamentary ethics"*. In practice, it may be too complicated to accept and adopt amendments to the report in the plenary right after consideration of the report. Instead, a **process of publishing a preliminary report, allowing for MPs' proposals and their consideration by the Committee beforehand, prior to the final adoption of the annual report at the plenary meeting could be considered**.

114 See ODIHR, "Addressing Violence against Women in Parliaments - Tool 2" for guidance to parliaments on preventing violence against women in parliaments, 2022, p. 33.

RECOMMENDATION E.

To further elaborate in the Draft Law on the structure and content of the Ethics Committee's annual report, ensuring the inclusion of anonymized and sex-disaggregated data about complaints relating to violence against women with information about the complaint mechanism, investigations, outcomes of investigations and sanctions, while presenting the annual report in a more comprehensive and meaningful format, enabling MPs to gain a thorough understanding of the state of the parliamentary ethics and conduct, while ensuring that sufficient time is allocated during the discussions on the annual report to facilitate meaningful exchanges among MPs on these important topics.

4.4. Sanctions

100. Dissuasive and proportionate sanctions for misconduct, as well as tools for their effective enforcement are crucial to ensure meaningful regulation and overall legitimacy of a parliamentary regulation system. [115] In most OSCE pSs, systems of parliamentary discipline include a wide range of sanctions, *"from the relatively soft 'naming and shaming', through fines and temporary suspensions from office (with loss of pay), up to the ultimate political sanction of loss of a parliamentary seat. For conduct that breaks the law, there are, legally enforced penalties"*.[116] A draft new Article 40 is proposed to be added to the Law on the Status of People's Deputy of Ukraine, addressing "Liability for Violation of the Standards of Deputy Ethics". This article clearly states that liability in these cases is individual and cannot be assigned to a parliamentary faction or any other internal collective within the VRU.

101. Draft Article 40 outlines the following types of sanctions: a warning with recommendations for compliance with the norms of deputy ethics issued by the Ethics Committee; a warning announced by "the presiding officer" during a session of the VRU in case of repeated violations of parliamentary ethics within a year; an obligation for the MP concerned to attend a training course on parliamentary ethics, along with depriving of the right to participate in plenary sessions of the VRU (up to five plenary sessions) in case of repeated violation twice within a year; the deprivation of the right to participate in plenary sessions of the VRU, committee meetings, temporary investigative commissions, and temporary special commissions for up to one month, or the deprivation of payments related to the performance of parliamentary duties for a period of one to two calendar months, in case of repeated violations of parliamentary ethics more than twice within a year.

102. The abovementioned sanctions are based on the frequency of violations and it is commendable to have sanctions that aim to be both proportionate and dissuasive with an increasing severity in case of repetition and envisioning the possibility of corrective action (recommendations from the ethics body, training course, refraining from repeated violation of ethics principles). In most OSCE pSs, systems of parliamentary discipline encompass a wide range of sanctions, ranging from relatively mild measures like "naming and shaming"

115 See ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* p. 86.
116 See ODIHR's *ODIHR Background Study: Professional and Ethical Standards for Parliamentarians* (2012), p. 69. See also ODIHR Document: *Parliamentary Integrity: A Resource for Reformers (2022)*, p.17

to fines and temporary suspensions from office (with loss of pay), and ultimately to the most severe political sanction: loss of a parliamentary seat.

103. At the same time, the nature of the respective violations that the specific sanctions relate to is not mentioned by the Draft Law, which instead refers to them generally as "violations of the norms of parliamentary ethic". In addition to the recurrence of the violation, **it would be advisable to also envisage in the Draft Law a classification of the different types of violations depending on their nature and gravity, and the extent of damage they may cause to the reputation of the VRU, with graduated sanctions proportionate to the harm they may cause**. These factors are essential for determining the most appropriate sanction in each individual case. Furthermore, **consideration could be given to adding softer sanctions, such as a requirement for a written or oral (in plenary) apology, to the list**.

104. Importantly, the proposed new Article 33^3 (2) of the Law on Committees envisages the decisions which can be taken by the responsible Committee, including with regard to the imposition of sanctions.[117] Although generally similar to the system enumerated above, this amendment differs in wording and sequence/graduation of the sanctions.

105. According to the abovementioned draft Article 40 of the Law on the Status of People's Deputy of Ukraine, all sanctions (apart from the warning and recommendation) are implemented by the Speaker of the VRU upon the decision of the Ethics Committee. At the same time, according to draft Article 33^3 (2) of the Law on Committees, the majority of sanctions are imposed by the Speaker based on the Committee's recommendation, rather than decision. **It is advisable to clearly codify all sanctions in one place and have them consistently laid out in one piece of legislation to avoid inconsistency.**

106. Moreover, it remains unclear what happens if the Speaker chooses not to act on the Ethics Committee's decision/recommendation, or what are the Speaker's prerogatives after receiving a decision/recommendation from the Committee. Additionally, there is no framework for the Speaker to determine whether to apply different types of sanctions for similar violations, leaving these decisions entirely at the Speaker's discretion. Furthermore, it should be noted that the list of powers of the Speaker of the VRU defined in Article 88 of the Constitution of Ukraine does not mention imposition of sanctions on MPs.

107. The issue of suspending MPs from sessions or committee meetings, while not extensively detailed, raises questions about whether this includes the suspension of their right to vote in Parliament while under sanction. When suspended, this means that an MP's ability to represent their electorate or specific constituency is significantly limited. Furthermore, such suspensions could be misused to exclude MPs from the chamber, potentially distorting the majority.

108. Importantly, the obligation to attend a compliance course is presented in the Draft Law only as a sanction, while generally such courses should be a necessary instrument offered

117 In particular this Article envisaged the following areas of responsibility of the Committee: a. to issue a warning to the violator of the norms of parliamentary ethics and provide recommendations on their observance; to recommend issuing a warning to the violator of the norms of parliamentary ethics, which is announced by the Chairman during the session of the VRU; b. to recommend to the Chairperson of the VRU to impose the obligation to attend a course on compliance with the norms of parliamentary ethics on the violator of the norms of parliamentary ethics with deprivation of the right to participate in plenary sessions at time spent listening to such a course (up to five plenary sessions); c. to recommend to the Chairman of the VRU to deprive the violator of the norms of parliamentary ethics of the right to participate in meetings of the VRU, meetings of committees, temporary investigative commissions and temporary special commissions for a period of up to one month; d. to recommend to the Chairman of the VRU to deprive the violator of the norms of parliamentary ethics of payments related to the exercise of parliamentary powers for a period of one to two calendar months; e. approve a report on compliance with the norms of deputy ethics; transfer the materials of consideration of a complaint on violation of the norms of deputy ethics to law enforcement agencies; f. dismiss the complaint about violation of the norms of deputy ethics.

to MPs as a part of their induction to the Parliament. Since the Draft Law does not propose any training or education initiatives for MPs (apart from tasking the responsible Ethics Committee to organize such training), obliging only sanctioned MPs to take this course does not seem to be an effective measure to build a culture of integrity within the VRU and would reinforce the perception of the ethics framework as a punitive instrument. As already mentioned above, codes of ethics/conduct or ethical framework should be adopted to promote specific behaviours and values, and proactively prevent unacceptable conduct. To effectively achieve this goal, lawmakers should introduce mandatory regular training courses on these topics for all MPs, rather than reserving such education as a penalty for non-compliance.

109. The proposed new Article 51^1 of the RoP outlines the appeal procedure for decisions regarding an MP's liability for violating parliamentary ethics. The proposed procedure requires an MP to file a motion against a decision within 14 days from the date of adoption, supported by at least 50 signatures from other MPs. During the session where the appeal is considered, the MP who filed the motion is allotted two minutes for a speech, followed by another two minutes for a representative from the Ethics Committee. Following these speeches, the motion is put to a vote, where a majority of MPs can overturn the decision regarding the MP's liability.

110. However, the rationale for requiring support from 50 MPs for such a motion is not clearly articulated. Additionally, the Draft Law does not specify any further actions or submissions which an MP can make to the Ethics Committee prior to the VRU session. The time allocated for both the MP and the Committee's representative to present the case is too brief, as it seems unrealistic to expect clear arguments to be made in just two minutes.

111. Furthermore, while the Draft Law mandates that 50 MPs support the motion with their signatures, it does not allow these MPs to speak on their reasons for supporting the motion. This lack of opportunity for discussion raises questions about the merits of their support and their role in this significant process, beyond merely providing a signature. Without this avenue for elaboration, the decision-making process may become influenced more by political alliances than by substantive arguments, which undermines the integrity of the proceedings and more generally of the ethical framework.

112. **Therefore, the procedures for appealing a decision to sanction an MP should be developed in a more comprehensive and detailed manner. This will ensure that all interested parties have sufficient time and opportunity to present their arguments, whether in support of or in opposition to the case**.

RECOMMENDATION F.

To elaborate a more detailed classification of the different types of violations depending on their nature and gravity, and the extent of damage they may cause to the reputation of the VRU, with graduated sanctions proportionate to the harm they may cause.

To further elaborate in the Draft Law the procedure for appealing the Ethics Committee's decision to sanction an MP for violating the rules of parliamentary ethics to ensure that all parties to the process have sufficient time and opportunity to present their arguments, whether in support of or in opposition to the case.

5. PROCESS OF DEVELOPING AN ETHICAL FRAMEWORK

113. The planning and preparation for the drafting of a set of ethical rules or code of conduct/ethics for MPs, and the drafting process itself are fundamental to ensure broad consensus about its content, greater acceptance and ultimately compliance with its rules. At the initial stage, the process of developing such an ethical framework requires a comprehensive assessment of the particular context, compatibility with formal and informal rules and (international and national) norms in the existing legislative framework, as well as challenges and risks affecting the work of the parliament and MPs in the given country. Further, catalyzing an inclusive, open and meaningful public discussion on integrity standards and expectations of MPs' conduct enables the parliament to develop a common understanding on appropriate conduct, thereby boosting a sense of ownership, as well as addressing the low level of public confidence in the institution.[118]

114. Consultations throughout the process of developing a code of conduct [119] should not only be conducted with the wider public but also with all relevant internal stakeholders, such as with representatives of all parliamentary political parties and fractions, aiming for a cross-party consensus, and ensuring balanced participation of women and men and other groups. This is crucial in building legitimacy, developing a sense of shared ownership among MPs and contributing to an effective, responsible and consistent use of the developed ethical framework. Practice suggests that ensuring the clearly delineated responsibility of one body for driving the development process, established in a fair, inclusive and transparent process, is another vital precondition for an effective and enforceable code of conduct.[120] Based on information made available to ODIHR, it is understood that the Parliamentary Working Group on the preparation of comprehensive legislative proposals on amendments to the laws of Ukraine in the field of parliamentary law has sought to consult and involve all parliamentary factions in the development of the Draft Law, which is welcome in principle. It is important that wide and inclusive consultations with all relevant stakeholders continue throughout the process of adoption of the Code of Ethics.

[END OF TEXT]

118 See e.g., ODIHR Document: *Parliamentary Integrity: A Resource for Reformers (2022)*, p. 44. See also CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023), Sub-Section 1.6.

119 UNODC, *Legislative Guide for the Implementation of the UN Convention against Corruption* (2nd revised edition, 2012), para. 91, which states that *"[s]ome good practices include the development of rules through a process of consultation rather than a top-to-bottom approach, the attachment of ethical rules to employment contracts and the regular provision of awareness-raising initiatives".*

120 See e.g., ODIHR Document: *Parliamentary Integrity: A Resource for Reformers (2022)*, pp. 44-45.