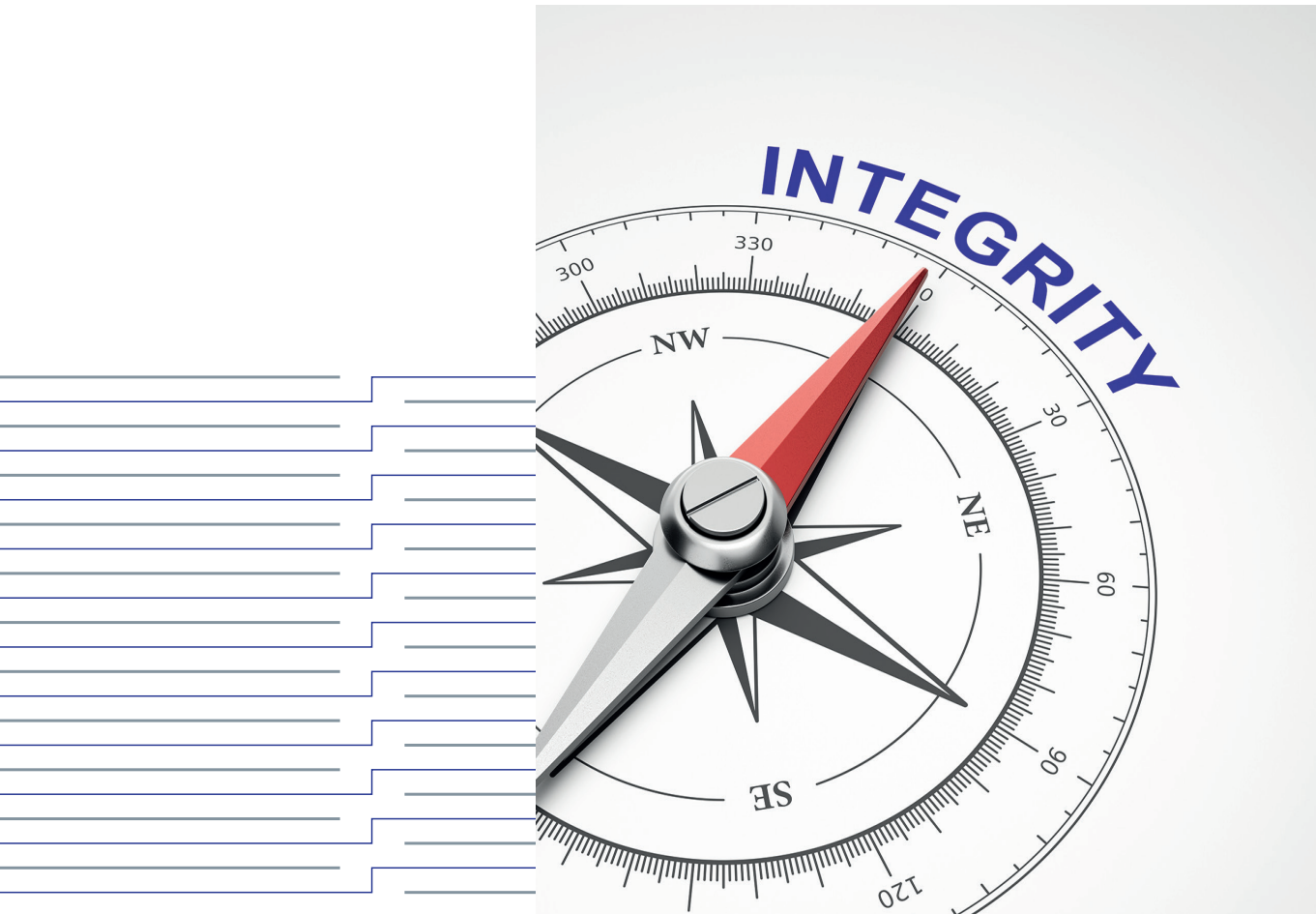




Tweede Kamer
DER STATEN-GENERAAL



Regulations on the Monitoring and Enforcement
of the Code of Conduct for Members of the
House of Representatives of the States-General



Regulations on the Monitoring and Enforcement of the Code of Conduct for Members of the House of Representatives of the States-General

Chapter 1. General

Section 1 Definitions

In these regulations the following definitions apply:

- a. Adviser: the independent integrity adviser;
- b. Board: the board of inquiry on integrity;
- c. Code of Conduct: the Code of Conduct for Members of the House of Representatives of the States-General.

Chapter 2. The Board

Section 2 Composition and appointment

1. The Board comprises a chair and two members. They are appointed by Parliament upon nomination by the Presidium for a period of up to six years. The House decides without deliberation. Reappointment is possible twice and for up to six years in each case.
2. The Board is independent.
3. The members of the Board receive reimbursement only of the expenses occasioned by the exercise of their duties.

Section 3 Remit

It is the task of the Board to deal with complaints regarding violations of the Code of Conduct by Members of Parliament (MPs).

Section 4 Annual report

1. In February of every year, the Board shall send the Presidium its annual report for the previous year.
2. In its annual report, the Board can make recommendations for amending the Code of Conduct or give an elucidation of the Code of Conduct.
3. The Presidium shall make the annual report public.

Section 5 Archive and public accessibility

1. Every six years, the Board shall transfer to the House those documents that were provided at its request as well as other documents it considers to be of importance. In this regard, it may make a reasoned request for documents not to be made public and to be made available for scrutiny to members of the Board only for a period of ten years.
2. The Board shall not make any information public.

Chapter 3. Complaints procedure

Section 6 Complaints

1. Anyone may make a complaint regarding a violation of the Code of Conduct.
2. A complaint shall be made in writing and shall contain, at the least, the name and postal address of the complainant, the name of the MP to whom the complaint relates and the facts leading to the complaint being made.
3. The Board may decide not to deal with a complaint if it considers the complaint patently unfounded, if the requirements referred to in the second paragraph have not been met, or if the same complaint has been made by different complainants. The complainant shall be informed of this.
4. A complaint relating to a possible violation for which a different manner of monitoring is specified in the Rules of Procedure will not be dealt with by the Board.
5. A complaint relating to a possible punishable offence, not being a serious offence involving abuse of office, will not be dealt with by the Board. After consultation with the complainant, the complaint may be forwarded to the Public Prosecutions Service.

Section 7 Complaint handling

1. The Board shall inform an MP when a complaint about him/her is dealt with.
2. The Board shall request information from the MP. The MP shall comply with this request.
3. After assessing the information received and other facts and circumstances it may deem important, the Board may decide not to investigate the complaint further. The MP and the complainant shall be informed of this. The Board may also make a recommendation to the MP.

Section 8 Investigation of complaint

1. After receiving the information referred to in section 7, paragraph 2, and after assessing the other facts and circumstances it deems important, the Board may decide to institute an investigation into the complaint.

2. If the complaint concerns an issue on which the Adviser has previously issued advice to the MP in question, which advice has been followed, the Board must substantiate its decision if it is to investigate the complaint.
3. If the Board decides to institute an investigation, the Adviser shall not issue further advice to the MP in question on the same matter.
4. The MP shall comply with any requests for cooperation in the investigation that he/she receives from the Board.
5. The Board shall draw up a draft report of its findings and shall afford the MP the opportunity to be heard within four weeks. The MP's position shall be included in the report. The Board can make a recommendation to the MP in the report.
6. If the Board establishes a violation of the Code of Conduct, a recommendation on sanctions can be made in the report.

Section 9 Report

1. The Board shall send the report to the Presidium and to the MP in question. When sending the report to these parties, the Board may determine that, for compelling reasons, parts thereof will remain confidential.
2. No later than four weeks after being sent it by the Board, the Presidium shall make the report public to the extent that the Board has determined that it may be made public.

Chapter 4. Appeal

Section 10 Possibility of appeal

1. The MP to which the report referred to in section 9 relates may lodge an appeal with the House within two weeks of receiving the report. In that event the Presidium shall not make the report public.
2. Upon nomination by the Presidium, the House shall institute a temporary board of appeal. Section 2 shall apply *mutatis mutandis*.
3. The task of the temporary board of appeal is to assess, with due consideration for the report and the relevant facts and circumstances, whether the Board was able to reach its opinion in a reasonable manner.
4. The temporary board of appeal shall send its written opinion to the Presidium and to the MP in question. Once it has sent its opinion the temporary board shall be dissolved.
5. The Presidium shall make the opinion public together with the report without delay.

Chapter 5. Sanctioning

Section 11 Possible sanctions

The following sanctions may be imposed in the event of a violation of the Code of Conduct:

- a. an instruction, which is understood to mean a measure that obliges an MP to rectify a violation of the Code of Conduct;
- b. a reprimand, which is understood to mean a public letter from the Presidium to an MP in which the conduct that resulted in a violation is condemned;
- c. a suspension, which is understood to mean exclusion of an MP for a period of up to one month from participation in plenary sittings (with the exception of votes), committee meetings or other activities held by or on behalf of the House.

Section 12 Proposal of sanctioning by the House

If a report as referred to in section 9 identifies a violation of the Code of Conduct and recommends a sanction as referred to in section 11, the Presidium, simultaneously with the publication of the report, shall send a letter to the House containing a proposal regarding the imposition of the sanction recommended by the Board.

Section 13 Decision by the House

The House shall decide on the proposal by the Presidium, as referred to in section 12, without deliberation. If the House decides to impose a sanction, this shall be implemented the day after the decision by the House.

Section 14 No appeal

No appeal to the House shall lie against decisions taken pursuant to section 13.

Section 15 Review

The Presidium may make proposals to the House for review of the Code of Conduct and the notes thereto. The Presidium may also make proposals for review of these regulations. The Presidium shall refer to the annual reports of the Adviser and the Board in this regard.

Section 16 Application of the regulations

These regulations shall only apply to violations of the Code of Conduct that take place after the entry into force of these regulations.

Section 17 Evaluation

Two years after the entry into force of these regulations, the House shall draw up a report about the effectiveness and results of these regulations in practice.

Section 18 Entry into force

These regulations enter into force on 1 April 2021.

Notes

General

In the proposed monitoring and enforcement system, dealing with complaints regarding violations of the Code of Conduct for Members of the House of Representatives of the States-General is assigned to an independent board of inquiry on integrity.

The Board shall investigate complaints about sitting MPs. Anyone may lodge a complaint. If the Board is of the opinion that the code of conduct has been violated in a concrete situation, three kinds of sanctions may be proposed to the House: an instruction, a reprimand or suspension. The House shall decide on the imposition of a sanction. If the investigation of a complaint does not establish a violation, or if a sanction is not considered to be opportune, the Board may issue a recommendation to the MP. Complaints that are considered patently unfounded, that refer to violations for which the Rules of Procedure have specific monitoring rules, or that relate to a punishable offence, shall not be dealt with.

Moreover, the proposed regulations include provisions for properly regulating the possible concurrence of advice by the independent integrity adviser and monitoring by the envisioned board. One of the provisions, for example, is that if the MP follows the advice of the Adviser, a decision by the Board to investigate the same issue will require specific reasoning. As the role of the Adviser primarily involves concentrating on providing Members of Parliament with advice regarding the interpretation and application of the integrity rules in advance, the Adviser will not provide advice regarding the issue to the MP in question once a complaint regarding the same issue has resulted in an investigation by the Board.

Once the regulations have been adopted by the House, explicit reference to them in the Rules of Procedure may be considered, in order to guarantee consistency.

Explanatory notes on individual sections

Section 1

The regulations are centred around the board of inquiry on integrity and the Code of Conduct for Members of the House of Representatives of the States-General. In order to improve the readability of the regulations, these terms are defined briefly. The independent integrity adviser is also defined briefly¹.

Section 2

For dealing with complaints there is a board of inquiry, the members of which are appointed by the House upon nomination by the Presidium. The members of the Board are individuals with authority and expertise. It is recommended that the appointment and reappointment cycle be arranged such as to avoid the term of appointment of all three members running out in the same year. This will safeguard the knowledge and expertise of the Board. The regulations explicitly provide for the independence of the Board. It arises from this that sitting MPs cannot serve on the Board. Although the position of board member is unsalaried, agreements regarding legal status may be reached upon the appointment of the board members as to, for example, the reimbursement of expenses they will receive. On appointment it must also be laid down that the board member is indemnified from liability.

Section 3

This section describes the task of the Board.

Section 4

The Presidium will receive an annual report from the Board every year. This may cover the published reports, as mentioned in section 9, from the preceding year and explain the work that was done. Recommendations regarding the Code of Conduct can also be made. If the board has identified possible improvements to the Code of Conduct it can indicate this in the annual report by means of recommendations. The purpose of including the reports and any recommendations is that these may also serve as guidelines for the conduct of MPs. Moreover, this inclusion might also have a normative effect; after all, the reports and recommendations contribute to an unambiguous and consistent interpretation and the further development of the Code of Conduct. In respect of certain of the existing integrity rules, more particularly the rules that are not yet subject to monitoring, further specification might be necessary in practice since, for example, they include open norms. This development will as such take place over several years, so that in time a steadily clearer and more consistent framework will emerge.

¹ With regard to this post, see the letter of the Presidium dated 28 November 2019 regarding the appointment of the independent integrity adviser.

Section 5

The first paragraph describes archiving. The second paragraph explains that the Board will not make information public itself. The Presidium, and not the Board, shall make the reports and annual reports public.

Section 6

Anyone may make a complaint to the Board. However, the second paragraph specifies the requirements a complaint must comply with, and it falls within the competence of the Board to decide whether a complaint meets the requirements. The third paragraph of this section specifies that the Board may decide not to deal with a complaint if it does not meet the requirements given in the second paragraph. If, for example, a complaint does not contain any facts regarding the complaint, or if the complaint only refers to the political actions of an MP or the complaint does not refer to a sitting MP (for example, it refers to a minister), the Board may decide not to deal with the complaint. Moreover, the Board is competent to decide not to deal with a complaint if it is patently unfounded. This might be the case, for example, in respect of complaints that are substantively incomprehensible or inconsistent. Finally, the Board may decide not to deal with complaints if the same complaint regarding the same MP is received multiple times or in large numbers. The complainant shall be informed of this. It is recommended that the MP in question be informed as far as possible regarding complaints not dealt with, for example to prevent an MP from later being confronted with the Board's decision in public. However, there may also be situations in which it might be appropriate not to inform the MP. An example of this might be if the complainant is a staff member of the parliamentary group in question and is therefore in a vulnerable position. For this reason, the Board must treat complaints prudently.

The fourth paragraph specifies that complaints about possible violations for which the Rules of Procedure already provide a different form of monitoring are not dealt with. Examples of these might be complaints about procedure during plenary sittings or committee meetings. Sections 58 to 62 of the Rules of Procedure apply here.

The fifth paragraph specifies that complaints relating to punishable offences, not being serious offences involving abuse of office², may not be dealt with by the Board. Examples are punishable offences against persons, such as acts of violence, as these offences are subject to criminal law. The Board might, however, consult with the complainant about forwarding the complaint to the public prosecution service. If possible, the Board may help the complainant take the step of reporting the punishable offence him/herself.

² There is a specific procedure for serious offences involving abuse of office in respect of MPs. The explanatory note to section 9 goes into this in more detail.

Section 7

If the Board decides to handle a complaint, the MP in question is informed of this as soon as possible. The Board is then obliged to request information with regard to the complaint from the MP. It would be appropriate to request any written advice provided by the Adviser regarding the matter in question as well. The MP is obliged to comply with the request. In this manner, he/she must also provide the advice to the Board. It should be noted that confidential advice will not be made public; existing confidentiality must still be guaranteed. Given the fact that there is no ongoing investigation into the complaint at this stage, the request for information will in practice be brief.

If it is clear from the information provided by the MP that the complaint does not merit further investigation, the complaint will be regarded as settled. In this regard, the Board might also take into consideration to what extent it considers the complaint sufficiently substantial to justify an investigation and resulting public report. The complainant and the MP will be informed about this. The Board might still make a recommendation to the MP, for example regarding the manner in which a registration obligation might best be met.

Section 8

The Board may decide to investigate a complaint. The duration of an investigation is determined in part by the nature and complexity of the alleged violation, but an investigation may be expected to be completed within a reasonable period.

If the complaint relates to an issue about which the Adviser has previously issued advice, and the MP has followed this advice, the Board must reason its decision if it is to investigate the complaint. This may be the case, for example, if supplementary facts or circumstances have become known that could have led to a different advice, or when, for other compelling reasons, further investigation is considered important. This provision serves to protect the MP. It would be undesirable for an MP who has appealed to the Adviser and has followed the advice received from the Adviser to be subjected to further investigation by the Board without there being compelling reasons for this beforehand. After all, the Adviser's advice carries a certain authority. Where applicable, the Board will decide whether an investigation is necessary. In order to come to a decision, the Board may contact the Adviser.

Once the Board decides to launch an investigation, the Adviser will not issue any further advice on the same matter. This will prevent a concurrence of the activities of the Adviser and the Board. As the role of the Adviser primarily involves concentrating on providing MPs with advice regarding the interpretation and application of the integrity rules in advance, it is only logical that the Adviser will cease to advise the MP in question once a complaint regarding the same issue leads to an investigation by the Board.

At this stage too, the MP is obliged to comply with requests for cooperation in the investigation from the Board and is also given the opportunity to be heard regarding the draft report.

The views of the MP will be incorporated in the report. This gives the MP the guarantee that everything that is relevant may be presented in the matter in question.

The draft report will state the results of the investigation. It is up to the Board to decide on the framing of the results.

Section 9

The report will be sent to the Presidium and to the MP in question.

As there might be consequences for the MP in question, the report will not also be sent directly to the complainant. After all, the Presidium is obliged to make the report public no later than four weeks after its dispatch, enabling the complainant to take note of the report at that time. However, the Board may determine that parts of the report remain confidential for compelling reasons. The Board can, for example, determine that in the interest of privacy certain information shall be included in a confidential annex. The Presidium can then make public only those parts of the report that are not confidential.

If the Board considers a sanction appropriate, it can recommend this in its report. The Board may also conclude that a sanction is not opportune, or that only a recommendation be given to the MP. This might be the case, for example, if the Board is of the opinion that the violation is slight in nature or if the integrity rule in question is not clear enough and the MP cannot in all reasonableness be accused of the perceived violation. In this regard it may be taken into consideration that making the report public may in itself have certain consequences.

If the Board suspects that a serious offence involving abuse of office may have been committed, then in principle, the report cannot establish a violation of the code of conduct. Serious offences involving abuse of office can be addressed under the Ministerial Responsibility Act (*Wet ministeriële verantwoordelijkheid en ambtsdelicten leden Staten-Generaal, ministers en staatssecretarissen*), after all. It is to be expected that the Board will, in such events, not establish any violation in the report, but indicate that there is the suspicion of a serious offence involving abuse of power. In that event, it makes sense that the activation of the appropriate procedure will be supported. No further regulations are required for this eventuality.

Section 10

Any MP who disagrees with the report may lodge an appeal with the House within two weeks of receiving the report. The House will then establish a temporary board of appeal, upon nomination by the Presidium. Section 2 will apply *mutatis mutandis*, which means that there will be three members, one of whom will act as chair, and that only expenses will be reimbursed. The remit of the temporary board of appeal entails inspecting the relevant facts and circumstances and whatever has been included in the report regarding said facts and circumstances, and then assessing whether the outcomes arrived at by the Board in the report were reasonably reached. It is not the intention that the entire investigation be done anew at this stage. The opinion of the

temporary board will be sent to the Presidium, and the Presidium will then make the report and opinion public without delay. For completeness' sake, it has been determined that the sending of the opinion will serve to dissolve the temporary board. If the report included recommendation of a sanction, the Presidium must also include a sanction proposal in accordance with section 12.

Section 11

This section sets out the sanctions that may be imposed for violation of the Code of Conduct. An instruction might for example relate to the registration obligation in the Rules of Procedure. With regard to reprimands, it may be noted that these may be seen as a warning to the MP. After all, the next possible sanction, suspension, is the most severe form. At present, this sanction is only possible in the event of breach of secrecy or confidentiality, as set out in sections 145 and 147 of the Rules of Procedure. In this proposal, suspension will also become possible for other violations of the Code of Conduct. It should be noted that the suspension is flexibly framed, so that the measure can be tailored and be proportionate to the nature and severity of the violation. For example, an MP who has repeatedly failed to report trips abroad that are subject to registration may be suspended from participation in an upcoming working visit abroad of a committee, or from membership of a parliamentary delegation to interparliamentary conferences or other international fora. Even in this more flexible form, suspension naturally remains a heavy remedy, which must not be imposed rashly. Suspension might conceivably be considered if the violation is of a very severe nature or if a member repeatedly commits certain violations for which lighter sanctions such as a reprimand have been imposed before. It is further pointed out that suspension from participation in a plenary sitting will not apply to the vote. This means that a member who has been suspended may take part in votes. Excluding a member from participation in votes would be incompatible with the constitutional position of MPs.

Section 12

When publishing the report, which can be seen as the sending of the report to the House, the Presidium will also add a letter including the proposal for a sanction if the Board has established a violation of the code of conduct and has recommended this sanction. This confirms that a sanction as referred to in section 10 may only be imposed after a prior investigation by the Board. It may, after all, be expected of the House that the sanctioning of an individual MP be prepared and substantiated with care. Moreover, an investigation by the Board guarantees that the MP in question has had the opportunity to respond to the identified facts and circumstances.

Section 13

The House will decide on the actual imposition of a sanction without deliberation. Decision without deliberation is already the case in respect of proposals for suspension pursuant to section 145 of the Rules of Procedure. If the House decides to impose a sanction, the sanctioning will be implemented the following day.

Section 14

In accordance with section 62 of the Rules of Procedure, appeal to the House will not be possible with regard to decisions taken pursuant to these regulations.

Section 15

The regulations will enter into force once they are adopted by the House, unless the House decides differently.

The Code of Conduct is intended to be a living document and is based on the integrity rules applicable in the House. As the meaning of the Code of Conduct and the underlying rules become more closely defined in practice, it might become necessary to adapt the Code of Conduct or the notes thereto. This also applies to the system of monitoring and enforcement laid down in these regulations. The Presidium may make proposals for review to the House from time to time. To promote the consistency of the interpretation and application of the Code of Conduct and the underlying rules, the Presidium will expressly refer to the annual reports of the Adviser and of the Board in its proposals.

In view of the renewal proposed by these regulations, it is recommended that an overall evaluation of the functioning and effectiveness of the Code of Conduct and the system of advice, monitoring and enforcement be held six years after their entry into force. Partial evaluations might also take place in the interim if this is considered desirable.

Section 16

In view of the importance of legal certainty for MPs, this section explicitly specifies that the regulations only apply to violations of the Code of Conduct that occur after the entry into force of these regulations.

Speaker of the House of Representatives,
Bergkamp