

The main features of an Ethics Framework for the Public sector



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Introduction

One of the major policy themes of the governments of the European member states focuses on increased attention to society's shared standards and values. In this respect it will be self-evident that the authorities themselves can set an important example by ensuring for an appropriate operation of the administrative system, and for a correct approach to the public. Within this context it is important to give consideration to the vulnerability of the public administration. An honest public administration is a necessary condition for the appropriate performance of its duties; the public must have confidence in the authorities' discharge of their duties, in accordance with the rule of law and the democratic frameworks, in an open and impartial manner. This is of essential importance to a high-quality, authoritative and reliable public administration. Damage to the quality and integrity of the administrations' operations has a great impact on its authority – and, consequently, on the effectiveness of the administrations' actions. For this reason the reliability of the public administration can be guaranteed only when the guiding principles that govern working for the administration are both explicit and known to all those involved. These guiding principles constitute the essence of the appropriate discharge of public-official duties – and their importance has only increased during the past few years. The expansion of the discretionary powers of administrative bodies, the changes in administrative relations and the emphasis placed on interactive policy-making have all created more scope for civil servants' individual responsibilities. As such, this is a favourable development; however it also results in the need for civil servants to be fully aware of the requirements imposed on the manner in which they discharge their duties.

- *A common understanding about integrity*

However, in practice requirements are not always defined in explicit terms. Limits of ethical conduct and value judgements pertaining to integrity are relative; what one person perceives as undeniably condemnable another can perceive as either acceptable, or at least open to discussion. In addition, the integrity of an organization is not infrequently assessed in terms of the incidence of fraud and corruption within that organization. However, 'integrity' encompasses much more than the absence of fraud and corruption, and conduct contrary to the integrity principle within an administrative organization often extends to other forms of undesirable conduct that can also exert a great influence on the public's perception of that organization. Integrity is a disposition which encompasses incorruptibility, reliability, impartiality, objectivity, and justice. The meaning assigned to 'integrity' is directly related to standards and values generally accepted within society, and with democratic constitutional principles. Within this context integrity involves decisions which are taken in an open and transparent manner – and the existence of accountability for those decisions.

A key issue in the development of an integrity policy is the achievement of an appropriate equilibrium between a top down (measures from management) and bottom-up (taking into account initiatives opinions of workers) approach. An ideal integrity policy would focus on the prevention of damage to integrity in a manner that offers scope for the individual responsibilities and requires civil servants to arrive at carefully-considered decisions on specific integrity issues. For this reason the integrity policy places great emphasis on cultural issues. The ultimate objective is to arrive at an open culture that offers scope for accountability as to what is and is not considered to be acceptable, although on occasion tighter regulations and more uniformity will be required for specific issues.

- *Developing codes of conduct: a suggested approach to implementing an integrity policy*

Investigations have been carried out to assess the extent that legislation would (or could) serve as a tool for an integrity policy. The investigation revealed that the nature and substance of many of the principles for public-official ethics are such that it would be preferable to include them in a code of ethics rather than lay down regulations in procedural law. Many national authorities and international organizations have already introduced internal codes of conduct that devote attention to the principles of public-official ethics and integrity. A code of conduct is an important tool and form of support in fostering an appropriate culture within administrative organizations. Such code needs to constitute an active and 'living' tool that is fully integrated in a necessarily open, transparent, and honest organizational culture. The code lays down standards and values of importance to the discharge of public-official duties in administrative organizations.

The development of a code of conduct involves a number of choices, the nature of which depends on the nature of the organization, its size, the organizational culture, and the composition of the workforce. Theoretically speaking, it would be possible to implement a code of conduct using a top-down approach in which the public-service employer lays down the rules of conduct that must be observed by their civil servants.

However a code of conduct is intended to offer a framework for the consideration of ethical issues, and to provide for the development of the ethical awareness of those involved – an objective for which a bottom-up approach is more suitable. This approach is based on the essential importance of the participation of all the organization's civil servants to the achievement of the objective, namely commitment. In effect it is a process-oriented approach in which the discussions and consultations foster civil servants' ethical awareness, and then raise that awareness to a higher level.

A code of conduct which provides a more abstract framework for the consideration of ethical issues will require civil servants confronted with an ethical dilemma to use the code's framework in arriving at a decision on the appropriate action they should take. The code lays down very few specific solutions or rules. The more abstract nature of the code complicates the development of a system of sanctions; moreover its abstract form may be perceived as vague, and it might not always be clear in advance which kind of conduct is required in a specific situation.

A suitable code of conduct will be comprised of a prudent combination of a framework for the consideration of ethical issues, specific rules, and examples of situations confronted in practice. Civil servants will need to realize that it is impossible to lay down comprehensive rules for moral actions, and they will repeatedly need to seek recourse to their ethical awareness. An appropriate discharge of public-official duties is a question of an attitude; it is a moral disposition. A code of conduct is a means of initiating a discussion about standards and values, and a means of drawing continual attention to the issue. Consequently the complete integration of a code of conduct is possible only with permanent consultations between holders of political office, supervisors, and civil servants which extend to issues such as the organization of training courses and the discussion of moral dilemmas encountered at the workplace. An appropriate code of conduct will pivot on the responsibilities of individual civil servants. Moreover laying down the most important moral principles will also offer society the necessary clarity; the public, social organizations and companies will be aware of the ethical framework within which civil servants perform their duties – and what they may, or may not

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expect from them. In so doing a code of conduct will assist civil servants to avoid actions which are incompatible with an appropriate discharge of their duties.

- The Main Features of an Ethics Framework

The annexed document may reflect the basic common values and standards which member states consider important for the proper functioning of public service and to help identify common elements in this sense in the European Member States. It may inspire the discussion to be pursued on the national level and serve as a 'toolkit' / general guideline for the development of a code of conduct.

The document is comprised of four sections. Section I identifies a number of general core values, both characteristic of examples taken from member states and serve as models of good practice for the central governments of the European member states. These are supplemented in Section II with the formulation of more specific standards of conduct for a number of particular issues. These should be regarded as derivatives or more detailed specifications of the general core values; they relate to regulations for a number of issues that each member state may wish to reference. For implementing, promoting and stimulating the integrity values and standards, Section III contains a number of actions adopted by member states to safeguard integrity within their organization. Section IV finally contains examples of methods and procedures to report integrity related offences which may have been committed within the organization.

In practice it is impossible for Governments to formulate specific regulations which cover every conceivable situation. For this reason it is necessary to be able to seek recourse to a number of generally-formulated core values in situations – such as complex and dynamic situations – in which there are no specific regulations and no relevant experience, and in which the appropriate course of action to be taken is not completely clear. The core values offer civil servants a framework for the consideration of ethical issues which they can use in the assessment of the alternatives that are open to them in arriving at an ethical approach to a specific situation. Moreover the necessity of formulating outline testing frameworks is further increased by the differences between the individual member states – differences that render it impossible, and on occasion undesirable, to stipulate detailed regulations for an excessive number of issues.

The Code and the associated provisions are intended to serve as an initial impetus; the core values listed in Section I need to be worked out in more detail.

Section I: General core values

Although there are some major differences between the various member states it is, nevertheless, possible to identify a number of basic or core values that should be applicable to all EU governments. The following list of six (partly overlapping) core values is intended to serve as an impetus for a more detailed formulation of these values:

- *Principle of the rule of law*

The public administration's actions should be legitimized by national and EU law. Consequently the constitution and the associated legislation and regulations should serve as the framework or the reference for the public administration's actions. Within this context consideration can be given to the principle of legality, and to the general principles of proper administration.

- *Impartiality / objectivity*

Since civil servants represent the general interest the public must have confidence in the administration's lack of prejudice and impartiality – or, in other words, that the administration will refrain from favouring some more than others. Civil servants must form an opinion solely on objective grounds, and in forming their opinions they may not be impeded by improper or personal motives (such as political beliefs, social or other perceptions or (financial) conflicts of interest). Additional factors which play a role are equitableness, neutrality, and independence.

- *Reliability / transparency*

Reliability refers to the public's confidence that the administration – and, consequently, civil servants – will honour their agreements and fulfil their promises. This is of importance to the organization's credibility; the public's confidence depends entirely on the reliability of individual civil servants. Many of a civil servants' actions, irrespective of where and when those actions take place, exert an influence on other people's perceptions of civil servants – and, consequently, on the confidence that can be placed in the organization. In this respect it is important mentioning that transparency gives citizens insight in the machinery of government and hereby contributes to the confidence and reliability of the public service. The role of the independent media as an 'bureaucratic watchdog' is crucial.

- *Duty of care*

In addition to the care needed in decision-making, for example in taking account of all the relevant interests and the appropriate use of the assigned competences in arriving at a decision, this core value is also manifested in the care taken in the use of the resources made available to the service. In addition, care is also required in the deployment of the financial resources – care in the form of economy, effectiveness, and efficiency (value for money).

- *Courtesy, and willingness to help in a respectful manner*

The actions of civil servants should be focused on the interests of the organization and the public who are dependent on that organization. Civil servants should treat citizens – and each other – with respect, and they should give due heed to the standpoints, perceptions and contributions of others. This core value also extends to factors such as customer-orientation, helpfulness, decency, collaboration, refraining from discrimination, etc.

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- *Professionalism/ accountability*

Professionalism does not conclude the list of core values on the grounds that it is considered the least important value, but because it encompasses the aforementioned core values and constitutes a logical transition to Section II of the Code. Professionalism entails conduct appropriate to a civil servant. It also implies that civil servants not only need to perform their duties in an appropriate manner (in a “technical sense”); they also need to act with integrity in an ethical sense. This in turn encompasses the ability to act (simultaneously) in accordance with the aforementioned core values and, in addition, to autonomously act in accordance with the spirit of the law in situations not covered by the (following) specific rules. Civil servants will be held accountable for this.

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Section II: Specific standards of conduct

A great share of the member states have already determined most of the specific standards mentioned underneath. For those countries who didn't cover (some of) these topics it may be recommended to do so. These specific standards of conduct for a number of particular issues should be regarded as derivatives or more detailed specifications of the general core values mentioned in the previous section. They relate to rules covering a number of issues that each member state will almost certainly wish to implement.

- *Handling information / confidentiality / freedom of speech*

By virtue of their duties civil servants are frequently aware of information about issues, facts and circumstances that they know – or should realize – needs to be treated as confidential. Many national governments have introduced regulations and/or legislation which include provisions that either prohibit the disclosure of information of this nature by civil servants, or at least impose an obligation on them to treat the information made available to them in the performance of their duties with due care. However it is important to remember that civil servants are *also* members of the public, as a result of which they also enjoy all the concomitant rights guaranteed by the constitution. It should be realized that the fact that civil servants have entered into government employment certainly does not imply that they have relinquished their fundamental rights. For example, freedom of speech is a fundamental right in all EU member states – and a right which extends to all members of the public *and* civil servants. However, this is without prejudice to the need for civil servants to pay due heed to certain limits in exercising their fundamental rights, or to their accountability for contraventions of those limits. For example, in exercising their right to freedom of speech civil servants may not give cause to a situation in which the appropriate discharge of their duties or the appropriate operation of the administrative service – to the extent that this depends on the discharge of their duties – is no longer reasonably assured. Moreover civil servants are under the obligation to treat secret information they receive in connection with their duties as confidential. Within this context particular care is also required in contacts with the press and parliament.

- *Acceptance of gifts or favours*

It has become a generally-accepted custom for private individuals to offer each other a present or gift in certain situations. This custom is also common in the business community. The giver may wish to thank a civil servant, improve the relationship, influence the official – or possibly require something in exchange. Consequently accepting a gift may put a civil servant's integrity at risk. For this reason gifts may never simply be accepted – and, on occasion, may not be accepted at all. It is essential that civil servants can always guarantee their independence. Accepting a gift is permissible solely when this independence is not at risk.

A number of (procedural) principles should be observed so as to avoid civil servants from becoming dependent on others:

- Civil servants who are offered a gift or favour ought to notify their supervisor of the fact;
- The supervisor gives consideration to the offer on the basis of a number of criteria, in particular with respect to the context within which the offer is made and the value of the gift or favour. The following questions need to be addressed:
 - Why is the offer being made?

- At what point is the offer being made (for example, *before* or *after* the award of a contract)?
- What is the value of the gift or favour? A gift or favour which exceeds a certain value may not be accepted,¹ and gifts may never be received at the home address. Where relevant suppliers receive a letter drawing their attention to these regulations.

- *Avoiding conflicts of interest*

Conflicts of interest pose a major hazard to an honest public administration. Since civil servants represent the general interest the public must have confidence in the administration's lack of prejudice and impartiality – or, in other words, that the administration will refrain from favouring some more than others. Civil servants must form an opinion solely on objective grounds, and in forming their opinions they may not be impeded by improper or personal motives. Consequently civil servants may not have a personal interest in or be a party to decisions they take in the performance of their duties. Moreover they must avoid every semblance of a conflict of interests. A variety of tools could be used to avoid conflicts of interest. The most important tools are:

- Regulations governing civil servants' outside activities, where relevant. Regulations of this nature should include the following provisions:
 - an obligation to declare (all) outside activities;
 - the management's consideration of the permissibility of these outside activities;
 - the prohibition of outside activities that pose risks to an appropriate performance of their duties or an appropriate operation of the public service;
 - records are kept of any outside activities that are permitted;
 - the disclosure of the management's outside activities.
- Regulations governing civil servants' financial interests. Regulations of this nature should include the following provisions:
 - an obligation to declare the civil servant's financial interests
 - the management's consideration of the declared financial interests in terms of potential risks to an appropriate performance of the civil servant's duties or an appropriate operation of the public service;
 - the prohibition of financial interests that pose a risk to an appropriate performance of their duties or an appropriate operation of the public service;
 - records are kept of any financial interests that do not pose a risk;
 - the disclosure of the management's financial interests.

Regulations to counter what is referred to as 'revolving door employment'.²

The term 'revolving door employment' is used to refer to situations in which a former civil servant is engaged by the official's earlier ministry immediately or shortly after resigning from employment and then continues to work for the ministry (and carry out more or less the same duties), for example in self-employment or via an external consultancy. This conduct readily gives rise to an impression of favouritism, unfair

¹ Each member state has the authority to establish an adequate standard according to the applicable national regulations.

² GRECO uses the term 'pantouflage' in this respect.

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competition or the semblance of a conflict of interest. Consequently this construction poses a hazard to the integrity of the public administration.

To prevent conduct of this nature public administrations should introduce regulations which prohibit persons resigning from public service from being engaged, in any manner whatsoever, by the relevant ministry for the provision of services as an external contractor during the period of two years after their resignation. In addition, during this same period they may not be involved in contracted work carried out by an agency they join after leaving public service. Exceptions to this rule would be permitted solely in the event that agreements have been reached with civil servants within the scope of the termination of their employment which stipulate that they will continue to carry out work for the ministry for the specific and agreed period of time required to enable them to find new employment.

- *Use of public resources, equipment and property*

Civil servants make use of a wide variety of resources during the performance of their duties, including time and money but also company equipment such as (mobile) phones, computers, printers, faxes, and photocopiers. Concerning the time factor it's important to stress that employees should work in an efficient way and don't misuse office-time for private gain, as so called 'cuckoo workers' do. Concerning the use of office equipment it's important to stress that it is made available on the principle that it will be used solely for the civil servants' work. Some of this equipment is also used away from their place of work; for example, civil servants may take a mobile telephone or a laptop with them in the field, or to their homes. However, any equipment they take home may be used solely for their work. A restricted amount of use for private purposes is nevertheless permitted, provided that this does not degenerate into misuse. It would be advisable for public administrations to draw up 'house rules' for the use of public property and equipment.

- *Use of e-mail, intranet and Internet facilities*

Civil servants can make use of e-mail, intranet and Internet facilities during their work; these e-mail, intranet and Internet systems are made available to them in the performance of their duties, and consequently they are to be used for tasks arising from those duties. Nevertheless limited use of these systems for private purposes is permitted – provided that this does not disrupt the everyday work, is not detrimental to the performance of their duties, and that the systems are not used for prohibited purposes. Employees are not permitted to use e-mail systems to transmit messages with a pornographic, racist, discriminatory, insulting or offensive content, or to use them for (sexual) harassment. In addition, e-mails that (could) incite hate and/or violence are also forbidden.

Employees are not permitted to visit Internet sites with pornographic, racist, discriminatory, insulting or offensive content, or to download and/or distribute material of such a nature from those sites. Records may be kept of e-mail and Internet use. And the use of fire-walls may be considered preventing this.

- *Purchasing and contracting*

The stakes are often very high for suppliers – and then it is possible that they employ more than just the quality of their product in an endeavour to persuade a civil servant to make use of their services. Decisions to purchase goods and services should be taken in independence. Civil servants have a duty to avoid purchasing and contracting decisions from being influenced by promises of gifts, etc.

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- Conflicts of interest

Conflicts of interest should be avoided by involving a number of persons in

purchasing decision-making. Civil servants who are acquainted with the supplier outside work should always leave the decision-making to others. In general, public administrations have introduced rules which separate responsibilities for budget management.

In addition, civil servants are not permitted to participate in contracting and supplying goods and services for the public administration.

- Financial threshold for the mandatory European tendering procedure

Purchases or contracts with an estimated purchase price of € 154,014 and above governed by the European tendering regulations as laid down in the relevant EU directives. Public administrations may employ their own tendering regulations for amounts below this threshold.

Section III: Implementing, promoting and stimulating integrity

For implementing, promoting and stimulating the integrity values and standards, this section contains a number of actions to be taken safeguarding integrity within the organization. The mentioned topics are merely named and briefly outlined, and should be given further attention to by the HRM-working group.

- *Communication*

If an organization doesn't pay enough attention to integrity, the risk of integrity breaches increase. Without communication employees can get to think that integrity isn't considered as very important. Without clear, specific and well communicated values, standards and regulations employees don't know what behaviour is expected from them and how integrity is maintained within the organization. Attention on integrity should be paid on a regular basis, through various means of communication.

- *Training*

Apart from communication specific education and training modules should be developed and offered within the organization. Especially managers require such training. Handling ethical questions and tackling moral dilemmas is extremely difficult. That makes training a necessity.

- *Leadership*

As mentioned above is leadership a crucial element of implementing and maintaining ethical conduct in the workplace. The role of the manager is twofold. First of all they have to be a *moral person* who does the right thing. The manager sets the example. That means that manager's behaviour will be looked at, followed and copied. But it is not enough just doing the right thing themselves. The managers also has to be a *moral leader*; that means actively spreading the message, paying attention to the topic, sanctioning bad behaviour and rewarding good behaviour. Furthermore it is important to emphasize the evolving nature of the managers role as they move up the hierarchy to more responsible and accountable positions.

Section IV: Methods and procedures to report - integrity related - offences

This final section contains methods and procedures to report - integrity related - offences which may have been committed within the organization and stresses the importance of sanctioning misconduct.

- *Confidential integrity counsellor (Cic)*

This Toolkit contains a number of guidelines civil servants can use when they encounter situations in which integrity plays a role. However, situations may always occur that are not (exhaustively) covered by these regulations. In such situations it is advisable for civil servants to consult with a colleague or supervisor – or, in instances in which this is considered to be less desirable, with a confidential integrity counsellor. The counsellor can discuss the situation with them, in confidentiality, and can advise them as to how to approach an integrity issue.³ In addition, civil servants can also be confronted with a situation in which they observe others in the organization breaching the rules or standards. When this occurs, the question is then: What should they do? In some instances they are under the obligation to report the incident. In situations in which an offence is committed by a civil servant the civil servant observing the offence is under the obligation to report it to the public prosecutor; in the event of a breach of integrity they can report the incident to their manager (please refer to the following Section). In all these situations civil servants can contact a confidential integrity counsellor for advice. Regarding the position of the Cic within the organization, from an approachability point of view it's advisable appointing someone who doesn't function either too high or low in the hierarchy, and it may be considered also appointing an additional and external Cic as well.

- *Reporting procedure integrity breaches*

Pursuant to the Criminal Code/Code of Criminal procedure civil servants and public bodies of the majority of the EU member states are under the obligation to report any offences they discover which have been committed by civil servants, inclusive of the corruption of civil servants, to the public prosecutor.

It is possible that during the performance of their duties civil servants come across other transgressions which, albeit not offences committed by civil servants, do constitute a breach of integrity standards or rules – and which can, on occasion, cause major damage (inclusive of damage to the reputation) to the public service or administration. Pursuant to a professional and appropriate discharge of their public-official duties a civil servant will not ignore a breach of integrity, but will instead bring it to the attention of the authorities. In view of this it is appropriate for a proper administration to implement measures augmenting the statutory obligation to report offences committed by civil servants to the judicial authorities. This obligation should be supplemented by a scheme that enables civil servants to report internal breaches of integrity to their superiors without detriment to their position. In doing so an administrative organization is offered an opportunity to carry out in-house investigations of breaches of integrity, impose sanctions on the perpetrator(s) in the event that those breaches are proven, and carry out a critical review of internal administrative procedures in an endeavour to avoid a recurrence of a similar abuse in the future.

³ *Guidance document Confidential Integrity Counsellor, (CiC) developed by the Ministry of the Interior and Kingdom Relations of the Netherlands, May 2003. The document can be downloaded from the Dutch integrity website: www.Integriteitoverheid.nl under the subsection: Handreikingen en modellen.*

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A scheme of this nature could encompass the following:

- a definition of the forms of conduct that are (must be) reported;
- whether reporting is mandatory or optional;
- the authority to whom, in the first instance, the misconduct is to be reported (internal report);
- the authority to whom the conduct is to be reported in the event that the officer who should be contacted in the first instance is disqualified (because, for example, the officer is a party to the conspiracy);
- the appointment of a system of confidential integrity counsellors;
- an obligation for the competent authority within the organization to investigate the allegation and to report the results from the investigation to the informant within a reasonable period of time;
- an opportunity for the civil servant to report the breach to an external and independent agency (ethic committee) in the event that the authorities process or assess the internal report in an incorrect manner according to the informant;
- this agency / committee investigates the report and advises the responsible administrative body;
- legal protection for civil servants who report a breach in good faith and in accordance with the procedure, and for confidential counsellors who perform their duties in accordance with the regulations.

- *Sanctions*

Civil servants who breach the regulations laid down in the code of conduct or neglect the need to maintain their integrity in some other manner are deemed to have failed in their duties. In certain circumstances a civil servant's conduct outside working hours can also be deemed to constitute failure in their duties; this refers to conduct which has caused damage to the interests of the public service or has rendered their integrity an issue with respect to the performance of their duties. This can result in disciplinary measures.

In situations in which there are suspicions that an offence has been committed by a civil servant, for example the acceptance of a bribe, the incident will also be reported to the Public Prosecutions Department. In such situations it is possible that the disciplinary measures will be accompanied by a court conviction.