



PARIS

**SERVICE DE LA GESTION PUBLIQUE  
PUBLIC MANAGEMENT SERVICE  
COMITE DE LA GESTION PUBLIQUE  
PUBLIC MANAGEMENT COMMITTEE**

PUMA/RD(99)8  
Non classifié/Unclassified

**CHAPITRES PAR PAYS DU RAPPORT SUR L'ETHIQUE  
COUNTRY CHAPTERS OF THE ETHICS REPORT**

**20ème session du Comité de la Gestion publique, Château de la Muette, Paris, 28-29 octobre 1999  
20th Session of the Public Management Committee, Château de la Muette, Paris, 28-29 October 1999**

*Ce document rassemble les rapports -- approuvés par les pays Membres-- de 21 d'entre eux. Les chapitres individuels par pays se fondent sur les réponses des gouvernements au questionnaire sur la gestion de l'éthique dans le service public. Ils seront regroupés au sein de la partie 2 du Rapport sur afin d'apporter de données directement observables sur les actions entreprises par les pays Membres en les situant dans leurs environnements politico-administratif et social.*

*This Room Document consists of reports from 21 Member countries that have been already approved by the respective countries. The individual country reports are based on the government's response to the survey on managing ethics in the public service. They will be gathered in part 2 of the ethics report to present the directly observable data of Member countries' actions and put them in context by providing information on the surrounding political-administrative and social environments.*

For further information, please contact Anne-Marie Leroy,  
Tel. (33-1) 45 24 93 59, e-mail: [anne-marie.leroy@oecd.org](mailto:anne-marie.leroy@oecd.org)  
or Janos Bertok, Tel. (33-1) 45 24 93 57, e-mail: [janos.bertok@oecd.org](mailto:janos.bertok@oecd.org)

83542

Document complet disponible sur OLIS dans son format d'origine  
Complete document available on OLIS in its original format

## TABLE OF CONTENTS

AUSTRALIA/AUSTRALIE	3
BELGIUM/BELGIQUE *	19
CANADA	26
THE CZECH REPUBLIC/REPUBLIQUE TCHEQUE	36
DENMARK/DANEMARK	43
FINLAND/FINLANDE	50
FRANCE *	56
HUNGARY/HONGRIE	64
ICELAND/ISLANDE	70
IRELAND/IRLANDE	77
JAPAN *	86
JAPON	93
KOREA/COREE	100
MEXICO/MEXIQUE	107
NEW ZEALAND/NOUVELLE-ZELANDE	114
NORWAY/NORVEGE	121
POLAND/POLOGNE	128
SWEDEN/SUEDE	144
SWITZERLAND/SUISSE *	150
TURKEY/TURQUIE	168
UNITED KINGDOM/ROYAUME-UNI	175
UNITED STATES/ETATS-UNIS	183

\* French Text provided/Texte en français

## AUSTRALIA

### I. The general context for managing ethics in the public service in Australia<sup>1</sup>

#### a) *The principal ethics-related issues which have confronted the public service in Australia during the past 10 years, and especially within the past 18 months*

The Australian Government's public sector reforms in recent years have been directed at achieving a public service which:

- Uses the Commonwealth's resources efficiently, effectively and ethically, in order to achieve best results at least cost to the Australian taxpayer.
- Provides honest and robust policy advice to the Government of the day.
- Delivers fair, effective, impartial and courteous services for all Australians and is responsive to community needs.
- Ensures high standards of public accountability.
- Competes with, and benchmarks against, best practice in other sectors on both cost and quality.
- Fosters a more contestable environment.
- Manages for results.
- Promotes innovative organisational arrangements.
- Contributes to Australia's international competitiveness.

As an employer, the Government has indicated that the Australian Public Service (APS) should meet these expectations within the same workplace relations and employment framework which applies to the wider community. Against this background, the Government's reforms have been focused on achieving a public service where the behaviour of management and staff is governed by **adherence to fundamental values** rather than highly detailed and prescriptive legislation.

Detailed prescription is being replaced by principles based legislation (such as the Financial Management and Accounting Act 1997 and the Public Service Bill 1999) which clearly places the responsibility for the efficient, effective and ethical management of public sector organisations in the hands of Agency Heads. The role of the Public Service and Merit Protection Commission (PSMPC), along with other central agencies, has changed to the provision of advice and guidance to agencies rather than the development and enforcement of prescriptive rules.

It is recognised that greater responsibility and flexibility in decision-making needs to be balanced by at least a commensurate focus on **strengthening the associated accountability arrangements** to ensure that decisions are appropriately made and that those making decisions can be properly called to account when the need arises. To this end, the APS is working to ensure that robust corporate governance arrangements and financial management and other control structures are in place. Another important focus has been an

---

<sup>1</sup> This chapter relates to the federal jurisdiction, i.e. the Australian Public Service (APS).

emphasis on achieving greater accountability through improved performance of agencies and individual public servants.

In this context, and in an environment where public servants at all levels may be required to make judgements on ethical issues in their areas of responsibility, the maintenance of an **ethical culture** in APS agencies is recognised as a **crucial priority**.

The value of high ethical standards is well understood by APS agencies. An underlying ethical culture unifies the purpose of the APS and is essential for the maintenance of political and community confidence in its activities. The APS Values give public servants a framework in which to exercise discretion in decision making and to respond to emerging issues.

The Public Service Commissioner is required by the Public Service Regulations to report annually to Parliament on the extent to which public service agencies are upholding the APS Values and the adequacy of their procedures for ensuring compliance with the APS Code of Conduct.

The APS has maintained high ethical standards over an extended period. **The Prime Minister**, the Hon John Howard, MP made the following **statement** in an address on 9 May 1996:

“It's not in any sense trite of me to say that the Australian public is very fortunate that over the years, it's had a federal public service that has been distinguished by **two characteristics**. The first of those characteristics is an **extremely high degree of integrity and honesty**. One of the really remarkable things about public life in Australia has been the very low incidence of any sustainable allegations of corruption or impropriety on behalf of the federal bureaucracy. Indeed, the entire federal sphere of political endeavour in Australia, both politically and also bureaucratically, has by and large in the ninety-five odd years of Federation, been free of corruption, although the same cannot be said with equal passion and equal detail about other levels of government. Now, that is not the word of a complacent individual, but it does record a fact, and the reputation for integrity that the federal public service has enjoyed is one of its hallmarks. The other characteristic of course, is a **very high degree of professionalism**, and a willingness over the years - irrespective of the political complexion of Government - to give comprehensive and, on most occasions, pretty zealous technical advice.”

#### *b) Recent measures to improve ethical conduct in the Australian Public Service*

While the APS's record in this area is generally good, a number of initiatives have been taken to strengthen the ethical framework in recent years:

- In 1993 the APS Management Advisory Board (MAB) published “Building a Better Public Service” which articulated for the first time a set of Values for the APS. It **supplemented the more traditional values** by adding responsiveness to government, a close focus on results and continuous improvement in performance through individuals and teams.
- In 1995 the then Public Service Commission revised the document, “Guidelines on Official Conduct of Commonwealth Public Servants”. It is being revised again this year to reflect recent legislative changes.
- In 1996 the PSMPC (the successor to the Public Service Commission) published the document, “Outsourcing: Principles, Guidelines and Good Practice”. This included a requirement for probity standards to be strictly adhered to.
- Also in 1996 the APS MAB published “Ethical Standards and Values in the APS”, which provided guidance on expected ethical standards for public servants supported by case examples.

It also illustrated the complexities of many decisions that public servants are required to make and gave guidance on the values and principles that should be brought to bear on decision-making.

- In March 1998 the Government amended the **Public Service Regulations** to **incorporate the ethical framework**. The framework consists of the APS Values, APS Code of Conduct, whistleblowing protection and the Public Service Commissioner's annual State of the Service report. The ethical framework is also included in the Public Service Bill 1999.
- Following consultation with agencies, in June 1999 the PSMPC published the booklet "Values in the Australian Public Service". The booklet provides guidance to agencies on the meaning of the APS Values and how they may be applied in the workplace.

Since its establishment in 1995 the PSMPC has promoted the ethical framework widely across the APS through publications, conferences, and seminars. It has also strengthened its formal network of public servants which focuses on performance and conduct and has used its Internet site to promote the values and the code of conduct. Agencies themselves have taken a wide range of initiatives, including orientation and awareness raising programmes, and have made use of their intranet sites to promote the values and conduct material.

*c) Plans in preparation to address ethical issues in the Australian public service*

In addition to ongoing measures outlined in Section I. b, the following initiatives are in train:

- The PSMPC, in consultation with agencies is refining the evaluation framework for assessing agencies' performance in implementing the APS Values.
- The PSMPC is further developing its training modules in ethics and conduct for delivery in agencies and to individual public servants.
- Public Service Commissioners from the Commonwealth and State and Territory jurisdictions have formed an Ethics Group, consisting of representatives from each of the jurisdictions to advise them on developments affecting the management of ethics and conduct.
- The PSMPC will continue to support agency initiatives, e.g. through regular meetings of the Performance and Conduct Network.

## **II. Core values for the public service**

*a) Stating core values for the public service*

As noted above, in 1998 the Government included the newly articulated APS Values in amendments to the **Public Service Regulations**. The Regulations require Agency Heads to uphold and promote the APS Values. APS agencies are responsible for managing conduct standards within their own organisations and providing information to the Public Service Commissioner for inclusion in the annual State of the Service report.

The PSMPC provides policy advice and support to agencies in relation to the APS Values and Code of Conduct. The PSMPC is also responsible for developing the legal framework in which agencies operate in relation to these matters as well as promoting the standards to agencies and reporting on their implementation. The Public Service Commissioner is required to conduct an annual evaluation for

Parliament of the extent to which agencies incorporate the APS Values and the adequacy of systems to maintain conduct standards.

The core values for the APS as they appear in the Public Service Regulations are as follows:

- The APS is apolitical, performing its functions in an impartial and professional manner.
- The APS is a public service in which employment decisions are based on merit.
- The APS provides a workplace that is free from discrimination and recognises the diverse backgrounds of APS employees.
- The APS has the highest ethical standards.
- The APS is accountable for its actions, within the framework of Ministerial responsibility, to the Government, the Parliament and the Australian public.
- The APS is responsive to the Government in providing frank, honest, comprehensive, accurate and timely advice and implementing the Government's policies and programmes.
- The APS delivers services fairly, effectively, impartially and courteously to the Australian public.
- The APS has leadership of the highest quality.
- The APS establishes co-operative workplace relations based on consultation and communication.
- The APS provides a fair, flexible, safe and rewarding workplace.
- The APS focuses on achieving results and managing performance.

These core values are stated in:

Public Service Regulations (Regulation 5).

- Values in the Australian Public Service, a discussion paper published by the PSMPC in 1999. This paper describes the meaning of each Value and provides a suggested checklist for agencies to assist them in applying the APS Values to organisational goals and personal behaviour.
- Promotional bookmarks and other publications produced by the PSMPC.
- The PSMPC Web site: [www.psmpc.gov.au](http://www.psmpc.gov.au) .
- The updated document, Guidelines on Official Conduct of Commonwealth Public Servants, to be published in 1999.
- Publications produced by the PSMPC and agencies for their own staff.

***b) How stated core public service values are communicated to public servants***

The following initiatives have been adopted by most APS agencies:

- Core values are automatically provided new employees in the public service.
- Generally this is done through individual APS agencies' induction programmes and performance management arrangements.
- They are provided when a public servant moves to position in a different public service organisation. For example, as above, through induction programmes and individual performance agreements.
- The statement of core values is usually part of the employment contract/document. For example, through agencies' Certified Agreements or individual public servants' Australian Workplace Agreements established under the Workplace Relations Act 1996.

- Core values are communicated by instruments of new technology, such as the Internet: the PSMPC Web site contains the text of the APS Values. Many agencies have Internet and Intranet sites which provide access to the APS Values and some provide hotlinks to the PSMPC's Web site.

Some agencies have:

- Produced promotional material and distributed it to staff.
- Conducted staff surveys requesting comment on the extent to which the APS Values are being applied in the workplace.
- Distributed the PSMPC-produced bookmark with the APS Values and Code of Conduct printed on it to staff.
- Included expectations of how the individual will apply the APS Values in their work in individual performance agreements.
- Included the text of the APS Values in fraud, workplace diversity, recruitment and selection policies.
- Published information on the APS Values in staff newsletters.
- Made reference to the APS Values in Service Charters.

*c) The statement on core public service values was last revised in 1998*

In March 1998 the Government amended the Public Service Regulations to incorporate the ethical framework, including the APS Values and APS Code of Conduct. Agency Heads and focus groups of APS staff were involved in the consultation process.

### **III. Standards of behaviour for the public service**

*a) Statements on the standards of behaviour expected of public servants*

The **APS Code of Conduct**, which outlines the standards of behaviour expected of public servants, is contained in the Public Service Regulations. The APS Code of Conduct applies to all public servants including Agency Heads. The **text** of the Code, as it appears in Public Service Regulation 7 is as follows:

- An APS employee must behave honestly and with integrity in the course of APS employment.
- An APS employee must act with care and diligence in the course of APS employment.
- An APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment.
- An APS employee, when acting in the course of APS employment, must comply with all applicable Australian laws.
- An APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction.
- An APS employee must maintain appropriate confidentiality about dealings that the employee has with any Minister or any Minister's member of staff.
- An APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment.
- An APS employee must use Commonwealth resources in a proper manner.

- An APS employee must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment.
- An APS employee must not make improper use of inside information, or the employee's duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person.
- An APS employee must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS.
- An APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.
- An APS employee must not, except in the course of his or her duties as an APS employee or with the Agency Head's express authority, give or disclose, directly or indirectly, any information about public business or anything of which the employee has official knowledge.

The following **topics** are among those covered in the Guidelines on Official Conduct of Commonwealth Public Servants published by the PSMPC:

- Receiving gifts or benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Work outside the public service.
- Restrictions on post-employment.
- Special conditions/permission on movement from the public service to the for-profit sector.
- Involvement in political work.
- Working with government.
- Working with the public.
- Conflicts of interest – financial and personal.
- Merit in staff selection.
- Whistleblowing. 'Whistleblower' is a colloquial expression for an employee, usually a public servant, who makes allegations about maladministration.
- Fraud control.

The document, Guidelines on Official Conduct of Commonwealth Public Servants was widely distributed in 1995 and is currently accessible on the PSMPC's Web site. The Guidelines were also produced in summary form as a pamphlet for widespread distribution. Client Service Charters, representing a public commitment by each organisation to deliver high quality services to their customers and containing service standards that are to be expected, are published by a large number of agencies (all Commonwealth agencies which have dealings with the public are required to develop a Service Charter). Some agencies include conduct standards in their contracts with suppliers.

The use of corporate credit cards is covered in agency fraud control plans and procedures as well as in Chief Executive Instructions issued under the Financial Management and Accountability Act 1997.

There are also **specific guidelines/requirements** within particular agencies of the public service. The Department of Foreign Affairs and Trade, for example, has developed a specialised code of conduct relating to overseas service to supplement the more general advice contained in the Guidelines on Official

Conduct of Commonwealth Public Servants. Professional staff in some agencies are also required to comply with conduct standards applicable to their profession, for example, the National Museum of Australia and the Australian National Audit Office.

There are specific guidelines for public servants and political leaders working at the **political/administrative interface**:

- Expected standards of **ministerial** conduct are contained in “A Guide on Key Elements of Ministerial Responsibility”, issued by the Prime Minister. Issues covered include the use of public office for private purposes, ownership of shares and other interests, statements of interest, and gifts and benefits as well as contact with lobbyists, relations with departments, staff appointments and appointments to government bodies and overseas travel.
- Guidance for **ministerial staff** will be contained in Ministerial Staff Entitlements, a publication currently being developed by the Department of Finance and Administration.
- Expected behaviour of **public servants** working with ministers and members of parliament is outlined in the Guidelines on Official Conduct of Commonwealth Public Servants produced by the PSMPC. Issues covered include professional relationships, non-politicisation, election campaigns and re-integration of public servants who return to the APS after service on a Minister’s staff.
- Following the announcement of a general election and the dissolution of the House of Representatives, the government operates in “caretaker” mode until the election result is clear, or, in the case of a change of government, until the new government is sworn in. The business of public administration continues but, by convention, a caretaker government refrains from certain activities and defers some matters until after the election so as not to bind an incoming government and limit its freedom of action. The Department of the Prime Minister and Cabinet provides **advice** to public servants on the appropriate handling of business during the caretaker period.

The **minimum standards** of behaviour for the public service are stated in the Public Service Regulations.

***b) Unacceptable conduct for public officials according to the law***

The following kinds of **specific misconduct** are defined for public officials by criminal legislation:

- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Partiality in official decision-making.
- Abuse of office or public trust.
- In addition, the Crimes Act 1914 specifically prohibits Commonwealth officers from engaging in the following activities:
  - Destroying or damaging Commonwealth property.
  - False pretences (with intent to defraud).
  - Seizing goods in Commonwealth custody.
  - Disclosure of official information by Commonwealth officers, while in government employment or afterwards.
  - Falsification of books or records by officers.
  - Corruption and bribery of Commonwealth officers.

- Corruption and bribery of members of the Parliament.
- False returns or certificates by officers.

In addition, it should be noted that the Public Service Act 1922 contains discipline provisions for dealing with cases where a public servant has committed misconduct (has “failed to fulfil his duty”). These provisions are generally used when there has been a breach of the Code of Conduct. Agencies are responsible for the investigation of these cases and administering a penalty, as appropriate. A breach of the Crimes Act 1914 is dealt with through the Australian Federal Police and the Director of Public Prosecutions.

**Further prohibitions and restrictions** include the following legislation which applies to all Australians prohibits **discrimination** in the following areas:

Racial Discrimination Act 1975	Forbids discrimination on the grounds of race or ethnic background in employment and service delivery
Disability Discrimination Act 1992	Forbids discrimination against people with disabilities in employment and service delivery. In recruiting, this means employers must consider providing special equipment and training unless to do so would create hardship.
Sex Discrimination Act 1984	Forbids discrimination on the basis of sex, marital status, pregnancy or sexual preference in employment or service delivery.
Human Rights and Equal Opportunity Commission Act 1986	Forbids discrimination in employment and service delivery on a wide range of grounds - including religion, political opinion. It also establishes the Human Rights And Equal Opportunity Commission to deal with claims of discrimination.
Workplace Relations Act 1996	Prohibits discrimination on a wide range of grounds in the making of workplace agreements and setting employment conditions, and in termination of employment.

The following legislation is also relevant to standards of behaviour in the APS:

Public Service Act 1922	Public officials must make all decisions fairly and on the merits of the case, with no unfair discrimination. The Regulations under the Act contain a Code of Conduct that applies to all staff in the Australian Public Service. The Act provides for special programmes to assist disadvantaged groups.
Ombudsman Act 1976	Allows for investigation into complaints, generally made by the public, about poor administration in Commonwealth agencies.
Merit Protection (Australian Government Employees) 1984	Allows for the investigation of grievances lodged by public servants and appeals against certain employment-related decisions.
Occupational Health and Safety (Commonwealth Employment) Act 1991	Requires public officials to provide a workplace that protects the health and safety of all employees.
Administrative Decisions (Judicial Review) Act 1977	Provides for the investigation of complaints against processes used in making decisions in Commonwealth agencies.
Financial Management and Accountability Act 1997	Requires Agency Heads to manage their organisations in ways that promote the efficient, effective and ethical use of resources.
Freedom of Information Act 1982	Allows individuals to apply for access to information held by Commonwealth agencies.
Privacy Act 1988	Requires Commonwealth agencies to protect the confidentiality of individuals' personal information, subject to certain exceptions.

Some agencies, such as the Australian Taxation Office and Centrelink (the federal government's agency for the delivery of social welfare payments), have agency-specific legislation which strictly limits employees' access to the personal information contained in their respective databases. Compliance with these requirements is strictly monitored and penalties imposed in cases of infringement.

#### **IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct**

The increasing devolution of responsibility to agencies has been accompanied by recognition of the importance of agencies' own systems and procedures in promoting high standards of conduct and preventing and detecting misconduct. The following general measures are in place:

- Agencies' internal documents, such as Chief Executives' Instructions (CEIs), often include statements about the ethical use of resources.
- The PSMPC provides advice to agencies about their systems and procedures.
- The Public Service Commissioner also reports in the annual State of the Service Report on the adequacy of agencies' systems and procedures for ensuring compliance with the Code of Conduct.

**a) Measures used by human resources management to promote an ethical environment**

The measures used by human resources management to promote an ethical environment include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.
- Taking ethical considerations into account in the recruitment process. Applicants up to middle management level who wish to have a promotion decision reviewed have access to a Promotion Appeal Committee convened by the Merit Protection and Review Agency. Some agencies have recruitment committees which, as part of the selection criteria, make an assessment of how well applicants are able to demonstrate that they would apply the APS Values to their work.
- Considering ethical behaviour in the performance appraisal. Some individual performance appraisals include an assessment of adherence to the APS Values, which specify ethical behaviour.

Special **attention** is given to officials in positions particularly susceptible to corruption:

- Tax administration: The Australian Taxation Office has established a high level advisory committee which focuses on fraud prevention and detection. The Ombudsman, the Australian Federal Police and the PSMPC are represented on the committee.
- Overseas postings: The Department of Foreign Affairs and Trade provides pre-posting briefings to raise awareness of ethics.
- Grant/funding/loan approval: Better use is being made of information technology to track expenditure approval.
- Issuing of contracts and outsourcing: Mandatory legal awareness sessions are conducted in some agencies; in all agencies there is a requirement for senior executives to disclose financial interests.
- Customs services: The Australian Customs Service provides specific fraud awareness and training for its staff.
- Social welfare payments: Centrelink provides specific fraud awareness and training for its staff.
- General administration: Agency fraud control plans specify measures to minimise fraud in the administration of salaries, travel allowances and purchasing (including the use of government credit cards) and the management of property and physical assets.

In addition, agencies are required to have in place procedures to deal with disclosures alleging a breach of the code of conduct ("whistleblowing") and are required to protect whistleblowers from victimisation and discrimination after having made a disclosure.

**b) Informing and training public servants on ethics issues**

Training is the responsibility of each agency. Agencies generally develop and conduct their own training, often using experts in the field. Most training is voluntary although some training is compulsory when an agency identifies a specific need – e.g. all staff may be required to attend ethics awareness seminars, all managers to undertake legal awareness workshops, all new staff to undertake an induction programme.

The content of the training varies, depending on the target audience. It can range from raising awareness of ethics principles and action to take if staff become aware of possible breaches of the Code of Conduct, to fraud investigation training and training on handling breaches of the Code.

In addition, the PSMPC offers training modules which are delivered to groups of public servants as a “public” programme or to individuals within agencies on an “in-house” basis. Public servants are also given promotional material on the Code of Conduct, fraud control and prevention and protection for Whistleblowers.

**Guidance, advice or counselling** are available to public servants to resolve their work-related ethical problems:

- The Guidelines on Official Conduct of Commonwealth Public Servants provide advice on appropriate standards of behaviour.
- Networks such as the Performance and Conduct Network, convened by the PSMPC, provide opportunities for staff from across the APS to discuss issues and exchange good practice ideas.
- Human resources areas organise and provide training for staff with a view to raising awareness of ethical issues.
- A number of agencies have set up formal mentoring schemes whereby mentors assist others in their handling of ethical issues.
- The PSMPC’s Helpline provides support, advice and guidance to agency staff.

***c) Other measures to promote high standards of conduct and assist prevention***

These include:

- Identifying and reporting conflict of interest situations, especially in areas of financial management, post public employment, receiving gifts and benefits such as fees, payments, entertainment, use of frequent flyer points, conflicts of interest from personal relationships, outside employment while working in the APS.
- Requiring the release of internal information related to ethical conduct and possible transgressions.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness of responding to requests.
- Anti-corruption provisions in bids for public contract (e.g. companies, found guilty of corruption, are disqualified/suspended from future tenders/bids).
- Specific controls on public procurement procedures.
- Risk assessment of the areas susceptible to misconduct.

***d) Disclosure policy***

All public servants are required, by the Code of Conduct, to disclose to their managers actual or potential conflicts of interest and then to take reasonable steps to remove the conflict.

In addition, members of the Senior Executive Service (SES) are required to complete a Return of Private Interests and lodge it with the Agency Head. The Return of Private Interests by SES officers requires the following to be disclosed when joining the Senior Executive Service and annually thereafter or when relevant circumstances change:

- Assets and liabilities.
- Sources of substantial income (over \$5000).
- Gifts.
- Outside positions.
- Investments.
- Real estate.
- Shares.
- Trusts/nominee companies.
- Partnerships.
- Substantial sponsored travel and hospitality.

Information is confidential to the Agency Head. Access is given to the Minister if requested. Requests for access from the Parliament or a Court, Tribunal or under the Freedom of Information Act are dealt with according to law. The information is to place on record any interests that may conflict, or may be seen to conflict, with public duty. A generic *pro forma* designed by the PSMPC is available for agency use.

*e) Procedures to report misconduct/suspected corruption*

Legal provisions define the procedure for exposing wrongdoing, and internal rules define the procedure within each public service organisation. The Public Service Regulations (Regulations 9-11) incorporate the minimum requirements for a whistleblowing scheme in the APS. Agency Heads are required to establish procedures for dealing with disclosures alleging a breach of the Code of Conduct in relation to their agency. In addition, the Regulations prohibit public servants and contractors working for agencies from discriminating against or victimising an APS employee because they have made whistleblowing disclosure. Whistleblowers who are not satisfied with the outcome of an investigation at agency level, or who believe that it would not be appropriate for their own agency to deal with the disclosure, may request the Public Service Commissioner to investigate the matter. The Public Service Commissioner has published in booklet form and on the Internet, procedures for such circumstances.

Protection/safeguard is available to public servants who expose wrongdoing, through legality and anonymity. Protection is available only when the person exposing the wrongdoing uses the correct procedures. No protection is granted if a disclosure is made to the media.

In addition to the whistleblowing procedures, which involve agencies and the Public Service Commissioner, the following avenues are available **for the public** to expose wrongdoing committed by public servants:

- Complaint procedures outlined in service charters.
- Help desk and help telephone line in agencies.
- Ombudsman.
- Australian Federal Police.
- Auditor-General.
- Inspector-General of Intelligence and Security (where the issue relates to the conduct of a member of one of the intelligence or security organisations).

*f) Internal control to support the improvement of ethical conduct in the public service*

Measures of internal control include financial control, fraud control, security control, internal audit and management control. These measures support corruption prevention methods by helping agencies to assess areas of risk, identify individual instances of corruption and fraud, identify systemic corruption and fraud activity, regularly review plans and procedures and encourage the maintenance of an ethical culture through awareness raising, training and performance management.

**Follow-up** mechanisms include the requirement for each agency to review their Fraud Control Plan every two years, to develop an Action Plan to implement measures contained in the Fraud Control Plan and to report to its Minister annually. An agency's audit committee should oversee the development and implementation of the agency's Fraud Control Plan.

Internal control is required:

- By law through the Financial Management and Accountability Act 1997, the Financial Management and Accountability Regulations and standards issued by the Commonwealth Law Enforcement Co-ordination Division of the Attorney-General's Department. The Public Service Regulations require Agency Heads to uphold and promote the APS Values. The Regulations also state that Agency Heads are bound by the Code of Conduct in the same way as APS employees.
- By general policy such as the Fraud Control Policy of the Commonwealth.

The frequency of internal control reviews is not specified in the Commonwealth's Fraud Control Policy but is determined by each Agency Head. Reviews should be held every two years as a minimum, unless an agency has undergone major changes in organisational arrangements. Such reviews would normally be carried out in conjunction with annual reporting to Ministers. In addition, Quality Assurance Reviews are conducted annually in selected agencies by the Attorney-General's Department and the Australian Federal Police.

Agencies' annual reports are provided to the Minister responsible for the particular agency, the agency's management and the Commonwealth Law Enforcement Board (CLEB). CLEB is responsible for the co-ordination of fraud control policy in the Commonwealth and for providing annual reports to Government through the Minister for Justice on the progress on fraud control, based on agency annual reports. The Law Enforcement Co-ordination Division (LECD), as part of the Attorney-General's Department, undertakes the work of the Commonwealth Law Enforcement Board (CLEB).

*g) Disciplinary procedures in case of a breach of public service standards*

The disciplinary process including the range of sanctions available are contained in the Public Service Act 1922. Sanctions range from counselling to dismissal. The more serious sanctions (excluding dismissal) can be appealed through a Discipline Appeal Committee established by the Merit Protection and Review Agency. A public servant who has been dismissed may seek a remedy through the Australian Industrial Relations Commission. Questions of law can be taken to the Federal Court.

## V. Scrutinising misconduct in the public service

### a) *Institutions and procedures to investigate and prosecute misconduct*

The ethical culture of the APS is reinforced by accountability procedures and institutions such as the Ombudsman, Freedom of Information (FOI) legislation, privacy legislation, client service charters, and merits review by bodies such as the Administrative Appeals Tribunal. In addition:

- The Australian National Audit Office operates to ensure compliance with financial and performance standards, with jurisdiction over the whole public service.
- The Merit Protection and Review Agency investigates some appeals and grievances.

Both these bodies report to Parliament and provide advice or direction to agencies.

Generally, agencies have the primary responsibility for **investigating** and applying sanctions in cases of alleged misconduct within their own organisations.

In addition, there is a whistleblowing scheme in place whereby public servants may disclose to their agencies alleged breaches of the Code of Conduct. Except where the allegations are considered frivolous or vexatious, agencies are required to investigate the disclosure and to ensure that the findings are dealt with as soon as practicable.

Where there is a possible breach of criminal law, agencies refer the matter to the Australian Federal Police for investigation. The Director of Public Prosecutions is the office empowered to bring cases to court.

### b) *Institutions in place to perform independent scrutiny of the administration*

These include:

- Parliament/parliamentary committees (particularly Senate Legislation Committees).
- Independent, external auditors reporting to elected bodies such as parliament (e.g. the Auditor-General).
- Ombudsman (the Commonwealth Ombudsman).
- Courts for judicial review (the Federal Court of Australia).
- Merits review tribunals such as the Administrative Appeals Tribunal, the Social Security Appeals Tribunal and the Immigration Review Tribunal concerning administrative decisions.
- The Merit Protection and Review Agency in relation to the review of employment decisions concerning promotion, discipline, redeployment and retirement of public servants and the investigation of their grievances.

There are procedures/mechanisms available to bring wrongdoing to the attention of bodies exercising independent scrutiny on public service activities:

- Appeal tribunals for members of the public who have been affected by a relevant Commonwealth decision.
- Merit Protection and Review Agency for public servants who are directly affected by an agency's decisions or actions in relation to their employment.
- Public Service Commissioner in relation to whistleblowing.

Agency financial statements and agency performance audits are conducted under the Auditor-General Act 1997 and the Financial Management and Accountability Act 1997. Agency financial statements are audited annually. Performance audits are conducted on an *ad hoc* basis with approximately 50 carried out per year across all APS departments. Audit reports are always published and tabled in the Parliament. Parliamentary Joint Committee of Public Accounts and Audit reviews all audit reports and conducts public inquiries of selected reports quarterly.

## VI. Co-ordination and self-assessment

### a) *Co-ordination and management of government ethics and anti-corruption policy*

Insofar as the PSMPC has a co-ordination role, it is to assist agencies to develop a shared understanding of the APS's ethical framework. The Public Service Commissioner is required to monitor and report to the Parliament on agencies' adherence to the APS Values and the adequacy of their systems for ensuring compliance with the Code of Conduct. The PSMPC has responsibility for facilitating understanding of the legislative framework, monitoring and reporting on agencies' performance in implementing the APS Values and ensuring compliance with the Code of Conduct.

The Law Enforcement Co-ordination Division of the Attorney-General's Department promotes the Government's Fraud Control Policy. The Commonwealth Law Enforcement Board reports annually through the Minister for Justice on agencies' performance in relation to fraud prevention, investigation and education.

Public Service Regulation [Regulation 12(2)(a)] requires the Public Service Commissioner to include, in the annual State of the Service Report, an evaluation of the extent to which agencies incorporate the APS Values and the adequacy of systems and procedures to ensure compliance with the Code of Conduct.

A **report** on the state of ethics in the public service is provided **annually**, at the end of each financial year:

- For Parliament (as noted above, the Public Service Commissioner is required to report to Parliament).
- For Government.

The following actions are taken to ensure the **consistency** of the government ethics and anti-corruption measures:

- Analysing systemic failures, trends in criminal and disciplinary cases. Agencies are being encouraged to perform this more strategic analysis.
- Providing national guidance and/or checklist to develop prevention strategies in organisations.

The PSMPC, in consultation with agencies, has developed a **checklist** which agencies and staff may use to assist them to apply the APS Values to organisational goals and personal behaviour. These are published in Values in the Australian Public Service which also contains a list of indicators that could be used as signposts that particular APS Values are being applied from both an agency and APS-wide perspective.

In recent years there has been a greater emphasis on training in areas such as fraud awareness across agencies. Nationally accredited competencies are the basis for fraud prevention and investigation training across the APS.

*b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct*

The Public Service Commissioner is required by the Public Service Regulations to report annually to Parliament on the extent to which public service agencies are upholding the APS Values and the adequacy of their procedures for ensuring compliance with the Code of Conduct.

The APS, in keeping with the Prime Minister's statement of May 1996, is not confronting a crisis of corruption or ethical "deficit". However, this does not mean that the Government is complacent about the situation. There are always opportunities for fraud, corruption and misconduct to occur and agencies and the PSMPC remain committed to fostering and promoting an ethical culture across the APS. Part of the challenge in maintaining high standards of conduct is awareness of where organisations and systems may be vulnerable. In a recent speech (May 1999), the Auditor-General, Mr Pat Barrett, made the following statement:

"Greater responsibility and flexibility in decision-making needs to be matched by at least a commensurate focus on strengthening the associated accountability arrangements to ensure that decisions are appropriately made and that those people making decisions can be properly called to account should the question arise. To provide such assurance, public sector entities need to have robust corporate governance arrangements and financial management and other control structures in place. However, it is during the transition period, as these accountability arrangements and changed organisational structures are bedded down, that the greatest risk to effective decision-making arises. In my view, such risk is accentuated with greater involvement of the private sector in contractual arrangements; loss of corporate memory in agencies with downsizing of the APS; the greater use of computing technology with attendant control and fraud related issues, particularly when outsourced; and lack of required skills in project and contract management in the public sector."

The Government and Agency Heads are aware of the special attention that must be given to such risk areas.

---

## BELGIQUE \*

### I. Le contexte général de la gestion de la déontologie dans le service public de Belgique<sup>2</sup>.

#### *a) Les principaux problèmes relatifs à la déontologie auxquels le service public de Belgique a été confronté au cours des dix dernières années et plus particulièrement des 18 derniers mois.*

Dans le domaine de la déontologie, ces dernières années en Belgique, des phénomènes de corruption se sont essentiellement fait jour. Ils se sont surtout révélés à l'occasion de la passation de marchés publics importants. Ils ont été révélés notamment par les « affaires » - bien connues même à l'étranger- dites « Agusta », « Carapace », « Inusop », des « Obus », etc.

#### *b) Les mesures prises pour améliorer le comportement déontologique dans le service public.*

Le précédent gouvernement fédéral belge, lorsqu'il s'est constitué en 1995, a notamment décidé un renforcement de la lutte contre la corruption. La loi du 10 février 1999 « relative à la répression de la corruption » découle de cette décision. Cette loi incrimine à **présent** la tentative de corruption passive, l'abus d'influence, la corruption du candidat à une promotion publique, la corruption de fonctionnaires internationaux et étrangers ainsi que la corruption privée. Jusqu'alors, seule la corruption active et passive de fonctionnaires publics et la tentative de corruption active de fonctionnaires publics étaient incriminées. Parallèlement, un arrêté royal du 17 février 1998 a créé au sein du Commissariat général de la police judiciaire, un Office central pour la répression de la corruption dont les missions sont définies comme suit :

- « rechercher ou fournir un appui à la recherche des crimes et délits complexes et graves portant préjudice aux intérêts moraux ou matériels du service public, et plus particulièrement dans le cadre de l'élaboration, de l'adjudication et de l'exécution de marchés publics, de même que dans le cadre de l'élaboration, de l'attribution et de l'utilisation de subsides publics et dans le cadre de la délivrance d'autorisation, de permis, d'agrément et d'agrément ; »
- « la gestion dynamique et l'exploitation d'une documentation spécialisée opérationnelle appropriée au profit de tous les services de police. »

Il est par ailleurs à souligner que la nouvelle réglementation en matière de marchés publics (loi du 24 décembre 1993 et ses arrêtés d'exécution) prévoit des procédures rigoureuses et impartiales qui sont de nature à mieux prévenir les pratiques corruptrices. Il faut, en outre, noter que l'article 10 de cette loi interdit à tout fonctionnaire ou personne chargée d'un service public d'intervenir d'une façon quelconque dans la passation et la surveillance de l'exécution d'un marché public dès qu'il a intérêt, soit personnellement, soit par personne interposée dans l'une des entreprises soumissionnaires.

A relever aussi que par arrêté royal du 6 juillet 1997 a été institué au sein du Ministère fédéral de la Fonction publique le Service des Marchés publics et des Subventions (S.M.S.) qui, dans le cadre de ses activités de consultance, peut aider les services publics qui font appel à lui à bien interpréter, à bien

---

2. Ces informations ne concernent que l'administration du gouvernement fédéral.

appliquer la nouvelle législation sur les marchés publics et à éviter ainsi des dysfonctionnements lors de la passation et de l'exécution de ces marchés.

Il n'est pas sans intérêt non plus de noter l'existence :

- de la loi du 29 juillet 1991 relative à la motivation formelle des actes administratifs qui impose à toute autorité administrative l'indication dans l'acte des considérations de droit et de fait fondant ses décisions qui ont une portée individuelle;
- de la loi du 11 avril 1994 relative à la publicité de l'administration qui, par son article 2, 4°, impose aux autorités administratives que la décision ou l'acte administratif à portée individuelle indique les voies de recours, les instances compétentes pour en connaître ainsi que les formes à respecter. En l'absence de ces informations, le délai de prescription pour introduire le recours ne prend pas cours;
- de la loi ordinaire et de la loi spéciale du 2 mai 1995 relatives à l'obligation pour, entre autres, les membres des différents gouvernements, les mandataires politiques, les gouverneurs de province, les fonctionnaires généraux, les membres du conseil d'administration des entreprises publiques autonomes, les membres du conseil général de la Banque nationale de Belgique, de déposer une liste de mandats, fonctions et professions et une déclaration de patrimoine. Ces lois ne sont pas encore d'application ;
- d'un code de conduite, récemment adopté, au Ministère de la Défense nationale (qui tient en 8 points et qui est une résultante des efforts de moralisation entrepris à la suite des révélations d'exactions commises par des casques bleus belges en Somalie et en Croatie, lors de missions menées sous l'égide de l'O.N.U.);
- de la recommandation – restée lettre morte – de la Commission d'enquête parlementaire sur les commandes militaires, instituée en 1993, d'établir des règles précises de déontologie et une formation spécifique pour les fonctionnaires amenés à traiter avec des représentants de firmes privées à l'occasion de la passation et de l'exécution de marchés publics.

***c) Les projets actuellement en préparation relatifs aux problèmes déontologiques dans le service public de Belgique.***

Le Service des Marchés publics et des Subventions, dont il a été question ci-avant, a été chargé en mai 1999 par le Ministre fédéral de la Fonction publique du suivi de la problématique de la prévention de la corruption et plus précisément de la création d'un groupe de travail chargé de l'étude des mesures à prendre en matière de prévention de la corruption.

De plus, l'accord de gouvernement du gouvernement fédéral qui vient d'être formé prévoit notamment ce qui suit : « Les partis qui constitueront la prochaine majorité s'engagent à signer un pacte de dépolitisation de l'administration. Dans ce but, tout recrutement pour une fonction publique ou parapublique fera systématiquement l'objet d'un concours et d'une épreuve. Pour évaluer la qualité des recrutements, il sera fait appel à des experts reconnus. Il en sera de même pour le recrutement et la sélection des fonctionnaires contractuels. Le pacte de dépolitisation confirme le droit de s'exprimer pour tout fonctionnaire tel qu'il est prévu par le statut actuel. Tout fonctionnaire assumera pleinement sa responsabilité avec compétence et impartialité dans le respect des règles de déontologie. Le gouvernement organisera dans chaque département un point de contact où des informations relatives aux dysfonctionnements internes et à des abus pourront être adressées en toute confidentialité. Au moment de sa nomination, le fonctionnaire reçoit une description précise de ses missions et devoirs. Il ou elle s'engagera par écrit à les respecter. [...] Le gouvernement veillera à la mise en œuvre rapide et correcte de la nouvelle législation sur le décumulus des mandats.

Dans le même ordre d'idées, un régime sévère d'incompatibilités sera mis en place, touchant aussi bien le secteur public que le secteur privé, afin d'éviter des conflits d'intérêts. Les partis de la majorité conviendront de créer au Parlement une commission de déontologie, chargée de développer une jurisprudence en la matière. Corollairement, il convient d'exécuter sans délai la loi ordinaire et la loi spéciale du 2 mai 1995 relatives à l'obligation de déposer une liste de mandats, fonctions et professions et une déclaration de patrimoine ».

## **II. Les valeurs essentielles du service public.**

### ***a) Les valeurs essentielles du service public.***

L'article 10, §1er de l'arrêté royal du 2 octobre 1937 portant le statut des agents de l'Etat définit les valeurs essentielles du service public :

« Les agents remplissent leurs fonctions avec loyauté et intégrité sous l'autorité de leurs supérieurs hiérarchiques. A cet effet, ils doivent :

- 1° respecter les lois et règlements en vigueur ainsi que les directives de l'autorité dont ils relèvent ;
- 2° formuler leurs avis et rédiger leurs rapports avec rigueur et exactitude ;
- 3° exécuter les décisions avec diligence et conscience professionnelle. »

### ***b) La communication aux fonctionnaires des valeurs essentielles du service public.***

Le projet de pacte de dépolitisation de l'administration inclut les dispositions suivantes : « au moment de sa nomination, le fonctionnaire reçoit une description précise de ses missions et devoirs. Il ou elle s'engagera par écrit à les respecter ».

## **III. Normes de conduite dans le service public.**

### ***a) Déclarations sur les normes de comportement que l'on est en droit d'attendre des fonctionnaires.***

Les déclarations sur les normes de comportement sont reprises aux articles 7, 10, 11, § 1<sup>er</sup> et § 2, et 49 de l'arrêté royal du 2 octobre 1937 portant le statut des agents de l'Etat ainsi qu'aux articles 3, 7 et 8, § 1<sup>er</sup> et § 2 de l'arrêté royal du 26 septembre 1994 fixant les principes généraux du statut administratif et pécuniaire des agents de l'Etat applicables au personnel des services des Gouvernements de communauté et de région et des collèges de la Commission communautaire commune et de la Commission communautaire française ainsi qu'aux personnes morales de droit public qui en dépendent. Ces normes couvrent en particulier les aspects suivants :

- l'acceptation de dons et d'avantages, tels que rétributions, paiements, divertissements ;
- l'utilisation d'informations officielles ;
- le travail extérieur au service public.

En plus de ces normes valables pour tous les fonctionnaires, il existe des exigences supplémentaires pour les agents civils du Ministère de la Défense nationale et les militaires.

***b) Types de conduites considérées comme inacceptables au regard de la loi pour des agents de la fonction publique.***

Les **types de comportements répréhensibles** suivants sont spécifiquement définis dans la législation pénale pour les agents de la fonction publique :

- corruption active, passive, directe, indirecte et tentative de corruption sur des agents de la fonction publique/effectuée par des agents de la fonction publique
- détournement
- concussion
- prise d'intérêt
- destruction ou suppression d'actes ou de titres
- abus d'influence
- faux en écritures publiques

Des **interdictions et restrictions** dans les domaines suivants sont imposées aux fonctionnaires par d'autres types de législation :

- l'acceptation de dons et d'avantages, tels que rétributions, paiements, divertissements
- l'utilisation d'informations officielles
- le travail extérieur au service public

**IV. Institutions et procédures destinées à promouvoir un haut niveau de probité, à prévenir et à détecter les fautes professionnelles.**

***a) Instruments utilisés par la gestion des ressources humaines pour la promotion d'un environnement favorisant le respect de la déontologie.***

Les instruments suivants sont utilisés :

- Il existe des règles/des directives/des politiques pour les procédures de recrutement et de promotion.
- Le recrutement et la promotion sont normalement fondés sur le mérite.
- La transparence des procédures de sélection tend à être assurée par la publication des règles/des directives/des politiques de recrutement, la publication des avis de postes vacants et l'évaluation des procédures de sélection.
- Seuls les critères de sélection publiés et adéquats sont pris en compte lors du recrutement.

***b) Sensibilisation et formation des agents publics aux questions déontologiques.***

Néant.

***c) Autres dispositions utilisées pour promouvoir le respect de normes de conduite exigeantes et la prévention de la corruption.***

Ces dispositions comprennent :

- obligation de motivation des décisions administratives

- existence de voies de recours contre les décisions administratives
- existence de délais de réponse maximum tolérés pour répondre aux demandes des usagers
- existence de dispositions de lutte contre la corruption dans les appels d'offres
- existence de contrôles spécifiques pour les procédures de passation des marchés publics

***d) Politique relative aux déclarations.***

La loi du 2 mai 1995 et la loi spéciale du 2 mai 1995 dont les arrêtés d'exécution n'ont pas encore été pris définissent la politique relative aux déclarations. Elles prévoient qu'une déclaration d'informations personnelles sera exigée de la part :

- des représentants élus, dont les membres de la Chambre des représentants et du Sénat
- des hauts fonctionnaires, dont les fonctionnaires généraux des ministères fédéraux
- des gouverneurs de provinces, des membres des conseils d'administration et des comités de direction des intercommunales, des membres du conseil d'administration des entreprises publiques économiques, des administrateurs qui sont désignés dans des sociétés anonymes de droit public, des holdings bancaires de droit public et dans des établissements publics de crédit
- des administrateurs des sociétés dont l'Etat, les communautés ou les régions sont actionnaires majoritaires
- des membres du conseil général de la Banque nationale de Belgique, des membres du comité de gestion de l'Office national de sécurité sociale et des membres du comité général de l'Institut national d'assurance maladie-invalidité

Les lois du 2 mai 1995 prévoient que « chaque année, avant le premier avril, les personnes visées déposent une déclaration écrite dans laquelle elles mentionnent tous les mandats, fonctions dirigeantes ou professions, qu'elle qu'en soit la nature, qu'elles ont exercées au cours de l'année précédente, tant dans le secteur public que pour le compte de toute personne physique ou morale, de tout organisme ou association de fait, établis en Belgique ou à l'étranger. » Elles précisent en outre que dans le mois qui suit leur première entrée en fonction ou leur première nomination, ainsi qu'un mois au plus tard après chaque démission ou près l'expiration de chaque mandat ou fonction, les personnes visées déposent une déclaration de patrimoine. Les informations suivantes sont exigées dans la déclaration :

- actifs et passifs dans une déclaration faite à l'entrée ou à la sortie de la fonction publique
- emplois antérieurs dans une déclaration annuelle

***e) Procédures permettant de rendre compte des actes répréhensibles/de soupçons de corruption.***

Il n'existe pas de procédures permettant et exigeant des agents publics qu'ils rendent compte des actes répréhensibles/de soupçons de corruption commis par d'autres agents publics. Il y a lieu toutefois de noter que l'article 29 du Code d'instruction criminelle dispose que « toute autorité constituée, tout fonctionnaire ou officier public, qui dans l'exercice de ses fonctions, acquerra la connaissance d'un crime ou d'un délit, sera tenu d'en donner avis sur-le-champ au procureur du Roi près le tribunal dans le ressort duquel ce crime ou délit aura été commis ou dans lequel l'inculpé pourrait être trouvé, et de transmettre à ce magistrat tous les renseignements, procès-verbaux et actes qui y sont relatifs».

Il n'existe pas de protection pour les agents de l'Etat qui dénoncent des malversations. Néanmoins, le projet de pacte de dépolitisation inclut la disposition suivante : « le gouvernement organisera dans chaque département un point de contact où des informations relatives aux dysfonctionnements internes et à des abus pourront être adressées en toute confidentialité ».

*f) Dispositifs internes de contrôle pour l'amélioration de la déontologie dans les services publics.*

Néant

*g) Procédures disciplinaires pour traiter des cas de manquement aux normes de la fonction publique.*

Les peines disciplinaires pour manquement aux normes de la fonction publique sont reprises à l'article 77, § 1<sup>er</sup>, de l'arrêté royal du 2 octobre 1937 portant le **statut des agents de l'Etat**. Ces peines disciplinaires sont les suivantes :

- le rappel à l'ordre
- le blâme
- la retenue de traitement
- le déplacement disciplinaire
- la rétrogradation
- la révocation

L'agent à charge duquel une peine disciplinaire est définitivement proposée peut introduire un recours contre cette proposition devant la chambre de recours compétente. Il peut aussi introduire une requête en annulation d'une sanction disciplinaire au Conseil d'Etat.

**V. Contrôle des actes répréhensibles dans la fonction publique.**

*a) Institutions et procédures permettant d'enquêter sur les malversations et de les poursuivre.*

Un organisme fonctionne avec compétence sur l'ensemble du service public pour **enquêter** sur la malversation et la corruption. L'organisme d'enquête en question est l'Office central pour la répression de la corruption qui fait partie de la division « appui opérationnel et recherche » du Commissariat général de la police judiciaire près les parquets. Les enquêteurs affectés à cet office sont au nombre de 95 maximum. Ils exercent leurs activités sous l'autorité du ministère public et sous celle des juges d'instruction lorsqu'ils effectuent des investigations pour ces derniers, ce qui doit garantir leur indépendance. Les autres services de police sont aussi compétents pour enquêter sur les malversations et la corruption dans les services publics. Ils sont également sous l'autorité du ministère public et des juges d'instruction pour l'accomplissement des devoirs judiciaires d'enquête qui leur incombent.

Le ministère public est compétent pour **engager les poursuites**. Il est indépendant ; toutefois, le ministre qui a la Justice dans ses attributions a, à son égard, un pouvoir d'injonction positive. A noter que les services de police ont compétence pour rechercher les crimes et délits et en rassembler les preuves.

Le ministère public a la compétence de **saisir directement les tribunaux**, les organismes d'enquête ne l'ont pas. Des SOUPCONS de corruption à l'encontre de quelqu'un ne suffisent pas pour le citer devant un tribunal. Il faut au moins des éléments tendant à démontrer que les faits sont avérés.

*b) Institutions compétentes pour exercer un contrôle indépendant sur l'administration.*

Ces institutions comprennent :

- Parlement/Commission parlementaire

- auditeurs indépendants/externes rendant compte à des organismes élus tels que le Parlement
- médiateur
- les tribunaux judiciaires

Il existe des procédures permettant d'attirer l'attention sur des malversations éventuelles d'organismes chargés d'exercer un contrôle indépendant sur les activités de services publics. Les procédures en question sont les procédures pénales stipulées dans le Code d'instruction criminelle. L'audit externe (audit par une organisation indépendante rendant compte au Parlement) consiste en des contrôles de légalité et de gestion. Il est effectué de façon continue. Les rapports d'audit externe sont systématiquement publiés.

## **VI. Coordination et évaluation.**

### ***a) Coordination et gestion de la politique de l'administration en matière de déontologie.***

Exceptée la décision du ministre de la Fonction publique de charger le Service des Marchés publics et des Subventions du suivi de la problématique de la prévention de la corruption, il n'y a pas eu de mesures prises par le Gouvernement dans le domaine de la déontologie, et donc pas de vérification de ces mesures.

### ***b) Évaluation de l'efficacité des mesures visant à promouvoir les conduites déontologiques et à prévenir la corruption.***

Néant.

## CANADA

### **I. The general context for managing ethics in the public service in Canada**

#### ***a) The principal ethics-related issues which have confronted the public service in Canada during the past 10 years, and especially within the past 18 months***

Fiscal pressures forced a complete re-evaluation of government programmes and service delivery priorities that resulted in a degree of downsizing and privatisation, as well as wage freezes for public servants. Together these factors brought about a change in expectations regarding public servant behaviour and performance, which sensitised both those within and outside government to ethical issues and dilemmas.

The relationship between the public service and the private sector has also been undergoing a transformation as each seeks ways to increase the amount of contact. This has led to pressures in the context of the acceptance of gifts, benefits and hospitality, raising questions among public servants regarding what is acceptable or permitted interaction, as well as a need to increase awareness of public service policy and guidelines in this area, and the legal framework that applies. There have been occasions in recent years when public servants take inappropriate benefits in circumstances when they feel they are not harming anyone and, although contravening policy, they do not believe there will be any enforcement (e.g. air miles/frequent flier points). The private sector is also becoming increasingly sensitised to this question and will at times inquire as to what might be permissible.

Vigilance is also necessary to ensure that public servants remain free from the pressures of political offices that may seek to stretch the role of the public servant to areas that fall within political and/or partisan interest. Moreover, the creation of alternative service delivery agencies has also been altering the employer-employee relationship, fostering some union/management challenges that have the potential to impact the values and ethics regimes of these organisations and the public service as a whole.

#### ***b) Recent measures to improve ethical conduct in the public service***

One of the government's major initiatives in this area was the appointment of Canada's first Ethics Counsellor and amendments in 1994 to the Conflict of Interest and Post-Employment Code for Public Office Holders (i.e. ministers, political staff, parliamentary secretaries and all persons appointed by the government to departments, agencies and tribunals). The Ethics Counsellor is also responsible for the Lobbyists Registration Act and the Lobbyists Code of Conduct. This has been followed by the establishment in 1999 of the Public Service Values and Ethics Office within the Treasury Board Secretariat.

In 1995 a group of deputy ministers was asked to look into the question of changing values and ethics in the public service. This work resulted in the preparation of a major report, *A Strong Foundation*, which was used to initiate a process of analysis, introspection and dialogue with respect to the state of values and ethics throughout the public service. Since the release of the report, deputy minister champions have been named to lead the follow-up efforts to the report and to help provide overall direction on values and ethics related activity.

Part of the follow-up from that work was the preparation of detailed analysis and related guidance on the acceptance and treatment of gifts, benefits and other forms of hospitality. This work has been circulated to all deputy ministers who will each be responsible for ensuring that appropriate steps are taken in their

department to ensure that all public servants are provided with adequate information and support on this matter.

*c) Plans in preparation to address ethical issues in the Canadian public service*

On the legislative front, there was the recent passage of Bill S-21 (The Corruption of Foreign Public Officials Act), which gave effect to Canada's commitment to ratify both the OECD and OAS anti-corruption conventions. There is also the recent resumption of collective bargaining and the pending introduction of the new classification system which will have the potential to strongly impact on public service morale and overall behaviour.

There will also be an enhancement of the information and education aspects of public service ethics along with a greater linking of the dialogue on values with ethics issues in order to promote a fuller understanding and acceptance of these key underlying principles. These efforts are in part the result of the creation the Public Service Values and Ethics Office within the federal government's Treasury Board Secretariat that is responsible for co-ordinating such activity across federal departments.

Federal departments are also in the process of examining the support mechanisms that are in place to assist public servants in meeting their responsibilities with respect to the treatment of gifts, benefits and other forms of hospitality. A review will also take place related to workforce adjustment and harassment.

Further, the Lobbyists Registration Act will be reviewed by a Parliamentary Committee in January 2000, with consultations already underway.

## **II. Core values for the public service**

*a) Stating core values for the public service*

There are a number of policy and legislative vehicles which help to enunciate certain public service values, including the Public Service Employment Act which provides for appointments to the public service based on merit, as well as the Conflict of Interest and Post-Employment Code for the Public Service, which sets certain ethical guidelines for conflict of interest. This Code is a regulation passed pursuant to the Financial Administration Act and is made available to all public servants at the time of their appointment to the public service. For instance, section 6 states:

- "Every employee shall conform to the following principles:
- Employees shall perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.
- Employees have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.
- Employees shall not have private interests, other than those permitted pursuant to this Code, that would be affected particularly or significantly by government actions in which they participate.
- On appointment to office, and thereafter, employees shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising, but if such a conflict does arise between the private interests of an employee and the official duties and responsibilities of that employee, the conflict shall be resolved in favour of the public interest.

- Employees shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the employee.
- Employees shall not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to any person.
- Employees shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public.
- Employees shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.
- Employees shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.”

The 1995 deputy minister task force (the Tait Task Force) report on values and ethics, A Strong Foundation, **outlined the core public service values** as follows:

<b>Democratic Values</b>	
Loyally helping ministers, under the rule of law and the Constitution, to serve the public good.	
This requires respect for fundamental values, such as accountability to ministers and through them, to the Parliament and the citizens of Canada; support for the government of the day; and respect for the Constitution of Canada, for the rule of law, and for the due process.	
Rule of law Loyalty Due process Accountability	Neutrality/Non-partisanship Public interest/Common good Responsible government/support democracy Respect for the authority of elected office-holders
<b>“Traditional” &amp; “New” Professional Values</b>	
Serving Canada and Canadians with professional competence, efficiency, impartiality, non-partisanship, creativity, and innovation.	
Public servants must constantly renew their commitment to serve Canadians by enhancing the quality of service, by adapting to changing needs and by improving productivity.	
<b><u>Traditional</u></b> Merit Excellence Effectiveness Economy Objectivity and impartiality in advice Speaking truth to power Fidelity to the public trust Neutrality/non-partisanship	<b><u>New</u></b> Quality Innovation Initiative Creativity Resourcefulness Horizontality Teamwork Service to clients/citizens

### Ethical Values

Values such as honesty, integrity and probity are no different from those found in other sectors of society. However, they take on a particular meaning in the public service where they imply the ability to hold a public trust and to put the common good ahead of any private or individual self-interest.

Integrity	Equity
Honesty	Discretion
Probity	Public trust
Prudence	Disinterestedness
Impartiality	

### Peoples Values

The public service should display the same values of fairness, equity, courtesy, caring and concern to its employees as it does to other citizens of Canada.

Because citizens in a democracy are equal bearers of rights and duties, it is a principle of the public service that citizens should be treated equitably, without favouring anyone.

Balancing the interests and preserving the rights of citizens in a fair and equitable manner is fundamental to public service.

Respect	Tolerance	Moderation	Courage
Concern/caring	Openness	Decency	Reasonableness
Civility/courtesy	Fairness	Humanity	Collegiality/participation

The report also called for further examination of this outline of core public service values by individual departments. To varying degrees, that process has taken place in some organisations, and individual departmental mission or vision statements are often linked to some of these core values. The report also resulted in the preparation of several support documents, such as a handbook on values and ethics and a booklet on initiating a values and ethics dialogue.

The fourth Annual Report of the Clerk of the Privy Council and Head of the Public Service also addressed the values which form the foundation of public service.

#### ***b) How stated core public service values are communicated to public servants***

The following forms are used:

- Core values are automatically provided when someone joins the public service.
- The statement of core values is part of the employment contract/document.
- Discussion is ongoing as part of a dialogue on values and ethics within specific organisations.

The “core values” being referred to in this context are those outlined in the Conflict of Interest and Post-Employment Code for Public Service, as mentioned in Section I.b).

### III. Standards of behaviour for the public service

#### *a) Statements on the standards of behaviour expected of public servants*

These standards of behaviour are stated in the Conflict of Interest and Post-Employment Code for the Public Service, the Treasury Board human resources and/or personnel directives and policies (e.g. travel policy), and certain legislative references which have an impact on the behaviour of public servants including the Financial Administration Act, Official Secrets Act, Public Service Employment Act, the Criminal Code, and the Canadian Human Rights Act. The standards cover the following points:

- Receiving gifts or benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Use of corporate credit cards.
- Work outside the public service.
- Restrictions on post-employment.
- Special conditions/permissions on movement from the public service to the for-profit sector.
- Involvement in political work.

There are also guidelines/requirements for specific groups, such as:

- Department of National Defence (military personnel).
- Procurement officers at the Department of Public Works and Government Services.
- Professional standards for lawyers, doctors, engineers, accountants and actuaries.
- Industry Canada (re: gifts).
- Revenue Canada (customs officers).

Specific guidelines for standards of behaviour for public office holders are stated in the Conflict of Interest and Post-Employment Code for Public Office Holders (which includes, in part, ministers and deputy ministers, although it does not include other public servants who are covered by a separate code):

“Every public office holder shall conform to the following principles:

- Public office holders, in fulfilling their official duties and responsibilities, shall make decisions in the public interest and with regard to the merits of each case.
- A public office holder shall take care to avoid being placed or the appearance of being placed under an obligation to any person or organisation, or the representative of a person or organisation, that might profit from special consideration on the part of the office holder.
- In the formulation of government policy or the making of decisions, a public office holder shall ensure that no persons or groups are given preferential treatment based on the individuals hired to represent them. Ministers are also provided with information by the Prime Minister on their appointment to Cabinet which touches on the ministers’ relationship with the public service and the division of responsibility and accountability.”

**Minimum standards** of behaviour for the public service are stated in the Criminal Code.

***b) Unacceptable conduct for public officials according to the law***

The following kinds of **specific misconduct** are defined for public officials by criminal legislation:

- Active, passive, direct or indirect corruption of public officials/corruption committed by public officials.
- Breach of trust by public officials.
- Fraud perpetrated on the government.
- To interfere with the administration of justice.
- To procure or facilitate the commission of an offence.
- To protect from detection or punishment a person who has committed or intends to commit an offence.

**Further prohibitions and restrictions** are imposed on public officials by the Official Secrets Act which states that they must maintain confidentiality of classified information.

**IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct**

***a) Measures used by human resources management to promote an ethical environment***

The following measures are used:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.

**Special attention** is given to officials in positions particularly susceptible to corruption, with additional guidelines for over 50 federal departments and agencies, and audits.

***b) Informing and training public servants on ethics issues***

No broad-based mandatory co-ordinated training on ethical matters is offered, although some departments do have training programmes for staff. Executive training programmes take values and ethics issues into account with formal training modules available for those seeking such information and guidance. The release of the report of the deputy ministers task force on values and ethics also began a process of consultation and discussion on these issues which included the preparation of formal workshops on values and ethics.

Responsibility for administration of the Conflict of Interest Code for the Public Service is delegated to deputy heads of departments. Public servants can seek the advice of specialised officers, i.e. in the departmental human resources branches, regarding ethics related matters. However, the first point of contact for such matters rests with the employee and his/her manager. All departments offer formal Employee Assistance Programmes which can also provide related counselling. A number of departments have established departmental ombudsmen to assist as well.

*c) Other measures to promote high standards of conduct and assist prevention*

Measures include:

- Identifying and reporting conflict of interest situations, especially in areas of financial management, post public employment, receiving gifts or benefits such as fees, payments or entertainment, or in case of outside activities.
- Providing redress against administrative decisions.
- Anti-corruption provisions in bids for public contract (e.g. companies found guilty of corruption are disqualified/suspended from future tenders/bids).
- Specific controls on public procurement procedures.
- Risk assessment of the areas susceptible to misconduct.

*d) Disclosure policy*

All public office holders are required to make a confidential disclosure of assets, liabilities, investments, outside activities and offers of hospitality and benefits upon appointment and any changes in their personal situation are to be reported in 30 days. Yearly review is also initiated by the Ethics Counsellor.

For public servants, confidential disclosure is required when they have assets, activities or investments which have some relationship with the exercise of their duties and responsibilities.

The disclosed information is used to provide guidance and instruction to the declaring employee as to the conduct of his/her official duties to ensure that any real, apparent or potential conflict of interest is resolved in the public interest.

This information is protected by the Privacy Act, and used for recommending measures to prevent real or potential conflicts of interest from arising.

*e) Procedures to report misconduct/suspected corruption*

There are no procedures or obligations for public servants to report misconduct committed by public servants. Protection is available to public servants who expose wrongdoing, thanks to anonymity and confidentiality of personal information (Privacy Act). For the public, no special procedures are available to expose wrongdoing committed by public servants.

*f) Internal control to support the improvement of ethical conduct in the public service*

Internal control supports corruption prevention efforts. All federal officials must certify that they will obey conflict of interest rules. There are also financial and management controls. Internal audits of departmental practices and finances provide management with information that can be used to identify specific acts of corruption, as well as systemic weaknesses that could permit such acts. **Follow-up** mechanisms to implement recommended measures for systemic improvements are used through the Auditor General and the departmental management.

Internal control is required by law and by general policy. Its frequency varies according to the audit review schedules. Supervisors (for internal departmental audits), and Parliament (for the Auditor General) have access to the reports of the reviews.

***g) Disciplinary procedures in case of a breach of public service standards***

The disciplinary measures -- from reprimand, fine to dismissal or disqualification from public office - are stated both in agency documents and laws. For example, sections 80 and 81 of the Financial Administration Act provide for the following disciplinary measures:

“Every officer or person acting in any office or employment connected with the collection, management or disbursement of **public money** who

- (a) receives any compensation or reward for the performance of any official duty, except as by law prescribed,
- (b) conspires or colludes with any other person to defraud Her Majesty, or makes opportunity for any person to defraud Her Majesty,
- (c) designedly permits any contravention of the law by any other person,
- (d) wilfully makes or signs any false entry in any book, or wilfully makes or signs any false certificate or return in any case in which it is the duty of that officer or person to make an entry, certificate or return,
- (e) having knowledge or information of the contravention of this Act or the regulations or any revenue law of Canada by any person, or of fraud committed by any person against Her Majesty, under this Act or the regulations or any revenue law of Canada, fails to report, in writing, that knowledge or information to a superior officer, or
- (f) demands or accepts or attempts to collect, directly or indirectly, as payment or gift or otherwise, any sum of money, or other thing of value, for the compromise, adjustment or settlement of any charge or complaint for any contravention or alleged contravention of law,

is guilty of an indictable offence and liable on conviction to a fine not exceeding five thousand dollars and to imprisonment for a term not exceeding five years.”

Idem, where **bribes** are offered or accepted. “Every person who

- (a) promises, offers or gives any bribe to any officer or any person acting in any office or employment connected with the collection, management or disbursement of public money, with intent
  - (i) to influence the decision or action of that officer or person on any question or matter that is then pending, or may, by law, be brought before him in his official capacity, or
  - (ii) to influence that officer or person to commit, or aid or abet in committing any fraud on the revenue, or to connive at, collude in, or allow or permit any opportunity for the commission of any such fraud, or
- (b) accepts or receives any such bribe,

is guilty of an indictable offence and liable on conviction to a fine not exceeding three times the amount so offered or accepted and to imprisonment for any term not exceeding five years.”

**V. Scrutinising misconduct in the public service**

***a) Institutions and procedures to investigate and prosecute misconduct***

The institutions in place to investigate misconduct include:

- Internal Departmental Audit and Personnel and Human Resources and other officials within departments (who examine departmental practices and operations on an ongoing basis thus having the potential to uncover misconduct).
- The Comptroller General (who examines overall public service practices).
- Central agencies (who advise senior government officials on misconduct).
- The Auditor General (who audits the finances of all government operations).
- The Royal Canadian Mounted Police (who investigates breaches of law).

Investigations are initiated and structured based on the nature of the breach alleged and are generally led by the Royal Canadian Mounted Police. The Attorney General is in charge of prosecuting misconduct and corruption in the public service. Certain investigative or prosecuting bodies are empowered to bring suspected cases of corruption directly to court. The Ethics Counsellor, when asked by the Prime Minister, may also undertake investigations on ethics related matters.

***b) Institutions in place to perform independent scrutiny of the administration***

These include:

- Parliament/Parliamentary committee.
- Independent/external auditors reporting to elected bodies such as Parliament.
- Courts for judicial review.
- Independent office of ethics (not at federal level: it exists in each province/territory).

There are procedures/mechanisms available to bring wrongdoing to the attention of bodies exercising independent scrutiny on public service activities, through complaints to parliamentary committees or the Auditor General. According to the Auditor General Act:

“The Auditor General is the auditor of the accounts of Canada, including those relating to the Consolidated Revenue Fund and as such shall make such examinations and inquiries as he considers necessary to enable him to report as required by this Act. The Auditor General shall report annually to the House of Commons and may make (...) not more than three additional reports in any year to the House of Commons on the work of his office; and on whether, in carrying on the work of his office, he received all the information and explanations he required. Each report of the Auditor General shall call attention to anything that he considers to be of significance and of a nature that should be brought to the attention of the House of Commons, including any cases in which he has observed that

- Accounts have not been faithfully and properly maintained or public money has not been fully accounted for or paid, where so required by law, into the Consolidated Revenue Fund.
- Essential records have not been maintained or the rules and procedures applied have been insufficient to safeguard and control public property, to secure an effective check on the assessment, collection and proper allocation of the revenue and to ensure that expenditures have been made only as authorised.
- Money has been expended other than for purposes for which it was appropriated by Parliament.
- Money has been expended without due regard to economy or efficiency.
- Satisfactory procedures have not been established to measure and report the effectiveness of programs, where such procedures could appropriately and reasonably be implemented.

- Money has been expended without due regard to the environmental effects of those expenditures in the context of sustainable development.

The Auditor General may make a special report to the House of Commons on any matter of pressing importance or urgency that, in the opinion of the Auditor General, should not be deferred until the presentation of the next report (...). The Auditor General may, if in his opinion such an assignment does not interfere with his primary responsibilities, whenever the Governor in Council so requests, inquire into and report on any matter relating to the financial affairs of Canada or to public property or inquire into and report on any person or organisation that has received financial aid from the Government of Canada or in respect of which financial aid from the Government of Canada is sought.”

The reports of the Auditor General are published routinely.

## **VI. Co-ordination and self-assessment**

### ***a) Co-ordination and management of government ethics or anti-corruption policy***

The Public Service Values and Ethics Office within the Treasury Board Secretariat (employing five people) and the Office of the Ethics Counsellor (with 23 people) are assigned to co-ordinate and manage the implementation of the government ethics policy. Human resource management staff across departments support the administration of conflict of interest matters.

### ***b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct***

Proactive administration (particularly under the direction of deputy ministers), and provision of advice to public office holders by the Office of the Ethics Counsellor, the Office of the Auditor General and media reports, allow an assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct. The prevention measures are assessed with each new government (every 4-5 years).

The Conflict of Interest and Post-Employment Code for Public Office Holders, the Conflict of Interest and Post-Employment Code for the Public Service, the Criminal Code, the Lobbyists Registration Act, the Lobbyists Code of Conduct, and laws for individual agencies (e.g. National Energy Board) are considered as successful instruments for corruption prevention.

## THE CZECH REPUBLIC

### **I. The general context for managing ethics in the public service<sup>3</sup> in the Czech Republic**

#### ***a) The principal ethics-related issues which have confronted the public service in the Czech Republic during the past 10 years, and especially within the past 18 months***

The main problem which has confronted the public service in the Czech Republic since the fall of communism is the growing disparity between wages in the private and public sectors. While the real wage has grown by 35.5 per cent in the private sector, growth in the public sector is only 23.7 per cent (compared to 1992). This, combined with the growing amount of work in the public service, results in a high rate of fluctuation of personnel and in low interest on the part of qualified experts to work in the public sector.

#### ***b) Recent measures to improve ethical conduct in the public service***

In the last decade the following principal acts, *inter alia*, were amended: Criminal Act, Criminal Order, Labour Act, Act on the Administration of Taxes and Fees, Offence Act. Individual administration authorities also adopted many internal rules. In February 1999 the Government of the Czech Republic adopted the National Programme to Fight Corruption.

#### ***c) Plans in preparation to address ethical issues in the Czech public service***

The most important approach currently in preparation is the Act on Public Service, which is in an inter-ministerial reviewing process prior to its submission to the government at the end of 1999. The Bill itself will be submitted to the government by 30 September 2000. The Ministry of the Interior is drafting the "Bill on the Police and the Labour Relations (employment) of the Policemen" which will regulate the public service relations for the policemen. The Ministry is also preparing a new career structure and a Programme of Prevention of Criminal Practices by Police Officers. The Act on Professional Soldiers is currently in Parliament.

---

3. The term "public servants" covers the administrative employees of:

- Ministries and other central agencies.
- Deconcentrated state administration bodies.
- Local self-government.
- Police.
- Customs Offices.
- Army.
- Prison Service.
- State Attorney Offices.

A non-governmental organisation, named Business and Public Service Ethics is currently preparing a proposal of the Code of Conduct of Public Servants in co-operation with several ministries, including the Ministry of Agriculture, the Ministry of Education, Youth and Physical Training, and the Ministry of the Interior. The proposal should be submitted to the government before the end of 1999. In the Concept of Public Servants' Training adopted by the government in June 1999, there is a special section dedicated to training of public servants in ethic issues.

## **II. Core values for the public service**

### ***a) Stating core values for the public service***

The core values are stated in the General Labour Code, especially in § 72-74 which are focused on public servants, and in other related special acts. The values are also part of obligatory labour rules stated in every agency of the public service. According to these statements, public servants are obliged to:

- Act and decide impartially.
- Maintain secrecy on facts learned during their service if it is in the interest of their employer not to communicate these facts to third persons.
- Not to receive gifts or benefits relating to their job.
- Not to act in a way that could lead to conflict of public and personal interests.

### ***b) The stated core public service values are communicated to public servants***

The following forms are used:

- Core values are automatically provided when someone joins the public service.
- They are provided when someone takes up a position in a different public service agency.
- Depending on the agency, the statement of core values is part of the employment contract/document, when collective or individual contracts are used in the public service.
- Depending on the technical facilities in particular agencies, core values are communicated by instruments of new technology (such as Internet).

### ***c) The current statement on core public service values was enacted in 1992***

Relevant paragraphs -- *inter alia* § 72-74 -- were added to the General Labour Code on 23 April 1992. Officials of the Federal Ministry of Labour and Social Affairs prepared this amendment of the Labour Code. As with every act or amendment, it had to go through a reviewing process in every ministry and some other central agencies.

## **III. Standards of behaviour for the public service**

### ***a) Statements of the standards of behaviour expected of public servants***

The **expected behaviour** of public servants is stated mainly in the General Labour Code and in labour rules. These documents are available to any citizen. Expectations cover the following specific points:

- Receiving gifts or benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Special conditions/permissions on movement from the public service to the for-profit sector are not used generally, but in some cases (e.g. tax officers, some of the police officers) there is a promise of secrecy after leaving the public service and some special conditions are also stated in the Act on State Statistical Service and in some of the labour rules.
- Involvement in political work only in special cases (e.g. Director of the Office for Protection of Economic Competition).

In addition to the general standards applicable to all public servants there are **specific guidelines/requirements** for certain groups in the public service. For example: the Act on State Statistical Service enumerates some special requirements for public servants working in statistical service; specific guidelines also exist for the Customs Service; and some specific requirements for tax officers (e.g. promise of secrecy, and restrictions on additional employment) are stated by law. Moreover, the Act on Wage and Other Requisites Related to Functions of State Representatives enumerates some special requirements related to wages and benefits of officials working at the **political/administrative interface**.

The **minimum standards** of behaviour for the public service are stated in the following legal documents:

- General Labour Code.
- Administrative Proceedings Act.
- Act on Conflict of Interest.
- Act on State Statistical Service.
- Act on Malpractice of Public Functionaries (public functionaries include Members of Parliament, senators, members of the government (ministers) and the chairmen (heads) of other central state agencies who are not members of the government).

**b) Unacceptable conduct for public officials according to the law**

The following kinds of **specific misconduct** are defined for public officials by criminal legislation:

- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Partiality in official decision-making.
- Abuse of office or public trust.

Furthermore, **additional prohibitions** and restrictions are imposed on public officials by the following legislation. The Act on Conflict of Interest restricts elected officials from abusing their office, power or information, from receiving personal benefits, and from participating in other businesses. It also defines an irreconcilability of functions in Parliament and in some administration authorities, namely ministries (in appointed or decision-making functions), the army, the police, the State Attorney's Office, the Supreme Audit Office, etc. The Act on State Statistical Service obliges public officials in statistical service to maintain secrecy on individual data received during their service. The Act on Tax and Fees Administration obliges tax administrators to maintain secrecy on individual data received during their service and to pay special attention to the rights of taxpayers and persons involved in the tax administration process.

#### IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct

##### a) *Measures used by human resources management to promote an ethical environment*

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.
- Ethical considerations are consistently taken into account in the recruitment process, and ethical considerations are also taken into account during the probation period.
- Considering ethical behaviour in the performance appraisal, according to internal guidelines.

**Special attention** is given to officials in positions particularly susceptible to corruption:

- In the area of tax administration, a new organisational structure was established, which ensures that various tax officers participate in the process. This means that it is impossible for a taxpayer to deal with only one tax officer.
- As a new initiative, a proposal for the rotation of customs officers in different functions has been prepared and is soon to be implemented.

##### b) *Informing and training public servants on ethics issues*

There is currently no general guideline for **training** of public servants on ethics issues. Thus, the form of the training depends on individual agencies of the public service. Even then, the preparation differs depending on the functions of individual public servants. For example, the Ministry of Finance provides special training which also includes ethical issues for customs officers. The Czech Statistical Office and the Ministry of Education, Youth and Physical Training provide entrance courses for every new employee where ethical issues are also discussed.

Ethics issues are also a part of training programmes provided by the Institute of Local Administration. As mentioned above, the government recently adopted the Concept of Public Servants' Training. It assumes that a very important part of the standard training programmes for public servants will consist of ethics issues. This means that ethics will be part of a basic common module of training for every public servant.

There are no special institutions or persons to give **guidance, advice, counselling or consultation** to public servants to resolve their work-related ethical problems and dilemmas. Providing such help is the managers' responsibility.

##### c) *Other measures to promote high standards of conduct and assist prevention*

These include:

- Identification and reporting of conflict of interest situations, especially in areas of financial management, post public employment, receiving gifts or benefits such as fees, payments or entertainment.
- Anti-corruption provisions in bids for public contract (e.g. companies found guilty of corruption are disqualified/suspended from future tenders/bids).

**d) Disclosure policy**

Disclosure of personal information (declaration of personal assets, financial interests) is required from elected officials and senior public servants. The following information is required to be disclosed on an annual basis:

- Assets and liabilities.
- Sources and level of income.
- Outside positions.
- Gifts.

The information provided by the elected officials to Parliament is accessible to any citizen. However, the legal provisions (Act No.287/1995 CoL) deal with the possible abuse of declared information on personal assets, gifts, etc. in order to avoid that the information be abused by non truthful or incomplete interpretation. Information provided by senior officials and elected officials to the National Security Office (NSO) is confidential, accessible only to the NSO.

**e) Procedures to report misconduct/suspected corruption**

For public servants, legal protection is available when exposing wrongdoing in the public service. For the public, special procedures are available – such as help desk, telephone line – to expose wrongdoing committed by public servants in certain sectors (i.e., in the police and the Customs Service). Another general forum, the Government (Board) for the Protection of Economic Interest is an advisory organisation of the government - established on 23 September 1998 (Gov. Resolution No.623) - to take over the fight against corruption including control of the privatisation process of state (public) enterprises.

**f) Internal control to support the improvement of ethical conduct in the public service**

There are internal control departments in every public service organisation. The type and scope of their activities depends on the character of the organisation. Thus, for example, in the Ministry of Finance, internal control is provided by the Control Department, the General Director's Inspection Department and control departments in every territorial financial institution.

Internal control detects imperfection and inefficiencies and provides recommendations as a basis for follow-up improvements. Generally, there is no required type of follow-up measure, but very often follow-up control is required to find out how previously detected imperfections were dealt with.

Depending on the character of the institution, in some organisations (e.g. the Ministries of Finance and Justice) internal control is required by law. In some other central agencies (e.g. Czech Statistical Office) internal organisational rules specify the rules and conditions of internal control. Depending on the character of the institution, internal control is carried out annually or according to actual needs and the programme of controls.

*g) Disciplinary procedures in case of a breach of public service standards*

The General Labour Code states that the employee can be dismissed in case of serious breach of standards. Various disciplinary measures are contained in special laws regulating the service relationships of certain groups of public servants, such as policemen, members of the prison service or customs officers.

**V. Scrutinising misconduct in the public service**

*a) Institutions and procedures to investigate and prosecute misconduct*

Bodies in place **investigating** misconduct and corruption in the public service:

- An investigative body operates with jurisdiction over the whole public service.
- An investigative function exists inside individual public service agencies.

Examples are the Police of the Czech Republic (its Service for Detecting Corruption and Serious Economic Criminality), and the Inspection of the Ministry of the Interior and the Inspection of the Customs Service, which are accountable to respective ministers and financed from the resources of respective ministries.

Bodies in place **prosecuting** misconduct and corruption in the public service:

- The Ministry of Interior's investigators.
- State attorneys.
- Independent courts.

Investigative and/or prosecuting bodies are empowered to bring suspected cases of corruption directly to court.

*b) Institutions in place to perform independent scrutiny of the administration*

These include:

- Parliament/Parliamentary committee.
- Independent/external auditors reporting to elected bodies such as Parliament or the municipal council.
- Courts for judicial review.
- The Supreme Audit Office.

According to the law, the responsibility of the Supreme Audit Office is to control the administration of state property and financing, the application of the State Budget, and tendering of public procurements. The frequency of the external audits is determined by a plan approved by Parliament. The reports of the Supreme Audit Office are published routinely.

## **VI. Co-ordination and self-assessment**

### ***a) Co-ordination and management of government anti-corruption policy***

A national corruption prevention plan/strategy has been developed. The National Programme to Fight Corruption is a document adopted by the Czech Government. It describes the situation of the Czech Republic in the area of corruption, and defines basic methods and measures for fighting it. The programme also enumerates individual steps in the process, including their objectives, time schedule and means of monitoring their successful implementation.

The main priorities of the Programme are the development of a democratic and pluralistic society, transparency of the administrative system, promoting freedom of the media, international co-operation in the fight against corruption, transparency of financing of political parties, openness in the government information policy (i.e. discussing the causes of corruption), etc. The Programme sets a time schedule for measures to fight corruption, including legislative and organisational arrangements and arrangements in the area of education, it concerns a strategy vis-à-vis the media, and in the area of international co-operation.

Non-governmental organisations like Transparency International and Czech ETHICScentrum are often consulted and their representatives take part in the process of document preparation and the development of policies in the field of ethics (See section I.c.).

### ***b) Assessing the effectiveness of measures promoting ethical conduct and preventing misconduct***

The Czech Republic is still in the period of transition from communism to democracy. Policies and legislative measures in many areas, including ethics, are still being created or quite new. Thus, the main issue now is to implement those policies and measures effectively, and it is too early to evaluate their effectiveness.

As already mentioned, the recently adopted National Programme to Fight Corruption provides many measures to promote ethical conduct and prevent corruption and misconduct, and sets a time schedule for their implementation through 2001. After all the described measures have been implemented and functioning for some time, an assessment will be made of their effectiveness and consistency with the policies set.

## DENMARK

### I. The general context for managing ethics in the public service in Denmark

#### a) *The principal ethics-related issues which have confronted the Danish public service during the past 10 years, and especially within the past 18 months*

According to corruption surveys, Denmark is among the least corrupt countries in the world. Nevertheless, compared to most other countries Denmark has very little formal regulation of the behaviour of civil servants, and detailed codes of conducts are practically non-existent. On the surface this could seem like a paradox, but the explanation lies in the **tradition and culture** of the civil service in Denmark.

Following the first free Constitution in 1849, continuous efforts have been made to strike a balance between loyalty and integrity of the civil service. In 1851 the first law on pensions was passed which gave civil servants considerable protection against the king and government by securing them a generous pension if they were discharged free of guilt. This law served to protect the integrity of civil servants.

The law on wages of 1860 – which gave civil servants a monthly wage dependent on seniority and rank – further strengthened the position of the civil servants. It also served to increase their loyalty by making it less attractive to have extra work outside the civil service, since the income from such activities was deducted from the monthly wage.

Without giving a detailed historical analysis of the development of the civil service, it would be fair to say that already at a very early stage considerable efforts were made to avoid corruption and ensure loyalty and integrity. The most visible sign of the success of these efforts is that today the loyalty and integrity of the civil service are not dependent on any kind of specific regulation or rules. Rather they depend on the culture and *modus vivendi* which are a result of more than a century's effort to create a modern and competent civil service.

Contrary to the experience of many other OECD countries, the implementation of the ideas of "new public management" in Denmark has not led to a severe backlash in the identity and values of the civil service which could give rise to ethical considerations. The reason for this may be the rather piecemeal and pragmatic attitude towards public sector reform in Denmark, which has never taken place without **extensive dialogue** with civil servants. At the same time major new initiatives such as performance-based contracts and performance-based pay have not been implemented full-scale before **pilot projects** and experiments had been carried through and evaluated. This approach has helped adjust and improve ideas in order to prevent ethical dilemmas or undesired effects.

However, this should not lead to the impression that ethical issues have been completely absent from the political agenda, but compared to other countries the ethical issues have not (yet) attracted very much attention. The principal ethics-related issues which have been debated have centred on the political/administrative interface. More specifically debates have arisen concerning the **relationship between ministers and civil servants** (and the use of political advisers), freedom of speech for civil servants, and the right and duty of civil servants not to accept illegal instructions.

Especially the last issue attracted considerable attention following the so-called "Tamil-case" in the late 1980's and early 1990s which had to do with illegal administration of the rules concerning refugees. As it turned out, the illegal action had been ordered directly by the Minister of Justice, but had been accepted and obeyed by the rank and file in the ministry. The case led to the fall of the conservative-liberal government, the minister was taken to Constitutional Court, and some of the top civil servants were tried at a civil servants tribunal.

***b) Recent measures to improve ethical conduct in the public service***

Concerning the issues mentioned above, they have normally appeared on the political agenda because of a specific case. In these cases necessary actions have been taken e.g. by setting up a special investigative commission or the Ombudsman making official statements about freedom of speech for civil servants. But the cases in themselves have not resulted in major changes in rules, codes of conduct, etc.

On the issue of the relationship between ministers and civil servants, a **White Paper** has been produced. This has succeeded in creating consensus about which advisory functions a civil servant can undertake and under which conditions ministers can bring in so-called special advisers, who are not part of the normal staff of the ministry.

Concerning the right and duty of civil servants not to accept illegal instructions, two White Papers have been produced which have specified the situations in which the civil servant should not – or could not be expected to – accept instructions. Furthermore the legal consequences of such refusal have also been made more precise. However, the ongoing debate in the civil service community following these White Papers should not be considered as something negative, since it serves to further reinforce civil service morale and integrity.

***c) Plans in preparation to address ethical issues in the Danish public service***

In order to inspire a debate among civil servants, politicians, etc., reinforcing the focus on ethics to ensure that ethical considerations will also be prominent in future management reform, the government is planning to publish a new **guidance book** with articles on different aspects of ethics and values in the public sector. The approach will not concentrate on corruption since this is not seen as a problem in the Danish context; rather it will focus on how to preserve what is **positive** in the traditional civil service identity and values in a time of transition and reform of the public sector.

## **II. Core values for the public service**

***a) Stating core values for the public service***

The core values for the public service are the following:

- Legality.
- Impartiality.
- Honesty.
- Efficiency.
- Consideration.

They are stated in legislation, in court decisions, and in decisions from the Ombudsman and the Ombudsman's concept of best administrative practices. The core values for the public sector are also stated in the Central Government Personnel Policy.

The Ministry of Finance is the overall employer for 200,000 central government employees who have jobs as different as those of university professors, train drivers, policemen, administrative employees in the central administration, and ballet dancers. Consequently, the Minister of Finance is negotiating pay and employment terms and conditions with the various employee organisations. One of the tasks related to this is the development of the overall personnel and pay policy framework, published in a series of books. These books provide guidance, inspiration and management tools to establish local personnel policies.

It is a central issue for government that the public sector provides good, efficient services to citizens and society, as well as attractive workplaces for all government employees. Thus demands are made on all government organisations for professionalism, flexibility, and a sense of responsibility.

*b) How stated core public service values are communicated to public servants*

The Ombudsman's annual report, the Central Government Personnel Policy, and guides published by the individual ministries, etc., are means of communicating stated core public service values to public servants.

*c) The statement on core public service values has not been revised in the last decade*

### III. Standards of behaviour for the public service

*a) Statements on the standards of behaviour expected of public servants*

There is no general code of conduct for the Danish public service. Statements on standards of behaviour expected of public servants can be found in several documents. The standards of behaviour cover the following points:

- Receiving gifts or benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Use of corporate credit cards.
- Employment outside the public service.

Specific institutions have established **additional guidelines** for their employees. The Tax and Customs Agency has published a guide regarding secondary employment. This guide states that it is the employee's responsibility to avoid conflicts of interest and ensure that his or her secondary employment does not create any kind of uncertainty of the Agency's impartiality. The Danish Financial Supervisory Authority has more strict rules regarding personal finances and ownership. With the same purpose as the Tax and Customs Agency – to make certain that personal dispositions do not influence the job – employees are requested to give access to their personal accounts and report any kind of change in their financial situation, e.g. new mortgages, etc.

As was mentioned under I. b), three White Papers have been produced which deal with various aspects of the dilemmas and challenges facing civil servants at the **political/administrative interface**. As an example, the guidelines are quite precise about which kinds of advice a civil servant is supposed to give. The Danish "rules" are quite liberal inasmuch as the civil servant who is part of the strategic/political advice structure can be expected, for example, to give advice on the parliamentary outcomes of different strategies. If the minister feels the need to employ a special adviser, this is also possible, as long as it is made explicit that the person cannot give instructions to the rank and file of the ministry and that the person must leave his or her position if a change of government takes place. Generally speaking, guidelines for civil servants working at the political/administrative interface are primarily based on tradition and unwritten rules.

**Minimum standards** of behaviour are primarily laid down in the Danish Public Administration Act, Civil Servants Act, and the Penal Code. The Danish Public Administration Act contains provisions on the following subjects:

- Disqualification.
- Guidance and representation.
- Political parties access to files.
- Hearing of parties.
- Giving of grounds, etc.
- Guidance on appeal.
- Professional secrecy, etc.

The Act applies to consideration of matters in which a decision has been or will be made by an administrative authority. The provisions on disqualification also apply to consideration of matters on the making of contracts and similar civil law agreements. The Civil Servants Act states in section 10, the fundamental principle that the behaviour of a civil servant both inside and outside the service must be worthy of the respect and confidence demanded of his profession (*decorum officiale*). According to section 17 of the Act a civil servant may hold outside positions only when this is consistent with his duties as a civil servant. Sections 19-24 contain provisions for disciplinary sanctions for misconduct. The Penal Code deals with corruption (in chapter 16 concerning misconduct in the public service, Sections 144 and 145), and the more severe cases of misconduct.

**b) Unacceptable conduct for public officials according to the law**

The following kinds of specific **misconduct** are defined for public officials by criminal legislation:

- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Partiality in official decision-making.
- Abuse of office or public trust.

Further prohibitions and restrictions, described in the last paragraph of III. a) above, are imposed on public officials by the Civil Servants Act.

#### **IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct**

##### ***a) Measures used by human resources management to promote an ethical environment***

These measures include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies and publicising vacant positions.

In general, no special attention is given to officials in positions particularly susceptible to corruption, except for the Tax and Customs Agency and the Danish Financial Supervisory Authority mentioned under III. a).

##### ***b) Informing and training public servants on ethics issues***

There is no centrally organised training system in Denmark. Individual organisations form their own training programme based on voluntary courses. Courses on ethics may be part of these programmes.

As stated above, both legislation and the central personnel policy cover the main issues in regard to ethical guidelines. When an employee finds himself/herself in a situation of doubt, it is common to seek advice from the immediate superior or the trade union representative.

##### ***c) Other measures to promote high standards of conduct and assist prevention***

These measures include:

- Identifying and reporting conflict of interest situations, especially in areas of financial management, receiving gifts or benefits such as fees, payments or entertainment, and on insider rules regarding securities, etc.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness of responding to requests.

##### ***d) Disclosure policy***

There are no general disclosure requirements. Section 6 of the Danish Public Administration Act provides that any person who knows of circumstances as referred to in subsection (1) of Section 3 (disqualification) shall as soon as possible advise his superior. Some senior officials are required to report their appointment as member of the board of directors of certain companies.

The information received under Section 6 of the Danish Public Administration Act is used by the authority concerned in order to decide whether the civil servant should be disqualified from the case. Similarly, the information concerning board members is used in order to avoid possible conflicts of interest.

*e) Procedures to report misconduct/suspected corruption*

Generally there are no specific procedures for civil servants to report misconduct or suspected corruption. However, it is part of the managers' duties to supervise staff and report misconduct or suspected corruption. Protection/safeguard is available to public servants who expose wrongdoing: ordinary protection against dismissal or other adverse reactions will apply in these cases. For the public, special procedures are available to expose wrongdoing committed by public servants, such as complaint procedures and the ombudsman.

*f) Internal control to support the improvement of ethical conduct in the public service*

Both financial and management control are used by the management of public service organisations to e.g. promote ethics. Since internal control is both required by law and by general policy, the control forms and control frequency vary from organisation to organisation. A wide range of control forms is being used. An increasing use of control can be identified in Danish public service organisations. Typical tasks for the control functions or units are:

- Providing management with relevant information
- Risk assessment and analysis.
- Budget control and quality control.
- Follow-up on performance contracts (measuring results).
- Tasks of internal consultants.

Follow-up is required to implement recommended measures for systemic improvements, and regular improvements will also be implemented as a result of follow-up mechanisms. Internal control is an integral part of the ongoing management procedures. By law the public has the right of access to documents. In practice the reports may be used for many purposes such as documentation for the National Audit Office of Denmark and as part of the steering relationship between public agencies and departments.

*g) Disciplinary procedures in case of a breach of public service standards*

Under the Civil Servants Act (section 24), disciplinary measures for misconduct range from reprimand to dismissal. A civil servant suspected of misconduct may be suspended (section 19), but may challenge a decision concerning disciplinary measures in the courts.

## **V. Scrutinising misconduct in the public service**

*a) Institutions and procedures to investigate and prosecute misconduct*

The principal **investigative** organisations involved in anti-corruption efforts include:

- An investigative function inside individual public service agencies and departments.
- The Ombudsman.
- An investigative commission which may be set up under the new Investigative Commissions Act.

Criminal offences committed by civil servants will be **prosecuted** by the police and the ordinary public prosecution and will be brought directly to court. Disciplinary cases will be handled by the agency or

department itself. In some cases the agency or department is required by the Civil Servants Act to hold an inquiry. The decision of the agency or department concerning disciplinary sanctions may be challenged before the courts. In disciplinary cases the civil servant may appeal to the courts against the decision of the agency or department.

***b) Institutions in place to perform independent scrutiny of the administration***

These include:

- Public Accounts Committee of the Parliament.
- Independent/external auditors reporting to elected bodies such as Parliament (NAOD)
- Ombudsman.
- Courts for judicial review.
- National Audit Office of Denmark.

The National Audit of Denmark (NAOD) is an independent institution carrying out audit of the State accounts and of State funds given to institutions. In addition, NAOD has access to review accounts wherever the State has invested money, e.g. State-owned limited liability companies. NAOD audits the various areas according to materiality and risk. NAOD has drawn up internal guidelines for audits. External audit reports are published routinely.

There are no specific procedures and mechanisms available to bring wrongdoing to the attention of bodies exercising independent scrutiny on public service activities.

## **VI. Co-ordination and self-assessment**

***a) Co-ordination and management of government ethics and anti-corruption policy***

Because of the positive conditions described in Section I. above, there has not been a need to develop a national ethics policy or corruption prevention plan. For that reason Denmark has no institution assigned to co-ordinate and manage the implementation of a government ethics or corruption prevention policy. But due to their general assignments on law and public management, the Ministries of Justice and Finance play important roles in monitoring problems and policies affecting ethics in public administration.

***b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct***

As mentioned in Section I., both international and domestic surveys show that Denmark is among the least corrupt countries in the world. The following factors and methods have contributed substantially to the achievement of this favourable position:

- Establishment of a tradition and culture in the public service which ensure the independence and professionalism of the public servants.
- The piecemeal and pragmatic approach for introducing public sector reforms in Denmark, which has always used extensive dialogue with civil servants, and pilot projects and experiments before the implementation of full-scale measures. This approach has helped adjust and improve ideas in order to prevent ethical dilemmas or undesired effects.

## FINLAND

### **I. The general context for managing ethics in the public service in Finland**

#### ***a) The principal ethics-related issues which have confronted the public service in Finland during the past 10 years, and especially within the past 18 months***

The principal ethics-related issues are:

- Public management reforms (e.g. management by results and result-based budgeting, the devolution of decision-making and overhaul of structural systems).
- The public service is becoming more market-driven and more internationalised (e.g. the impact of the European Union).

#### ***b) Recent measures to improve ethical conduct in the public service***

These include:

- Revising the criteria and procedures for selection of top government officials.
- Duty to declare relevant personal commitments.

#### ***c) Plans in preparation to address ethical issues in the Finnish public service***

A project has been launched concerning ethical conduct in the Finnish public sector, which should in its final analysis recommend actions to ensure well-functioning institutions and systems for promoting ethical conduct. The project should be completed before the end of 1999. In addition, there is a plan to provide more specific guidelines for ancillary jobs (any office and paid work which the civil servant concerned is entitled to refuse, and any profession, trade or business). Moreover, a project is planned to be launched concerning ethical conduct in the induction of new-comers in the state administration.

### **II. Core values for the public service**

#### ***a) Stating core values for the public service***

The following core values are stated for the Finnish public service:

- Independence.
- Impartiality.
- Objectivity.
- Trustworthiness of government.
- Transparency.
- Service-mindedness.
- Sense of responsibility.

These core public service values are available to public servants in legal documents, such as the Constitution Act and the State Civil Servants Act, and in other forms such as general guidelines, decisions-in-principle, etc. The Constitution Act contains, for example, a provision according to which good governance shall be guaranteed by law. The State Civil Servants Act includes a provision about the aim of the act “to ensure the efficient and appropriate performance of state duties while also meeting the requirements of legal protection”.

General principles of administrative law are also important legal norms which govern the administration. These principles include e.g. objectivity and equality. Moreover, there have been three Government Resolutions in the 1990s in which the values are specified or which give general guidelines:

- The Government Decision-in-Principle on Reforms in Central and Regional Government, 1993.
- The Government Decision-in-Principle on Revising the Criteria and Procedures for the Selection of Top Government Officials, 1997.
- High-Quality Services, Good Governance and a Responsible Civic Society – Guidelines of the Policy of Governance, 1998.

***b) The stated core public service values are communicated to public servants***

The principal forms for communicating core values are through the actions of supervisors and colleagues and through training of civil servants. New ways for communicating are being developed.

***c) The statement on core public service values was last revised in 1998***

The Government Resolution of 1998 (High-Quality Services, Good Governance and a Responsible Civic Society – Guidelines of the Policy of Governance) outlines guidelines of public management in steering the administration. The implementation of the Resolution is the task of the relevant ministries jointly with the agencies in their fields. The first part of the Resolution contains the goals and measures of the policy of governance and the second part contains the general principles of the reform policy (such as further development of political leadership practices and strengthening of the steering and evaluation systems of the government).

### **III. Standards of behaviour for the public service**

***a) Statements of the standards of behaviour expected of public servants***

The expected behaviour of public servants is stated mainly in the State Civil Servants Act. There are certain obligations, for example, a civil servant shall perform his/her duties properly and without delay, he/she shall conduct himself in a manner befitting his/her status and duties, he/she may not demand, accept or receive any financial or other benefit if this would reduce confidence in him or in an authority etc. Moreover, general information is given, for example in the form of civil service training. The following points are covered:

- Receiving gifts or benefits such as fees, payments, entertainment.
- Use of official information.
- Official travel.
- Work outside the public service.

- Ancillary jobs.

In addition to the general standards applicable to all public servants, there are **specific guidelines** and requirements for certain groups in the public service, such as for the police, the tax administration and the defence forces.

The **minimum standards** of behaviour for the public service are stated in the following legal documents:

- The State Civil Servants Act.
- The Constitution Act.
- The Administrative Procedures Act.

***b) Unacceptable conduct for public officials according to the law***

The following **specific types of misconduct** are defined for public officials by criminal legislation:

- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Partiality in official decision-making.
- Abuse of office or public trust.

**Further prohibitions and restrictions** imposed on public officials by the State Civil Servants Act include the following:

- A prohibition on accepting financial or other benefits.
- Limitations on ancillary jobs.
- Civil servants may not make use of, or without permission reveal to others, anything that comes to their knowledge in their official capacity regarding which confidentiality is required by law or which concerns the health of another person, or which clearly may not be revealed because of the nature of the matter.
- Acting contrary to official duties.

**IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct**

***a) Measures used by human resources management to promote an ethical environment***

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.
- Taking ethical considerations into account in the recruitment process.

***b) Informing and training public servants on ethics issues***

In each individual case, an agency uses its discretion to arrange training for newcomers. This may also include ethics issues. After that - according to discretion, e.g. when adapting to the particular methods of work of the department - public servants have the possibility of participating in further career training. The training is organised by the civil service departments concerned and sometimes by the Finnish Institute of Public Management.

There is no special institution or person to give **guidance, advice or counselling** to public servants in order to resolve their work-related ethical problems and dilemmas. It is mainly the managers' responsibility to provide such help.

***c) Other measures to promote high standards of conduct and assist prevention***

These include:

- Requiring reasons for administrative decisions.
- Setting standards for timeliness of responding to requests.
- Specific controls on public procurement procedures.

***d) Disclosure policy***

Disclosure of personal information - such as declaration of personal assets and liabilities, loans or outside employment - is required mainly from top civil servants and elected officials when they take up their position in the public service and if their relevant circumstances change. A similar disclosure system will also be used for judges from 1 March 2000.

***e) Procedures to report misconduct/suspected corruption***

For Finnish public servants, a general obligation is to observe legality. For the public, special procedures are available, such as complaint procedures and the ombudsman, to expose wrongdoing committed by public servants.

***f) Internal control to support the improvement of ethical conduct in the public service***

Internal control is required by law and by general policy. It supports corruption prevention efforts by enabling management and administration to detect irregularities and identify problems. On a larger scale, general financial, management and legal controls also promote ethics. Internal control reviews are used mainly once per year and they require administrative follow-up. Supervisory bodies have access to the reports of the reviews.

***g) Disciplinary procedures in case of a breach of public service standards***

The State Civil Servants Act includes provisions on the measures that can be used if a civil servant violates or neglects his/her official duties. These measures include written warning, dismissal and immediate termination of the official employment. In addition, there is suspension from office, which is a safety measure. Rectification of a decision can be requested from the Civil Service Committee. A Civil Service

Committee decision can be appealed to the Supreme Administrative Court, in which case the matter is treated as urgent.

## V. Scrutinising misconduct in the public service

### a) *Institutions and procedures to investigate and prosecute misconduct*

The **principal investigative and prosecuting organisations** involved in anti-corruption efforts include:

- The police and public prosecutors in case of a breach of the penal code (criminal investigation and prosecution). These investigative bodies operate with jurisdiction over the whole public service.
- The employer in the respective administrative departments when a public servant infringes the civil service regulations (e.g. violating the provisions of the State Civil Servants Act).
- An investigative body operating with jurisdiction over the whole public service.

Investigative and prosecuting organisations are empowered to bring suspected cases of corruption directly to court.

### b) *Institutions in place to perform independent scrutiny of the administration*

These include:

- The State auditors, the National Audit Office reporting to the Parliament.
- Ombudsman.
- The Chancellor of Justice.

According to the Constitution Act, the **State auditors** assist the Parliament to oversee the finances of the State and supervise compliance with the budget. The State auditors are entitled to obtain information and documents they require from the audited authorities. Provisions regarding the right of the State auditors to obtain elsewhere the necessary information for their work are prescribed by the Act of Parliament. External audit reviews check both the financial and legal aspects of activities in the public service. The external audit reviews are conducted once a year and the audit reports are published routinely.

The Parliamentary **Ombudsman** oversees the activities of:

- Public authorities, which include: the Council of State and Ministries, courts of law, government offices and institutions, municipal and regional authorities, ecclesiastic bodies (for example, parishes of the Evangelic Lutheran and Orthodox Churches).
- Public servants, including cabinet ministers, judges, police officers, military officers, public prosecutors, municipal managers, members of municipal councils, social welfare workers, tax commissioners, employees of governmental, municipal or ecclesiastic bodies.
- Others carrying out public functions.

Anyone may complain to the Parliamentary Ombudsman, regardless of age, citizenship or other similar reason. A complaint will be investigated if the Parliamentary Ombudsman finds there is reason to suspect unlawful or improper action subject to the Ombudsman's jurisdiction. The Parliamentary Ombudsman cannot intervene in the manner in which a public authority exercises the discretionary powers conferred on

it by law, unless this discretion is abused. The investigation of complaints involves no fees and the complaints are investigated in an impartial manner.

The Parliamentary Ombudsman may take the following measures:

- Order a criminal charge to be brought before a court of law against a public servant for misconduct in office.
- Reprimand a public authority or a public servant for improper conduct or faulty proceedings.
- Express critical views concerning the interpretation of the law by public authorities or public servants.
- Call the attention of the authority or public servant to principles of good administration.
- Recommend law reform with regard to statutory provisions that he or she finds ambiguous, defective or inconsistent.

The **Chancellor of Justice**, along with the Parliamentary Ombudsman, is the supreme guardian of the law in Finland. The Chancellor of Justice supervises the legality of decisions and actions of the Council of State, its members and the President of the Republic. From a constitutional point of view, the supervision of the legality of the Council of State's actions is one of the most important duties entrusted to the Chancellor of Justice. Furthermore, the Constitution Act of Finland charges the Chancellor of Justice to supervise that the authorities, civil servants, employees of public corporations and other persons in public posts observe the law in the performance of their duties and fulfil their obligations in such a manner that no one's legal rights are violated.

The Chancellor of Justice investigates notices and recommendations from various authorities and undertakes further measures where necessary. The Chancellor of Justice also investigates matters on his/her own initiative. For example, news reports in the media or alleged incidents of unlawfulness may lead to an investigation.

## **VI. Co-ordination and self-assessment**

### ***a) Co-ordination and management of government ethics policy***

There is no special body in charge of ethics in Finland. In the State administration, central control of personnel policy rests with the Personnel Department of the Ministry of Finance.

There is a project concerning ethical conduct in the Finnish public sector, which should in its final analysis recommend actions to ensure well-functioning institutions and systems for promoting ethical conduct. The project should be completed before the end of 1999. Non-governmental organisations were involved in the preparation of this project.

### ***b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct***

On the one hand, training, guidance and increasing the awareness of good ethics and behaviour are considered as successful instruments of corruption prevention. On the other hand, excessive and detailed regulations are deemed the most influential negative factor.

## FRANCE \*

### I. Le contexte général de la gestion de la déontologie dans le service public<sup>4</sup> de France.

#### *a) Les principaux problèmes relatifs à la déontologie auxquels le service public de France a été confronté au cours des dix dernières années et plus particulièrement des 18 derniers mois.*

Les principaux problèmes sont les suivants :

- Le développement rapide de l'urbanisme commercial.
- L'insuffisante transparence dans l'attribution de marchés publics due à une procédure contraignante et lourde.
- Le flux de départs des hauts fonctionnaires vers le secteur privé (« pantouflage »), suscité par les rémunérations supérieures proposées dans le secteur privé.
- Le délit de prise illégale d'intérêts de fonctionnaires en activité ou ayant cessé leur activité.
- Le rapprochement des secteurs public et privé exposant les fonctionnaires de l'Etat et les fonctionnaires territoriaux dans le mouvement actuel de la décentralisation.

#### *b) Les mesures prises pour améliorer le comportement déontologique dans le service public.*

- S'agissant des départs des fonctionnaires vers le secteur privé, liés à une cessation temporaire ou à une cessation définitive de fonctions, les mesures suivantes ont été prises :
- Les articles 72 de la loi du 11 janvier 1984 portant dispositions statutaires relatives à la fonction publique de l'Etat et articles équivalents pour les deux autres fonctions publiques, et l'article 87 de la loi du 29 janvier 1993 modifiée relative à la prévention de la corruption et à la transparence de la vie économique et des procédures publiques interdisent aux fonctionnaires des trois fonctions publiques qui cessent définitivement leurs fonctions ou qui demandent à être placés en position de disponibilité d'exercer une activité professionnelle dans le secteur privé ou dans le secteur public concurrentiel incompatible avec leur précédentes fonctions dans l'administration et instituent une commission de « déontologie » dans chacune des trois fonctions publiques. Le décret n° 95-168 du 17 février 1995 modifié définit les activités interdites et précise les modalités d'exercice du contrôle déontologique par les commissions. Une commission de déontologie a été instituée pour la fonction militaire et une procédure spécifique de contrôle a été mise en place pour les magistrats.
- En outre, des guides et codes de déontologie ont été élaborés dans quelques administrations à destination de leurs agents particulièrement exposés. On peut citer, à titre d'exemple : le Code de

---

4. En France, la fonction publique comprend l'ensemble des personnes occupant les emplois civils permanents de l'Etat, des collectivités territoriales et de leurs établissements publics et les établissements publics hospitaliers. Les fonctionnaires civils sont régis par deux séries de textes : des textes législatifs qui définissent les garanties, les obligations et principes essentiels régissant l'emploi et la carrière des fonctionnaires (il s'agit principalement du statut général, dont le titre I établit les droits et obligations de l'ensemble des fonctionnaires et dont les titres II, III et IV fixent les règles applicables respectivement aux fonctionnaires de l'Etat, des collectivités territoriales et des établissements hospitaliers publics) et des textes réglementaires qui énoncent les règles particulières applicables à chaque corps de fonctionnaires. Ce chapitre concerne principalement la fonction publique de l'Etat. Lorsqu'il traite des trois fonctions publiques, ceci est expressément spécifié.

déontologie de la police nationale (décret n° 86-592 du 18 mars 1986), le guide «Déontologie du fonctionnaire », élaboré à l'attention des fonctionnaires de la Direction générale des impôts (juin 1996), le guide « Prévenir les manquements internes à la probité », à l'usage des chefs d'établissements, de l'encadrement et de la maîtrise de La Poste (mai 1997), le guide « Responsabilité et déontologie », guide de référence pour les chefs de service et l'encadrement du ministère de l'équipement, des transports et du logement (janvier 1998).

- Des enseignements de la déontologie dans les écoles administratives (École nationale d'administration, Instituts régionaux d'administration) ont été mis en œuvre.

***c) Les projets actuellement en préparation relatifs aux problèmes déontologiques dans le service public français.***

Les projets suivants sont en préparation :

- Le renforcement du contrôle exercé par les commissions de déontologie qui sera étendu à toutes les positions statutaires permettant un départ vers le secteur privé ou le secteur public concurrentiel (actuellement ce contrôle ne porte que sur les cessations définitives de fonctions et les demandes de mise en disponibilité).
- La création de nouveaux codes de déontologie et de nouvelles commissions, tels le code de déontologie de l'administration pénitentiaire et la future commission nationale de déontologie de la sécurité.
- La réforme du décret-loi de 1936 relatif aux cumuls de retraites, de rémunération et de fonctions, qui devrait conduire à l'élaboration d'une nouvelle réglementation des cumuls d'activités et de rémunérations des agents publics.
- L'organisation, sous l'égide de la Direction générale de l'administration et de la fonction publique, d'un comité de réflexion associant les inspections générales pour échanger les expériences et les bonnes pratiques des administrations.

**II. Les valeurs essentielles du service public.**

***a) Les valeurs essentielles du service public.***

Les valeurs essentielles du service public sont définies tant dans les textes juridiques que dans la jurisprudence. Elles sont reprises dans les codes et guides de déontologie évoqués plus haut. Ainsi, on trouve dans les lois statutaires, notamment dans la loi n°83-634 du 13 juillet 1983 (titre I du statut général) portant droits et obligations des fonctionnaires, au chapitre IV, la liste des obligations des fonctionnaires tels :

- L'obligation de consacrer l'intégralité de leur activité professionnelle aux tâches qui leur sont confiées (article 25).
- L'obligation de respecter le secret professionnel et la discrétion professionnelle (article 26).
- L'obligation hiérarchique, sauf dans le cas où l'ordre donné est manifestement illégal et de nature à compromettre gravement un intérêt public (article 28).
- La responsabilité pour faute et les sanctions disciplinaires (articles 29 et 30).

Les fonctionnaires sont également soumis aux règles du Code pénal de la section concernant les manquements au devoir de probité (délits de concussion, de corruption, de prise illégale d'intérêts, de soustraction ou de détournement des biens et des deniers publics).

D'autres réglementations sont applicables aux agents publics, tels le décret loi du 29 octobre 1936 ou la loi du 29 janvier 1993 susmentionnés. Certaines obligations qui s'imposent aux fonctionnaires ne résultent pas d'un texte mais ont été créées par la jurisprudence. Ainsi, l'obligation de réserve, qui contraint les agents publics à observer une retenue dans l'expression de leurs opinions, notamment politiques, sous peine de s'exposer à une sanction disciplinaire. Cette obligation figure toutefois dans certains statuts particuliers, tel celui des magistrats de l'ordre judiciaire

**b) *La communication aux fonctionnaires des valeurs essentielles du service public.***

Ces valeurs sont communiquées aux fonctionnaires par la voie :

- Des codes et guides de déontologie mentionnés plus haut.
- De la formation initiale, de la formation effectuée lors de l'entrée en fonctions au sein de chaque administration et de la formation professionnelle continue.
- De la diffusion à l'ensemble des administrations des rapports annuels des commissions de déontologie instituées dans les trois fonctions publiques.

**c) *La déclaration sur les valeurs essentielles de la fonction publique a été reformulée au cours des dix dernières années.***

Plusieurs nouveaux dispositifs ont été mis en place au cours des dix dernières années, notamment la loi du 29 janvier 1993 susmentionnée qui soumet les agents publics et les procédures publiques à de nouvelles conditions en matière de lutte contre la corruption et le décret n° 95-168 du 17 février 1995 modifié qui définit les activités privées interdites aux agents publics et qui précise les modalités d'exercice du contrôle déontologique par les commissions.

### **III. Normes de conduite dans le service public.**

**a) *Déclarations sur les normes de comportement que l'on est en droit d'attendre des fonctionnaires.***

Il n'existe pas une déclaration des normes de comportement des agents publics mais un ensemble de normes composé des lois statutaires, de textes juridiques spécifiques, de la jurisprudence et des codes et guides de déontologie de chaque administration. Ces normes couvrent les aspects suivants :

- L'acceptation de dons ou d'avantages.
- L'utilisation d'informations officielles.
- Le travail extérieur au service public.
- Les restrictions en matière d'emploi après le départ de la fonction publique.
- Les conditions spéciales relatives au mouvement du service public vers le secteur privé.
- L'implication dans l'action politique.

Il existe des **directives supplémentaires**, présentées dans des codes de conduite professionnels spécifiques pour certaines catégories. Des guides et codes de déontologie ont été élaborés dans quelques administrations à destination de leurs agents particulièrement exposés tels :

- Le Code de déontologie de la police nationale (décret n° 86-592 du 18 mars 1986).
- Le guide « Déontologie du fonctionnaire », élaboré à l'attention des fonctionnaires de la Direction générale des impôts (juin 1996).

- Le guide « Prévenir les manquements internes à la probité », à l'usage des chefs d'établissements, de l'encadrement et de la maîtrise de La Poste (mai 1997).
- Le guide « Responsabilité et déontologie », guide de référence pour les chefs de service et l'encadrement du ministère de l'équipement, des transports et du logement (janvier 1998).
- Un décret instituant un code de déontologie de l'administration pénitentiaire (en projet).

Les **normes fondamentales** du service public sont définies par les lois statutaires, et différentes lois figurant dans le Code civil, le Code pénal, le Code des marchés publics.

***b) Types de conduites considérées comme inacceptables au regard de la loi pour des agents de la fonction publique.***

Les **types de comportements répréhensibles** suivants sont spécifiquement définis dans la législation pénale pour les agents de la fonction publique :

- La corruption active, passive, directe ou indirecte de corruption sur des agents de la fonction publique/effectuée par des agents de la fonction publique (articles 432-11 du Code pénal).
- L'abus de pouvoir ou de la confiance du public (articles 432-1 à 432-6 du Code pénal).
- La prise illégale d'intérêts des fonctionnaires en activité et des fonctionnaires ayant cessé leurs fonctions dans le fonctionnement des entreprises qu'ils auraient contrôlé, surveillé, avec lesquelles ils auraient passé des marchés ou contrats ou exprimé un avis sur ces marchés ou contrats (articles 432-12 et 432-13 du Code pénal).
- La concussion, fait pour certains agents publics d'exiger ou de recevoir des sommes qu'ils savaient ne pas être dues ou excéder ce qui est dû ou d'accorder un avantage en violation des textes légaux ou réglementaires (article 432-10 du Code pénal).
- La soustraction et le détournement de biens (articles 432-15 et 432-16 du Code pénal).
- L'atteinte au secret professionnel (article 226-13 du Code pénal).
- La discrimination (article 432-7 du Code pénal).

Les **interdictions et restrictions** suivantes sont, à titre d'exemple, imposées aux fonctionnaires par d'autres types de législation :

- Interdiction de cumuler un emploi public avec un autre emploi, privé ou public, sous réserve d'exceptions limitativement définies : Article 25-1 de la loi n° 83-634 du 13 juillet 1983 portant droits et obligations des fonctionnaires et décret loi du 29 octobre 1936 relatif aux cumuls de retraites, de rémunérations et de fonctions.
- Règles relatives aux procédures de passation de marchés publics, reprises dans le Code des marchés publics.

**IV. Institutions et procédures destinées à promouvoir un haut niveau de probité, à prévenir et à détecter les fautes professionnelles.**

***a) Instruments utilisés par la gestion des ressources humaines pour la promotion d'un environnement favorisant le respect de la déontologie.***

Les instruments suivants sont utilisés :

- Il existe des règles/des directives/des politiques pour les procédures de recrutement et de promotion garantissant la transparence des décisions prises et l'égalité de traitement des personnes (recrutement par concours, avancement à l'ancienneté et au choix, consultation des commissions administratives paritaires, promotion par concours).
- La transparence des procédures de sélection est assurée par la publication des règles de recrutement (statuts) et la publication des avis de postes vacants.
- L'encadrement des départs de fonctionnaires vers le secteur privé.

Les agents publics particulièrement exposés au risque de corruption font l'objet d'une **attention particulière**, comme en témoigne l'élaboration des guides et codes de déontologie dans certaines administrations : police nationale, fonctionnaires de la Direction générale des impôts, chefs d'établissements, de l'encadrement et de la maîtrise de La Poste, chefs de service et l'encadrement du ministère de l'équipement, des transports et du logement.

***b) Sensibilisation et formation des agents publics aux questions déontologiques.***

Les deux types de formation suivants sont assurés :

- Formation initiale : les élèves de l'École nationale d'administration et des Instituts régionaux d'administration reçoivent, de manière obligatoire, un enseignement relatif à la déontologie et à la responsabilité pénale.
- Formation professionnelle continue : lors de leur entrée en fonctions, les agents particulièrement exposés au risque déontologique sont informés des règles déontologiques qui leur sont applicables. Au cours de leur carrière, les agents sont incités, dans le cadre de la formation continue, à suivre des cours de déontologie dans divers organismes de formation.

Pour résoudre leurs problèmes de nature déontologique, les agents peuvent contacter les secrétariats des commissions de déontologie (Direction générale de l'administration et de la fonction publique au ministère de la fonction publique, de la réforme de l'Etat et de la décentralisation pour la fonction publique d'Etat ; Direction générale des collectivités locales au ministère de l'intérieur pour la fonction publique territoriale ; Direction des hôpitaux, au ministère de l'emploi et de la solidarité, pour la fonction publique hospitalière) afin d'obtenir des informations sur les modalités de départ vers le secteur privé. En outre, des « correspondants » déontologie existent dans plusieurs administrations. Enfin, les gestionnaires des ressources humaines des différentes administrations sont sensibilisés à ces questions et peuvent conseiller les agents à cet égard.

***c) Autres dispositions utilisées pour promouvoir le respect de normes de conduite exigeantes et la prévention de la corruption.***

Ces dispositions comprennent :

- L'identification et le compte rendu des situations de conflit d'intérêt, surtout dans les domaines de la gestion financière, l'emploi à la sortie de la fonction publique et l'acceptation de cadeaux et d'avantages tels que des rémunérations, des paiements, des distractions.
- L'obligation de motivation des décisions administratives.
- L'existence de voies de recours contre les décisions administratives.
- L'existence de délais de réponse maximum tolérés pour répondre aux demandes des usagers.
- L'existence de dispositions de lutte contre la corruption dans les appels d'offres.
- L'existence de contrôles spécifiques pour les procédures de passation des marchés publics.

- L'accès aux documents administratifs.
- Le contrôle hiérarchique interne : respect du principe hiérarchique dans l'administration : sensibilisation du management aux questions de déontologie et au contrôle des agents.

***d) Politique relative aux déclarations.***

Aux termes des lois n° 88-226 et n° 88-227 du 11 mars 1988 relatives à la transparence financière de la vie politique et du décret n° 96-672 du 1er septembre 1996, le Président de la République, les candidats à l'élection présidentielle, les députés et sénateurs, les membres du gouvernement, les titulaires de mandats de représentation au Parlement européen, les Présidents des assemblées délibérantes des collectivités territoriales, les maires de communes de plus de 30 000 habitants, ainsi que les présidents, directeurs généraux et leurs adjoints des entreprises nationales et des établissements publics nationaux à caractère industriel et commerciaux et de certains organismes publics ou semi-publics sont tenus d'établir une déclaration de situation patrimoniale et de la transmettre à la commission pour la transparence financière de la vie politique.

***e) Procédures permettant de rendre compte des actes répréhensibles/de soupçons de corruption.***

Il existe des procédures permettant aux agents publics de rendre compte des actes de corruption commis par d'autres agents publics : la mission de centralisation des informations est de nature à prévenir et à détecter les faits de corruption (Service central de prévention de la corruption au ministère de la justice,

***f) Dispositifs internes de contrôle pour l'amélioration de la déontologie dans les services publics.***

Les contrôles internes contribuent aux efforts de prévention contre la corruption avec :

- Le contrôle des dépenses à engager par les contrôleurs financiers.
- Le contrôle hiérarchique interne.
- Les inspections générales et les corps de contrôle des ministères.
- Les inspections des services.

***g) Procédures disciplinaires pour traiter des cas de manquement aux normes de la fonction publique.***

La responsabilité disciplinaire n'est engagée que si une faute disciplinaire a été commise. La loi statutaire du 13 juillet 1983 définit celle-ci comme « toute faute commise par un fonctionnaire dans l'exercice ou à l'occasion de l'exercice de ses fonctions ». Dans certains cas, la faute disciplinaire est constitutive d'une infraction pénale (détournement de fonds, corruption, concussion, violation du secret professionnel). Les sanctions disciplinaires sont limitativement énumérées à l'article 66 de la loi n° 84-16 du 11 janvier 1984 portant dispositions statutaires relatives à la fonction publique de l'Etat. Elles sont réparties en quatre groupes :

- Premier groupe : l'avertissement ; le blâme.
- Deuxième groupe : la radiation du tableau d'avancement ; l'abaissement d'échelon ; l'exclusion temporaire de fonctions pour une durée maximale de quinze jours ; le déplacement d'office.
- Troisième groupe : la rétrogradation ; l'exclusion temporaire de fonctions pour une durée de trois mois à deux ans.

- Quatrième groupe : la mise à la retraite d'office ; la révocation.

Lorsque la sanction envisagée par l'administration est supérieure au blâme, la commission administrative paritaire compétente réunie en forme de conseil de discipline est obligatoirement consultée. Le fonctionnaire sanctionné peut, dans les conditions de droit commun, exercer un recours gracieux devant l'auteur de la sanction ou un recours hiérarchique devant l'autorité supérieure. Il peut également saisir la commission de recours du Conseil supérieur de la fonction publique de l'Etat, dans certaines conditions (127 recours déposés en 1997). L'avis de cette commission est transmis au ministre, qui n'est pas lié par celui-ci. En outre, la sanction disciplinaire peut faire l'objet d'un recours pour excès de pouvoir devant le tribunal administratif dans les conditions de droit commun.

## V. Contrôle des actes répréhensibles dans la fonction publique.

### *a) Institutions et procédures permettant d'enquêter sur les malversations et de les poursuivre.*

Organismes mis en place pour **enquêter** sur la malversation et la corruption dans le service public :

- Les inspections générales et les corps de contrôle des ministères.
- Les inspections des services.
- Les juridictions financières (la Cour des comptes ou les chambres régionales des comptes).
- La commission centrale des marchés et la mission interministérielle d'enquête sur les marchés publics et les délégations de service public.
- Le service central de prévention de la corruption.

Organismes mis en place pour **exercer les poursuites** contre les malversations et la corruption dans le service public :

- Poursuites disciplinaires : l'autorité ayant le pouvoir de nomination.
- Poursuites pénales : l'autorité judiciaire exclusivement, saisie par les fonctionnaires ayant connaissance de faits délictueux (article 40 du Code de procédure pénale).

### *b) Institutions compétentes pour exercer un contrôle indépendant sur l'administration.*

Ces institutions comprennent :

- Les commissions parlementaires.
- Les tribunaux.
- L'Office indépendant sur la déontologie (commissions de déontologie).
- La Cour des comptes et les chambres régionales des comptes.
- Le Médiateur (recommandations).

**VI. Coordination et évaluation.*****a) Coordination et gestion de la politique de l'administration en matière de déontologie et de lutte contre la corruption.***

La Direction générale de l'administration et de la fonction publique est chargée de faire évoluer les textes, de coordonner les actions, de mutualiser et de valoriser les expériences des différentes administrations. En outre, des organes de régulation appliquent les orientations politiques définies par le gouvernement. En ce qui concerne le contrôle des départs vers le secteur privé, les commissions de déontologie instituées au sein des différentes fonctions publiques établissent un rapport annuel, diffusé au gouvernement et rendu public, s'agissant de la commission compétente pour la fonction publique d'Etat.

***b) Évaluation de l'efficacité des mesures visant à promouvoir les conduites déontologiques et à prévenir la corruption.***

*Pas de réponse.*

## HUNGARY

### **I. The general context for managing ethics in the Hungarian public service**

#### ***a) The principal ethics-related issues which have confronted the public service in Hungary during the past 10 years, and especially within the past 18 months***

Despite the democratic changes and the development of the rule of law, the following negative phenomena have arisen as characteristic features in the transition period:

- Reduction of the prestige of the civil service.
- Reduction of the real value of wages in the civil service.
- Moral and ethical norms are pushed to the background.

#### ***b) Recent measures to improve ethical conduct in the public service***

The measures that have been taken to improve ethical conduct in the public service are:

- Modification of legal regulations (penal, administrative and civil service provisions).
- Deregulation.
- Modernisation of organisational structures.
- Modernisation of decision-making procedures.

#### ***c) Plans in preparation to address ethical issues in the Hungarian public service***

A Code of Ethics for the Civil Service is in preparation and the draft text of the Code has been published.

### **II. Core values for the public service**

#### ***a) Stated core values for the public service***

The principal source of core values is primary legislation. The Act on Legal Status of Civil Servants (Act No. XXIII of 1992) states the following core values:

- Serving the public interest.
- Lawfulness.
- Handling of public affairs in a manner neutral to party politics.
- Competence: top quality professional qualification.
- Impartiality.

- Equity and fairness.
- Earning of citizens' satisfaction.

In addition to the legislated set of core values, the following new values are presented in the published draft Code of Ethics for the Civil Service:

- Individual assuming of responsibilities.
- Efficiency.
- Humanity.

*b) How stated core public service values are communicated to public servants*

- Core values are automatically provided when someone joins the public service.
- The statement of core values is part of the employment contract.
- Core values are communicated by instruments of new technology, such as the Internet.
- Core values are incorporated into training documents.

*c) The statement of core public service values was last revised in 1992*

The Act on Legal Status of Civil Servants (Act No. XXIII of 1992), containing the actual set of core values, was passed by Parliament on 31 March 1992. The representatives of the civil service - trade unions and professional associations – took part in the preparation of the Act. Moreover, the draft code of ethics was distributed in the civil service and made available on the Internet homepage of the Ministry of the Interior for comments.

### III. Standards of behaviour for the public service

*a) Statements of the standards of behaviour expected of public servants*

Legal provisions cover the following points:

- Receiving gifts or benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Work outside the public service.
- Restrictions on post-employment.
- Special conditions/permissions on movement from the public service to the for-profit sector.
- Involvement in political work.

In addition to the general standards applicable to all civil servants, there are **specific guidelines/requirements** for certain groups in the civil service, such as for the tax administration, the land registration service or some local self-governments. The **minimum standards** of behaviour for the public service are stated in the following legal documents:

- Act on Legal Status of Civil Servants.
- Act on Public Administration Procedure (Act No. IV of 1957).

- Criminal Code.

***b) Unacceptable conduct for public officials according to the law***

**Specific types of misconduct** defined by criminal legislation include the following:

- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Partiality in official decision-making.
- Abuse of office or public trust.

**Further prohibitions and restrictions** imposed on public officials by other legislation include the following:

- Stringent conflict of interest regulations (Act on Legal Status of Civil Servants).
- Stringent promotion regulations (Act on Legal Status of Civil Servants).
- Stringent exclusion rules (Act on Public Administration Procedure).

**IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct**

***a) Measures used by human resources management to promote an ethical environment***

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publicising vacant positions.
- Taking ethical considerations into account in the recruitment process by checking the record of candidates and conducting a screening prior to the appointment.

**Special attention** is given to officials in positions particularly susceptible to corruption, especially in tax and custom administration and in public procurement.

***b) Informing and training public servants on ethics issues***

In order to join the civil service, candidates are obliged to pass an entrance examination. The knowledge of ethical norms has an important role in this primary examination for civil servants. Furthermore, the subject of ethical norms is included in the curricula for medium-term training and further training.

***c) Other measures to promote high standards of conduct and assist prevention***

These include:

- Identification and reporting of conflict of interest situations, especially in areas of financial management and post public employment.
- Requiring reasons for administrative decisions.

- Providing redress against administrative decisions.
- Setting standards for timeliness for responding to requests.
- Anti-corruption provisions in bids for public contract (e.g. companies found guilty of corruption are disqualified/suspended from future tenders/bids).
- Specific controls on public procurement procedures.

#### *d) Disclosure policy*

Disclosure of personal information is required from elected officials. The following information is required to be disclosed when joining and leaving the public service:

- Assets and liabilities.
- Sources and level of income.
- Gifts.

Only those persons and organisations that are defined by law are allowed to use the disclosed information to avoid conflict of interest situations. With the agreement of the persons concerned, the disclosed data can be published.

#### *e) Procedures to report misconduct/suspected corruption*

In case of reasonable suspicion that an offence has been committed, the entity exercising the employer's authority is obliged to commence disciplinary proceedings. Both legal protection and anonymity are available to civil servants who expose wrongdoing. The criminal code introduced the category of "persecution of a person having made a report in the public interest (whistleblower)". This provision penalises anybody who takes action against a whistleblower who has made the report in the public interest.

**For the public**, special procedures are available, such as complaint procedures, ombudsman, and help desk or telephone line to expose wrongdoing committed by public servants.

#### *f) Internal control to support the improvement of ethical conduct in the public service*

Internal control in the public administration is required by law. The managers of the individual organisations within the framework of the law define the frequency of internal control reviews. Internal control supports corruption prevention efforts by enabling management to detect irregularities and by identifying procedural problems as well as providing specific recommendations for systemic improvements. Managers in the public service are required to follow up, and use mainly ordinary management control and training as follow-up mechanisms to implement recommended measures for systemic improvements. The principal aim of the internal control reviews is to help the management of the respective public service organisations; but external supervisory bodies, the State Audit Office and Members of Parliament have access to the reports of the internal reviews.

#### *g) Disciplinary procedures in case of a breach of public service standards*

The disciplinary punishments that may be imposed on a civil servant committing an offence are the following:

- Censure.

- Prolongation of waiting period in the career advancement system.
- Reduction or deprivation of benefits.
- Demotion in the career advancement system by one salary category.
- Demotion in the career advancement system by one classification category.
- Deprivation of personal remuneration.
- Deprivation of title, withdrawal of senior official assignment.
- Dismissal from office.

The source of the disciplinary measures is the Act on Legal Status of Civil Servants. Legal redress is available against the disciplinary punishment, and includes both administrative redress and the right of appeal to the court.

## V. Scrutinising misconduct in the public service

### *a) Institutions and procedures to investigate and prosecute misconduct*

The **principal investigative** organisations involved in anti-corruption efforts are the Government Control Office, the Police, and the Public Prosecutor's Office. In addition, the Police and the Public Prosecutor's Office are authorised to **prosecute** misconduct and corruption in the public service. The Government Control Office operates within the executive branch; the Police and the Public Prosecutor's Office have jurisdiction over the whole public service. The Government Control Office and the Police are accountable to the government while the Public Prosecutor's Office is accountable to Parliament. Respective laws - such as the Act on the Police and the Act on Public Prosecutors - ensure the independence of these bodies, and their resources are provided by Parliament in the Annual State Budget. The prosecuting bodies are empowered to bring suspected cases of corruption directly to court.

### *b) Institutions in place to perform independent scrutiny of the administration*

These include:

- Parliament and its committees - both in the form of standing and special investigative Parliamentary committee.
- Independent external auditors, reporting to elected bodies; for example the State Audit Office reporting to Parliament.
- Ombudsman.
- Courts for judicial review.
- Government Control Office.

The procedures that apply for a Parliamentary committee and for the ombudsman make it possible for anyone to bring wrongdoing of public servants to their direct attention. These bodies exercise independent scrutiny of public service activities.

The State Audit Office performs external audit. The functions, jurisdiction, competency and degree of independence of this organisation are defined by the Constitution of the Republic of Hungary as well as by the Act on the State Audit Office (Act No. XXXVIII of 1989). The State Audit Office is the financial/economic supervisory arm of Parliament and is governed exclusively by the relevant Acts of law.

It controls the management of the public finance system, examines (among other things) the soundness of the budget proposals and the legitimacy of expenditures, controls the management of State assets and monitors compliance with the State accounting regime. The frequency of external audits could range from regular (yearly) to occasional. Audits are determined by the annual working plan of the State Audit Office. The audit reports are published routinely, but some of them are confidential.

## **VI. Co-ordination and self-assessment**

### *a) Co-ordination and management of government ethics or anti-corruption policy*

The following actions are taken to ensure the **consistency** of the government ethics and anti-corruption measures:

- Using risk assessment to steer policy development for prioritising and sequencing ethics measures.
- Analysing systemic failures and trends in criminal and disciplinary cases.

A national corruption prevention plan has been developed. The plan was published in the Government Programme as well as in a Special Anti-Corruption Programme. The priority areas of the plan are:

- Special focus on prevention.
- Modernisation of the organisational framework.
- Making the legal regulation more stringent.

The plan requires the following measures from organisations across the public service:

- Legality.
- Transparency.
- Simplification of decision-making.

Non-governmental organisations such as professional associations were involved in the preparation of the plan. They are also informed of the status of implementation.

### *b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct*

Initiatives to assess the effectiveness of these measures are under preparation. At the moment, the following measures are considered as successful instruments for preventing corruption:

- Making the regulations concerning conflict of interest more stringent.
- Making the decision-making processes more transparent.

The major impediment to further reducing corruption in the public service is the low level of remuneration.

## ICELAND

### I. The general context for managing ethics in the public service in Iceland

#### a) *The principal ethics-related issues which have confronted the public service in Iceland during the past 10 years, and especially within the past 18 months*

Public service ethics is generally not high on the agenda in Iceland. This reflects a number of factors:

- The Icelandic public service is generally considered to be of high ethical standards. Cases of corruption and other types of misconduct are rare, of limited scope and not systematic. This is, for example, reflected in the Corruption Perceptions Index developed by Transparency International (TI). This TI Index ranks Iceland n° 5, i.e. as one of the least corrupt countries in the world.
- Public service ethics is not treated as a separate issue but rather as an integral part of management and administration policies, e.g. administration procedures, access to information, public sector employment, financial management and performance management.
- Discussions about ethics in public life tend to focus on political ethics rather than public service ethics.

However, attention is given to issues in relation to conduct by public servants and some issues are on the agenda. These issues reflect a number of characteristics of society. Iceland is a small and homogeneous society. A relatively high degree of consensus about norms and values exists. The smallness and closeness of the society also means that there is a high degree of transparency and it may be more difficult to conceal corruption such as bribes and fraud than in larger societies.

There is, however, a downside to this. Iceland has moved from a family based society to a modern society in a very short time. This rapid change, along with the smallness and closeness of the society, means that values that stress individual duty to support and assist family and friends are still strong. These values may conflict with modern principles of a merit-based civil service. What used to be an ethical duty may now be labelled as nepotism and cronyism. Accusations of this type have been made especially in relation to appointments. This is closely related to political patronage, i.e. politically motivated appointments. Pressures of this type seem to be decreasing rather than increasing, due to changes in public opinion and administrative and management reform measures.

Public management reforms have increased the interaction between the public and private sector, for example, in relation to privatisation and contracting out. This has caused limited problems, perhaps because the difference between the sectors is not very great. The Icelandic civil service has been relatively open and mobility between the public and private sector has been greater than in many other countries. Some discussions about favouritism in relation to privatisation have taken place but they directed towards politicians and not public servants.

The main discussion about ethics has focused on scandals in publicly-owned banks. For a long time the managers of these banks were politically appointed. Former ministers and members of parliament were often appointed. The banks were state owned and covered by special laws and not by public sector

accountability arrangements nor by private sector corporate governance arrangements. The pressures of competition were also limited. The banks were often accused of being part of a political spoils system, rather than commercial enterprises.

Recently the managers were accused of using entertainment allowances and official travel for private gain. They also gave inaccurate information in relation to parliamentary inquiries. The accusations led to resignations by the three top managers in the largest bank. It now seems obvious that unclear accountability arrangements (the banks were outside traditional public sector accountability) meant that standards of behaviour were unclear.

This type of problem is unlikely to emerge again as the banks have recently been turned into limited corporations as part of a plan to privatise them (part of the shares has been sold to the public). It is interesting that public corporations that have been moved directly from public accountability arrangements to a status of limited companies have not faced problems of this type.

Another potential challenge is related to public management reforms. Managers have received more autonomy and are increasingly expected to act strategically and as leaders. The boundaries between strategic management and leadership on the one hand and politics on the other may not be very clear. It may thus be necessary to develop guidelines about the interface between politicians and managers.

***b) Recent measures to improve ethical conduct in the public service***

- As mentioned above, Public service ethics is usually not treated as a separate issue. Therefore no measures have been taken specifically to improve ethical conduct. However, important steps have been taken during the past years which do indeed affect public service conduct. These include:
- The Administration Procedure Act (37/1993) formalises many principles that had been applied for many years, but not systematically. The Act defines a number of principles that guide public service conduct.
- The Access to Information Act (50/1996) formalises principles of openness and transparency.
- The Civil Service Act (70/1996) defines requirements in relation to public service conduct and how to deal with misconduct and unsatisfactory performance.
- A number of actions have been taken to improve accountability. These include a new post of the Ombudsman and making the State Audit Office more independent. Both the Ombudsman and the State Audit Office report directly to Althingi (the Parliament).
- Improving financial planning and reporting.
- Making public procurement more transparent and thus reducing the risks of misconduct in relation to procurement.
- Introduction of performance management to strengthen commitment to performance and making the civil servants more accountable.
- Privatisation and corporatisation of commercial activities.
- The implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions has led to some changes in legislation, making offers of bribes by individuals and companies to public servants nationally and abroad unlawful.

*c) Plans in preparation to address ethical issues in the Icelandic public service*

There are no specific plans but many of the activities and reform measures mentioned earlier will be continued and strengthened.

**II. Core values for the public service**

*a) Stating core values for the public service*

Core values are not systematically stated in any one document. However, core values such as accountability, impartiality, legality, transparency etc. are directly and indirectly stated in a number of legal documents. Legal documents which state core values include:

- The Civil Service Act.
- The Administrative Procedure Act.
- The Access to Information Act.
- The Penal Act.

*b) How stated core public service values are communicated to public servants*

As these values are not systematically stated, they are not systematically communicated. Values may be communicated within individual organisations and on an *ad-hoc* basis for example in relation to the introduction of new legislation. Some of the core values are communicated in some employment contracts.

*c) The statement on core public service values has not been revised in the last decade*

**III. Standards of behaviour for the public service**

*a) Statements on the standards of behaviour expected of public servants*

Standards of behaviour are not systematically stated in a single document. However, they are directly and indirectly stated in a number of legal documents. They cover the following issues:

- Receiving gifts and benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Use of corporate credit cards.
- Work outside the public service.

Expectations in relation to use of official property/facilities, official travel, and use of corporate credit cards are stated as general and not specific principles.

Special legislation for individual sectors of the civil service may define **special requirements** for special groups (e.g. police, judges, health professionals). Legislation in relation to health professionals requires them to comply with professional ethical codes. Some other professional groups are developing ethical codes. There are no specific requirements for those working at the political/administrative interface.

Legal documents that state **minimum standards of behaviour** include:

- The Civil Service Act.
- The Administrative Procedure Act.
- The Penal Act.

*b) Unacceptable conduct for public officials according to the law*

The following kinds of **specific misconduct** are defined for public officials by criminal legislation:

- Active, passive, direct, indirect and attempted corruption of public officials/corruption committed by public officials.
- Partiality in official decision-making, deliberate violation of principles of fairness.
- Abuse of office or public trust.
- Violation of confidentiality.
- Refusal to fulfil legal obligations.
- Serious or repeated negligence.

Moreover, a public official may be disqualified from public office for certain criminal offences.

Further prohibitions and restrictions are imposed on public officials by the Civil Service Act which prescribe the following cases when a public servant can be dismissed temporarily or permanently for:

- Lack of attendance.
- Neglect.
- Refusing to obey lawful orders by superiors.
- Lack of competence.
- Inaccuracies.
- Unsatisfactory performance.
- Conduct that is improper, unethical or in conflict with the post.
- Irregularities or difficulties in personal finances (temporarily, applies to public servants responsible for public funds).

Moreover, the Civil Service Act defines further standards of behaviour for public servants, such as a public servant is required to:

- Demonstrate commitment, faithfulness, courtesy, flexibility, fairness, and helpfulness.
- Respect confidentiality.
- Avoid conduct inside or outside the post that may cause embarrassment or disgrace.
- Ask for prior permission to take secondary employment, serve on a board or start business.

- Be accountable and responsible.

#### **IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct**

##### ***a) Measures used by human resources management to promote an ethical environment***

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies and publicising vacant positions. However, rules/guidelines/policies for recruitment and promotion procedures are only partial and cover only certain aspects.
- Basing recruitment and promotion on merit. However, the merit principle is not defined explicitly in legislation (except for some parts of the public service). Nevertheless, requirements for recruitment and promotion procedures and principles of equal treatment formally exclude other considerations than merit. Practice may vary and there are accusations that other factors influence appointments. Relatively flexible procedures and the lack of a formally stated merit principle may make it easier to ignore merit.

Individual ministries and organisations may give **special attention** to officials in positions particularly susceptible to corruption but this is not done systematically across the civil service.

##### ***b) Informing and training public servants on ethics issues***

Generally, informal and *ad-hoc* methods are used such as guidance within individual organisations, professional socialisation etc. Also, issues in relation to civil service conduct are integrated into other training activities such as human resources management, administrative procedures, etc.

No type of formal guidance, advice, counselling or consultation is available for public servants to resolve their work-related ethical problems and dilemmas. It is considered as the responsibility of managers to assist public servant in cases like these. However, some organisations have requested assistance from specialists (academics) in relation to general rather than individual problems and dilemmas.

##### ***c) Other measures to promote high standards of conduct and assist prevention***

These include:

- Identifying and reporting of conflict of interest situations.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness of responding to requests.
- Specific controls on public procurement procedures.

All public servants are required to report conflict of interest situations but only specifically in relation to individual cases and decisions.

*d) Disclosure policy*

Disclosure of personal information (declaration of personal assets, financial interests) is not required in the public service.

*e) Procedures to report misconduct/suspected corruption*

Legal provisions define the procedure and obligations for public servants **on** how to expose wrongdoing committed by public servants, but these procedures are more implicit than explicit. It has not been considered necessary to provide protection/safeguard for public servants who expose wrongdoing. In general, the ombudsman is available for the public to expose wrongdoing committed by public servants.

*f) Internal control to support the improvement of ethical conduct in the public service*

Internal control is part of a day-to-day supervision function by managers and higher level organisations. It is carried out on an *ad-hoc* rather than systematic bases.

*g) Disciplinary procedures in case of a breach of public service standards*

The following disciplinary measures are defined in the Civil Service Act:

- Reprimand.
- Temporary dismissal.
- Permanent dismissal.
- Disqualification from public office. This is also defined in the Penal Act.

In most cases the civil servant has the right to be notified and give his/her perspective in relation to a proposed reprimand. In the case of temporary dismissal the civil servant has redress to the minister. A special committee takes decisions on permanent dismissal. In the case of permanent dismissal the civil servant has the right to make an appeal to the courts. Only the courts may disqualify a person from public office.

**V. Scrutinising misconduct in the public service***a) Institutions and procedures to investigate and prosecute misconduct*

Misconduct and corruption are **investigated** by those organisations that have a specific or a general supervisory role in each case. The supervisory ministry is in charge of the investigation, often with assistance from the State Audit Office. If there is suspicion of a criminal offence the police leads the investigation and when a civil servant is temporarily dismissed a special independent committee investigates the case.

Bodies in place **prosecuting** misconduct and corruption in the public service:

- Police.
- State Prosecutor.

Only those cases that involve a criminal offence are brought to the courts. They are prosecuted by the police in case of minor offences or by the State Prosecutor in case of serious offences, in the same way as other criminal offences.

***b) Institutions in place to perform independent scrutiny of the administration***

These include:

- Parliament/Parliamentary committee.
- Independent/external auditors reporting to elected bodies such as Parliament.
- Ombudsman.
- Courts for judicial review.

There are procedures/mechanisms available to bring wrongdoing to the attention of bodies exercising independent scrutiny on public service activities.

The State Audit Office has very wide mandate to audit finances and regularity of transactions and the quality of procedures, activities and services of the administration. The external audits are conducted usually on an annual basis. Only major reports are published routinely. But the public can get access to the others on the basis of the Freedom of Information Act.

**VI. Co-ordination and self-assessment**

***a) Co-ordination and management of government ethics and/or anti-corruption policy***

No national ethics or corruption prevention plan/strategy has been developed. For this reason no dedicated institution in place is assigned to co-ordinate and manage the implementation of the government ethics policy.

***b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct***

Main aspects of policies that influence civil service conduct have been evaluated (*by whom?*) and improved over recent years. These modifications do not necessarily focus on the ethical dimension.

Generally, measures directed towards ensuring efficiency and effectiveness, openness and transparency and good quality administration are considered successful instruments for corruption prevention. The soundness of basic management systems is more important than specific actions against corruption.

As stated earlier in Section I.a, corruption is not seen as a major issue in Iceland. Putting more emphasis on specific corruption prevention initiatives would probably do more harms than good. However, some actions could be useful. These involve strengthening the merit principle and increasing awareness among civil servants, politicians and the public about ethics in public life.

## IRELAND

### I. The general context for managing ethics in the civil service<sup>5</sup> in Ireland

#### *a) The principal ethics-related issues which have confronted the civil and public service in Ireland during the past 10 years, and especially within the past 18 months*

A radical programme of restructuring in the civil service commenced in the 1990s under the Strategic Management Initiative Programme. An essential ingredient of the programme was a review of the human resource management function in the civil service. The review identified a need for a code of conduct for the civil service which would update and bring together in one publication existing rules in the area of ethical behaviour as well as address new challenges in regard to the ethical standards expected of civil servants in a rapidly changing service environment.

Similarly in the wider public service in the early 1990s, difficulties were identified in some State-owned companies arising from possible conflicts of interest between public duties and private interests. A 1994 report of a Tribunal of Inquiry into aspects of the beef processing industry brought to prominence the interaction of business and the political system. A 1997 Tribunal of Enquiry into payments to politicians by a major company made recommendations to strengthen the policing of ethics in public life; and the Government has committed itself to addressing those recommendations. The Government plans to address this area in the context of ongoing work on legislation regarding standards in public office. Further Tribunals have also been established to enquire into the planning process and to engage in a more detailed investigation of payments made to certain senior politicians.

#### *b) Recent measures to improve ethical conduct in the civil service*

The Public Service Management Act 1997 introduced a statutory basis for the creation of a new management structure for the civil service. Its purpose was to enhance the management, effectiveness and transparency of operations of departments and offices and to put in place mechanisms for increased accountability of civil servants.

---

<sup>5</sup> In considering this chapter on the management of ethics in the Irish public service it is important to note the distinction in an Irish context between the civil service and the wider public service. The civil service is composed of staff employed by central government departments (i.e. “ministries”) such as the Departments of Finance and of Justice, Equality and Law Reform. Issues such as recruitment to and dismissal from the civil service are subject to distinct statutory provisions, namely the Civil Service Commissioners Act, 1956 and the Civil Service Regulation Act, 1956. The wider public service, which includes employees of the health services and teachers, is not subject to the same statutory regulatory provisions.

This chapter focuses primarily on ethics in the context of the Irish civil service. However, where relevant, reference is made to statutory and other initiatives which apply to the wider public service.

A further element of the ethical framework is the Ethics in Public Office Act 1995 which addresses issues in relation to certain ethical matters for senior civil servants, senior executives of State bodies and the political system. The Act provides for:

- Transparency mechanisms in the form of disclosure of interests.
- Surrender of ministerial gifts.
- Publication of political adviser contracts and qualifications.
- Appropriate sanctions.
- Investigation of breaches of the Act.

It applies to all Members of each House of the *Oireachtas* (Parliament), ministers, and senior civil servants and senior executives in the wider public service such as directors and senior executives of State-owned companies and agencies.

The Committees of the Houses of the *Oireachtas* (Compellability, Privileges and Immunity of Witnesses) Act 1997 confers powers on *Oireachtas* committees to request papers and summon persons and to require witnesses to attend meetings and to respond to questioning when they attend on matters relevant to the investigating Committee's terms of reference.

### ***c) Plans in preparation to address ethical issues in the Irish civil service***

As part of the review of the human resource management function in the civil service, a draft code of conduct outlining standards on ethical and other conduct matters has been prepared for consideration by senior civil service management. It is intended that the code will contain detailed guidelines on matters such as conflicts of interest, receipt of gifts and hospitality.

In the wider public service context, following on from the recommendations of the 1997 Tribunal of Inquiry mentioned above, amendments to the Ethics in Public Office Act 1995 are being considered which may redesign the Public Offices Commission and confer additional investigative powers. Also under consideration is the creation of further sanctions for certain contraventions of the Ethics in Public Office Act 1995 and a legal requirement for the provision of tax clearance certificates and a related statutory declaration by those elected to either House of the *Oireachtas*.

## **II. Core values for the civil service**

### ***a) Stating core values for the civil service<sup>6</sup>***

The Minister for Finance is responsible for the fixing of terms and conditions of civil servants under Section 17 of the Civil Service Regulations Act 1956. This is achieved, *inter alia*, through the publication and distribution of circular letters throughout the civil service. The coherence of the civil service facilitates the dissemination and promulgation of core values in such a manner. The main core values for the civil service are set out in these circulars. These include:

- Impartiality.

---

6. It should be emphasised again that this section focuses on the central civil service, and that practices vary in the wider public service.

- Political neutrality.
- Recruitment and promotion based on merit.
- Proper disclosure of information.
- Sympathetic, efficient and courteous dealings with the public.
- Efficiency and diligence in work.
- Avoidance of the use of improper influence.
- Avoidance of conflict of interest.

***b) How stated core public service values are communicated to civil servants***

Core values are not as yet expressed in a single statement but are contained in a number of circular letters. It is intended to draw these core values together in a single document in the near future.

The following forms of communication are used in the civil service:

- Core values are automatically provided when someone joins the civil service.
- Core values form part of the terms and conditions of employment (contract). However, it should be noted that, given the statutory underpinning of the civil service in Ireland, the contract of employment of civil servants is not within a single document but contained in a combination of statutory provisions and circulars from the Minister for Finance.
- Core values, after revision, are distributed to all civil servants.

***c) There is no single statement on core civil service values***

However, a new code of conduct which will incorporate core public service values is currently being devised. It is planned to be published in late 1999 or early 2000. Civil servants from across the central administration are involved in the reformulation of the statement. It is envisaged that the new code of practice will be placed before Parliament for consideration.

### **III. Standards of behaviour for the civil service**

***a) Statement on the standards of behaviour expected of civil servants***

As stated above at Section II. c) a new code of conduct is currently being devised. Rules and regulations regarding standards for conduct are currently outlined in circular letters issued by the Department of Finance. Furthermore, the Ombudsman Office has published a guide to standards of best administrative practice for public servants. The code of conduct is likely to cover the following areas:

- Receiving gifts or benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Work outside the civil service.
- Restrictions on post-employment.
- Involvement in political work.

The Ethics in Public Office Act 1995 requires that senior officials covered by the Act disclose:

- Outside income.
- Shares, etc.
- Directorships.
- Land holdings (other than family homes).
- Certain gifts of property or services (subject to exclusions, e.g. personal gifts).
- Certain travel, accommodation, etc., provided free or below cost.
- Consultancies, etc.
- Public contracts.
- Other interests where these could materially influence the person in the performance of the functions or duties of his/her position.

There are specific guidelines/requirements for the officials of public sector bodies who are subject to the disclosure of interests requirement of the Ethics in Public Office Act 1995 and receive guidelines from the Public Offices Commission on their obligations under this Act. The Cabinet Handbook provides guidance to ministers and civil servants on matters relating to the conduct of government business.

In general, standards of behaviour required in the civil service are set out in circular letters issued by the Minister for Finance. The two main Acts which deal with standards of behaviour are the Civil Service Regulation Act 1956 and the Ethics in Public Office Act 1995.

***b) Unacceptable conduct for public officials according to the law***

The following kinds of specific misconduct are defined for public officials by criminal legislation:

- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Partiality in official decision-making.
- Abuse of office or public trust.

Relevant criminal statutes are the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906, and the Prevention of Corruption Act 1916. All three have been amended by the Ethics in Public Office Act 1995.

Responsibility for investigating suspected offences of bribery and corruption is a matter for the *Garda Síochána* (Police Force) and, as is the case generally with prosecutions on indictment, discretion on whether to prosecute rests with the Director of Public Prosecutions, who is independent in the exercise of his functions. Further legislation, the Prevention of Corruption Bill, is currently being prepared and is expected to be ready for publication within the next few months. The purpose of this Bill is to make any legislative changes necessary to enable Ireland to ratify the:

- OECD Convention on Combating Bribery of Foreign Public Officials in international Business Transactions.
- EU Convention on Corruption involving officials of the EU or of Member States of the EU.
- EU Joint Action on Corruption in the Private Sector.
- Council of Europe Criminal Law Convention on Corruption.

The Bill includes provisions regarding:

- Active and passive bribery, including the criminalisation of trading in influence.
- Extension of existing categories to include active and passive corruption involving: an office holder or a director of a public body; a person occupying a position of employment in a public body; a special adviser; a member of the Court of Auditors of the European Communities; and domestic, foreign and international parliamentarians and judges.
- Criminal liability of heads of businesses and corporate liability.

#### **IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct**

##### ***a) Measures used by human resources management to promote an ethical environment in the civil service***

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.

Special attention is given to officials in positions particularly susceptible to corruption. The Ethics in Public Office Act 1995 prescribes certain positions of employment in the civil service as "designated positions", thereby bringing the holders of such positions under the ambit of the Act. Civil servants working in posts dealing with contracts or in commercially sensitive areas would come under the Act.

##### ***b) Informing and training civil servants on ethics issues***

In addition to providing written guidelines to those who are subject to the Ethics in Public Office Act 1995, the Public Offices Commission is charged with providing guidance to individuals where they seek it to enable them to comply with the terms of the Act. On appointment to a position which is subject to the provisions of the Ethics in Public Office Act, an official is given guidance documentation on the Act including guidelines published by the Public Offices Commission.

##### ***c) Other measures to promote high standards of conduct and assist prevention in the civil service***

These include:

- Identifying and reporting conflict of interest situations, especially in areas of financial management, receiving gifts or benefits such as fees, payments and entertainment.
- Requiring the release of internal information related to ethical conduct and possible transgressions.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.

- Setting standards for timeliness of responding to requests for information.
- Specific controls on public procurement procedures.

The enactment of the Freedom of Information Act, which came into effect in April 1998 for central government departments and offices, was a significant step forward. It was also extended to parts of the wider public service, i.e. the local government and health sectors, in October 1998. The key feature of the Act is the creation of a legal right of access by the public to information held by public bodies, to be exercised both as an individual right and as an effective means of scrutinising and evaluating decisions by public bodies. The Act also confers the right on members of the public to seek reasons for decisions. This right can be exercised by a person who is affected by an act of a public body and who has a material interest in the matter.

#### *d) Disclosure policy*

Disclosure of personal information (declaration of personal assets, financial interests) is required from elected officials and senior civil servants under the Ethics in Public Office Act 1995. Disclosure is confined to particular sectors: senior executives and directors of State-owned companies and agencies. Members of the *Oireachtas* are obliged to declare all registrable interests for publication. The annual disclosure obligation on senior civil servants and senior executives of State bodies in the wider public service is confined to those interests which could materially influence them in relation to the performance of the functions of their directorship or position. In addition, the statements provided by *Oireachtas* Members and office holders (e.g. ministers) are entered in a register and published. Statements of interests of senior special advisers are laid before the Houses of the *Oireachtas* and given to the Public Offices Commission. By contrast, statements made by senior civil servants and senior executives of State bodies in the wider public service in respect of their personal interests and those of a spouse or child are confidential, but they are available to the Public Offices Commission either directly or on request.

The information is required to be disclosed annually, when joining or leaving the public service or when relevant circumstances change. The annual disclosures are supplemented by provisions in the Act requiring once-off declarations where a potential conflict of interest could arise in the performance of official duties or functions, between the public interest and the interests of the individual concerned or the interests of connected persons, e.g. close relatives or business partners. Designated civil servants, senior executives and board members of State bodies in the wider public service and special advisers are generally prohibited from performing a function where there is a conflict of interest unless there are compelling reasons, which must be given in writing, for such performance. The following information is required:

- Outside income.
- Shares, etc.
- Directorships.
- Land holdings (other than family homes).
- Certain gifts of property or services (subject to exclusions, e.g. personal gifts).
- Certain travel, accommodation, etc., provided free or below cost.
- Consultancies etc.
- Public contracts.
- Other interests where these could materially influence the person in the performance of the functions or duties of his/her position.

The declarations of Members of Parliament are published in a Register. Statements may form the basis for investigations by the Public Offices Commission. Senior public officials generally make their statements to the head of their body. The Act provides that compliance with the Ethics Act is included in the terms on which an official, executive or director holds their position. Statements of interests may therefore be relevant in, for example, disciplinary proceedings.

***e) Procedures to report misconduct/suspected corruption***

There are no specific legal provisions or procedures for reporting by civil servants of misconduct or suspected corruption in the civil service. However, a draft Whistleblowers Protection Bill is currently at discussion stage before the Parliament. This proposed legislation will provide protection from civil liability or penalisation to employees who make certain protected disclosures in relation to the affairs of their employers and to provide for related matters. Public servants will be covered by the proposed legislation.

***f) Internal control to support the improvement of ethical conduct in the civil service***

Breaches of certain ethical standards such as the requirement of political impartiality would be considered disciplinary matters in the civil service. A disciplinary code sets out the procedures for the processing of disciplinary issues. Government accounting procedures provide for internal control of financial arrangements in the civil service.

***g) Disciplinary procedures in case of a breach of civil service standards***

Disciplinary measures may vary from reprimand, demotion, decrease in earnings to dismissal depending on the seriousness of the breach of public service standards. Such disciplinary measures can be appealed to the Civil Service Disciplinary Appeals Board and the courts. Furthermore the Ethics in Public Office Act 1995 provides that an office holder within the meaning of the Act may face imprisonment and/or a fine if guilty of certain misdemeanours.

**V. Scrutinising misconduct in the civil service**

***a) Institutions and procedures to investigate and prosecute misconduct***

Bodies in place investigating misconduct and corruption in the civil service:

- An investigative body operates with exclusive jurisdiction over one or a defined range of public service organisations.
- An investigative function exists inside individual public service agencies/departments.
- Internal audit.

The Public Offices Commission, established under section 21 of the Ethics in Public Office Act 1995, has the right to investigate allegations of corrupt activity which breaches this Act. It is independent of Government, and is composed of the Comptroller and Auditor General, the Ombudsman, the Chair of the Lower House of Parliament and senior Parliamentary civil servants. However, it is of course also open to police authorities to investigate any matter which may involve a breach of anti-corruption laws. Responsibility for investigating suspected offences of bribery and corruption is a matter for the *Garda*

*Síochána* (police force) and, as is the case generally with prosecutions on indictment, discretion on whether to prosecute rests with the Director of Public Prosecutions, who is independent in the exercise of his functions. If the Public Offices Commission, during or after an investigation, forms the opinion that the person being investigated may have committed an offence relating to the performance of his/her functions, the Commission may report, in writing, to the Director of Public Prosecutions. Certain investigative or prosecuting bodies are empowered to bring suspected cases of corruption directly to court.

***b) Institutions in place to perform independent scrutiny of the administration***

These include:

- Oireachtas (Parliament) and its committees.
- Independent/external auditors reporting to elected bodies such as Parliament.
- Ombudsman.
- Courts for judicial review.
- Independent office of ethics.

There are procedures/mechanisms available to bring wrongdoing to the attention of bodies exercising independent scrutiny on public service activities. For example, members of the public can complain to the Public Offices Commission. The Comptroller and Auditor General (C&AG) audits the accounts of government departments, health boards and non-commercial semi-State bodies and educational institutions which receive funding from the exchequer. Audits by the C&AG take place on an annual basis. External audit reports are published routinely.

**VI. Co-ordination and self-assessment**

***a) Co-ordination and management of government ethics and anti-corruption policy***

The Ethics in Public Office Act 1995 provides for the determination, by the Minister for Finance, of the application of a number of its provisions, e.g. designating those positions and directorships in the public service which shall be subject to the Act. The Public Offices Commission, established under the Ethics in Public Office Act 1995, supervises the operation of the Act and provides guidelines and advice on steps required to be taken to ensure compliance at the individual level. In addition, the Commission has powers under the Act to refer a matter, where appropriate, to the Director of Public Prosecutions for possible prosecution as well as a process of formal investigation and reporting to the Houses of Parliament in cases of alleged contravention of the Ethics in Public Office Act by members of either House. The Public Offices Commission provides a report on the state of ethics in the public service for *Oireachtas* and Government. This report is required annually. The Government programme undertakes to restore confidence in public life through a credible policing mechanism for ethical issues. The programme also commits the Government to follow up on the recommendations of the 1997 Tribunal of Inquiry (Dunnes Payments) mentioned in Section I. a) above.

***b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct***

As stated previously, the Public Offices Commission provides a report on the state of ethics in the public service for *Oireachtas* and Government. This report is required annually. In the context of the wider public service, a number of statutory tribunals of inquiry have also examined issues in relation to ethical

conduct and preventing misconduct. Reports from such tribunals form an important element in the ongoing evaluation of the effectiveness of measures to promote ethical conduct.

**JAPAN \***

**I. The general context for managing ethics in the public service in Japan**

*d) The principal ethics-related issues which have confronted the public service in Japan during the past 10 years, and especially within the past 18 months*

No answer

*e) Recent measures to improve ethical conduct in the public service*

**Raising ethics awareness by training**

- The National Personnel Authority (NPA) offers training courses for instructors of the ethics sensitivity training programmes.
- The NPA has enriched the subjects related to ethics in inter-ministerial training courses, which it provides for government employees in each grade.
- In 1997, the NPA revised an ethics training programme for public servants. The NPA also produced video material concerning retention of ethics.
- In 1997, the NPA developed a brochure “Readings on Ethics in Public Service”, which was given to the trainees of all inter-ministerial training programmes conducted by the NPA in 1998.

**Establishing codes of conduct**

In 1996, new measures were compiled by the Council of Vice Ministers to secure an effective system for enforcing official standards of discipline and preventing misconduct. These measures require each ministry and agency to establish their own codes of conduct concerning contacts with persons or entities whose interest are affected by the performance of the employee’s duties. Each ministry and agency established its own codes of conduct based on the model suggested by the agreement.

**Strict and fair treatment over employees’ misconduct**

In January 1997, the Director General of the Bureau of Employee Relations of the NPA issued an instruction “Strict and Fair Treatment over Employees’ Misconduct”, to the ministries and agencies, requesting them once again to treat employees’ misconduct both strictly and fairly.

**A revision in disciplinary systems**

In September 1998, the NPA submitted an opinion concerning a revision in disciplinary systems to the Diet and the Cabinet. In July 1999, the Diet passed a legislative bill to amend the National Public Service Law (NPSL) based on this opinion. According to the modified provisions, disciplinary action may be taken against a public servant for his/her previous misconduct in national service – even after

transferral to local government, positions in special service, etc. – when he/she returns to the national government. This was not possible under the former legislation.

*f) Plans in preparation to address ethical issues in the Japanese public service*

Legislative bills to promote discipline among government officials were brought to the 1998 Ordinary Session of the Diet. The Diet passed the National Public Service Ethics Law on 9 August 1999. According to this new Law, the following measures will be entirely effective on 1 April 2000:

- Obligation on senior officials who receive gifts, favours, etc. of value beyond a certain amount of yen to report.
- Obligation on very senior officials to report their stock exchange and income.
- Establishment of the National Public Service Ethics Board in the NPA responsible for the affairs concerning retention of ethics related to the office, for example, training, review of above-mentioned reports, investigation and punishment of unethical conduct.
- Prohibition or restriction of some kinds of conduct by the National Public Service Officials Ethics Instructions established as a government order.

**II. Core values for the public service**

*a) Stating core values for the public service*

Following are the stated core values:

- “All public officials are servants of the whole community and not of any group thereof.” (The Constitution of Japan, Article 15, Section 2).
- “Any employee, as a servant of the people, shall attend to his/her duties in the interest of the public, and exert his/her utmost effort in the performance of his/her duties.” (National Public Service Law, Article 96, Section 1).

*b) How stated core public service values are communicated to public servants*

The following forms are used:

- Core values are automatically provided when someone joins the public service.
- Core values are normally communicated at the introductory training courses for new employees conducted in each ministry and agency.
- Core values are stated in the laws so that all core values are readily accessible.

c) *The statements on core public service values have not been revised in the last decade*

### III. Standards of behaviour for the public service

#### a) *Statements on the standards of behaviour expected of public servants*

Standards of behaviour for the public service are stated in the NPSL (National Public Service Law) and the codes of conduct established in each ministry and agency. They cover the following issues:

- Receiving gifts or benefits such as fees, payments, entertainment.
- Use of official information.
- Official travel (Law concerning Travel Expenses for National Public Personnel and Others Article).
- Work outside the public service includes the restriction on employment in profit-making enterprises (Article 103 of the NPSL) and on participation in other undertakings or business (Article 104 of the NPSL).
- Restrictions on post-employment.
- Special conditions/permissions on movement from the public service to the for-profit sector.
- Involvement in political work which includes the restriction on political activities (Article 102 of the NPSL).
- Obedience to superiors' orders (Article 98 of the NPSL).
- Prohibition of acts causing discredit to the public service (Article 99 of the NPSL).
- Prohibition of divulging any secret which may have come to employees' knowledge in the performance of their duties (Article 100 of the NPSL).
- Obligation to give undivided attention to duty (Article 101 of the NPSL).
- Receiving payment for speech and writing from persons and entities whose interest are affected by the performance or non-performance of the employees' duties (codes of conduct).
- Accepting meals from the above mentioned persons or entities (codes of conduct).

Although there is no particular statement concerning use of official property in the present regulation, Article 99 of the NSPL is regarded as covering this question. If an employee acts in a way that causes discredit to the public in the use of official property, disciplinary action may be taken against him/her.

There are **specific requirements** within the public service in addition to the general standards applicable to all public servants. For example, tax officials are strictly prohibited from divulging or misappropriating any secret which may have come to their knowledge in the performance of their duties. Furthermore, the following specific guidelines are in place for public servants and political leaders working at the political/administrative interface (Article 102 of the NPSL):

- Personnel shall not solicit, or receive, or be in any manner concerned in soliciting or receiving any subscription or other benefit for any political party or political purpose or engage in any political activity as defined by rules of the NPA other than to exercise his/her right to vote.
- No employee shall be a candidate for elective public office.
- No employee shall be an officer, political adviser, or member with a similar role of any political party or political organisation.

Minimum standards of behaviour for the public service are stated in the NPSL (National Public Service Law) and the codes of conduct established in each ministry and agency.

*b) Unacceptable conduct for public officials according to the law*

The following kinds of **specific misconduct** are defined for public officials by criminal legislation:

- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Abuse of office or public trust.

**Further prohibitions and restrictions** imposed on public officials are stated in the NPSL as follows:

- Prohibition of acts of labour dispute (Article 98).
- Prohibition of acts causing discredit to the public service (Article 99).
- Prohibition of divulging any secret which may have come to employees' knowledge in the performance of their duties (Article 100).
- Prohibition of holding two or more government positions simultaneously without authorisation by law or orders, and prohibition of receiving compensation for additional government position even with authorisation (Article 101).
- Restriction on political activities (Article 102 of the NPSL).
- Restriction on employment in profit-making enterprises (Article 103).
- Restriction on participation in other undertaking or business (Article 104).

**IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct**

*a) Measures used by human resources management to promote an ethical environment*

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies and auditing/monitoring the selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.
- Taking ethical considerations into account in the recruitment process. For example in the course of the interviews – which are part of the recruitment examinations for national public service – the interviewers are required to evaluate the ethical standards of the applicants.
- Considering ethical behaviour in the performance appraisal. The employee's ethical behaviour may be one dimension to be evaluated in the performance appraisal, which is developed in each ministry and agency.
- Conducting ethics training.
- Regular rotation or replacement of personnel.

**Special attention** is given to officials, who are in charge of budget-execution, licensing and approval affairs. They are discouraged from occupying their posts for a long period.

***b) Informing and training public servants on ethics issues***

Ethics training is executed by the NPA, a central personnel Agency, and each ministry and agency. Each training course primarily consists of lectures and discussions of pertinent ethical issues. Lectures focus on raising ethics awareness, and discussions on improving skills for ethical judgement. Training programmes conducted by the NPA and each department are explained as follows:

- The NPA conducts inter-ministerial training courses for administrative officers according to their strata, whose curricula include case studies in ethics awareness. Only those officials who are recommended for training by their respective departments receive training. However, all Level I employees (public servants who were appointed as the result of passing the Level I Recruitment Examination) are required to attend the initial training course upon their employment.
- The NPA also offers a programme for administrative officers of each ministry and agency on how ethics training in their own departments. Trainees are those who are expected to become instructors of ethics training and to give training for officials of their own departments.
- Each ministry and agency provides ethics training in its inter-ministerial training courses for administrative officers of each stratum, according to their own schedule.

Public employees who have work-related ethical problems or dilemmas, may consult with Discipline Management Officers of their ministries or agencies responsible for promoting discipline.

***c) Other measures to promote high standards of conduct and assist prevention***

These include:

- Identifying and reporting of conflict of interest situations, especially in areas of post public employment and receiving gifts and benefits such as fees, payments, and entertainment.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness of responding to requests.

***d) Disclosure policy***

Disclosure of personal information (declaration of personal assets, financial interests) is required from elected officials and members of the Cabinet. The following information is required to be disclosed when they take up their position in the public service and on an annual basis:

- Assets and liabilities.
- Loans.
- Sources and level of income.
- Outside positions.

The disclosed information is open to the public upon request. The purpose is to establish the political ethics of elected officials and members of the Cabinet by disclosing information -- such as personal assets and liabilities -- to the public and therefore to contribute to the development of democracy.

***e) Procedures to report misconduct/suspected corruption***

Legal provisions define the procedure for public servants on how to expose wrongdoing committed by public servants. There is no protection/safeguard provided for public servants who expose wrongdoing.

Neither procedures nor supporting institutions are in place for the public to expose misconduct committed by public servants.

*f) Internal control to support the improvement of ethical conduct in the public service*

There is no internal control to support the improvement of ethical conduct in the public service.

*g) Disciplinary procedures in case of a breach of public service standards*

When a public servant falls under one of the following cases (Article 82 of the NPSL), an employee may, as disciplinary punishment, be dismissed, suspended from duty, suffer reduction in pay or a reprimand:

- When he/she has acted contrary to this law or orders issued thereunder.
- When he/she has acted contrary to the duties of his/her position or has neglected his/her duties.
- When he/she is guilty of such misconduct as to render himself/herself unfit to be a servant of the people.

Concerning availability of redress, the Article of 90 of the NPSL provides that the employee subject to disciplinary punishment may file with the NPA only an objection such as an appeal for review or submittal of a protest under the Law for Examination of Objections Against Administrative Acts. Article 92-2 provides that no lawsuit may be brought for its cancellation until after the NPA has rendered a ruling or a decision on the said appeal or the protest submitted.

## V. Scrutinising misconduct in the public service

*a) Institutions and procedures to investigate and prosecute misconduct*

The **principal investigative organisations** involved in anti-corruption efforts include:

- Police.
- Public Prosecutors' Office.

**Police officers** are the major investigative force carrying out their duties within the jurisdiction of the Prefectural Police concerned. According to the jurisdiction of the Police Act (Articles 4 and 5) the National Public Safety Commission exercises administrative supervision over the National Police Agency within its authority. While the Commission is under the jurisdiction of the Prime Minister, the Prime Minister is not empowered to command or control the Commission directly. The Prefectural Public Safety Commissions exercise administrative supervision over their prefectural police by formulating basic policies and regulations for the police operations. However, neither the Prefectural Public Safety Commissions nor Prefectural Governors or elected assemblies may supervise individual case or specific law enforcement activities of the Prefectural Police. (Article 38 of the Police Act). The National Police Agency employs 1,405 police officers, 922 imperial guards and 5,323 civilians while 226,401 police officers and 29,351 civilians are in service in the Prefectural Police. The national budget provides 229,972 M yen for the National Police Agency and 3,469,256 M yen for the Prefectural Police in the financial year 1999/2000 (1 April 1999 –31 March 2000).

**Public prosecutors** operate with jurisdiction over the whole public service. Public prosecutors are empowered to both investigate and prosecute misconduct and corruption committed in the public service. The Minister of Justice (who is a civilian) may control and supervise public prosecutors generally in regard

to their functions. However, in regard to the investigation and disposition of individual cases, the Minister of Justice may control only the Prosecutor-General. The security of tenure is granted by the Public Prosecutors Office Law, except for the cases regulated by the Act, no public prosecutor shall, against his/her will, lose his/her office, be suspended from the performance of his/her duties or suffer reduction of salary unless by disciplinary action. Public prosecutors are empowered to bring suspected cases of corruption directly to court. Currently 1,304 public prosecutors, 919 assistant public prosecutors and 9,134 assistant officers and technical officers work for the public prosecutors offices. Their financial resource is 104,831.669 M yen for the current financial year (1 April 1999 – 31 March 2000).

***b) Institutions in place to perform independent scrutiny of the administration***

In Japan, courts have the authority to judge legality of administrative dispositions in specific cases. Courts perform scrutiny of actions of the administrative organisations within certain limits. The following requirements are necessary for courts to perform scrutiny of revocation lawsuits of administrative actions:

- The administrative actions come under administrative dispositions.
- The plaintiff has legal benefit in respect of his or her asking for revocation of the disposition.
- The lawsuits are filed within the time period specified by the law.

**VI. Co-ordination and self-assessment**

***a) Co-ordination and management of government ethics and anti-corruption policy***

As a central personnel agency, the NPA is responsible for basic standards for service discipline and matters concerning disciplinary action. The Prime Minister, another central personnel agency, is also responsible for matters concerning discipline, although in practice the Management and Co-ordination Agency (MCA) plays this role. The NPA, defined by the NPSL, provides an annual report for the Diet and the Cabinet concerning its activities. Matters concerning discipline are stated in the report.

The principal action and commonly used procedure in Japan to ensure the **consistency** of the government ethics and anti-corruption measures is the analysis of systemic failures, trends in criminal and disciplinary cases. No national ethics or corruption prevention plan has been developed.

***b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct***

The National Personnel Authority has reviewed all aspects of human resource management including ethics retention when necessary. If a revision requires an amendment in any law, the NPA recommends amendments to the Cabinet and the Diet.

## JAPON

### 1. Le contexte général de la gestion de la déontologie dans le service public au Japon

- a) *Les principaux problèmes relatifs à l'éthique auxquels le service public japonais a été confronté au cours des dix dernières années, et plus particulièrement au cours des 18 derniers mois.*

Pas de réponse

- b) *Les mesures prises pour améliorer le comportement déontologique dans le service public*

#### **Mieux sensibiliser aux questions d'éthique par la formation**

- L'organisme national de gestion du personnel (ONP) propose des cours de formation à l'intention des formateurs chargés des programmes de sensibilisation aux questions d'éthique.
- L'ONP a enrichi les sujets liés à l'éthique dans les programmes de formation interministériels qu'il assure pour les fonctionnaires dans chaque grade.
- En 1997, l'ONP a révisé son programme de formation aux questions d'éthique destiné aux fonctionnaires. Il a également produit des cassettes vidéo sur la préservation de l'éthique.
- En 1997, l'ONP a publié une brochure "Lecture sur l'éthique dans le service public" qui a été distribué aux stagiaires de tous les programmes de formation interministériels conduits par celui-ci en 1998.

#### **Mise en place de codes de conduite**

- En 1996, de nouvelles mesures ont été prises par le Conseil des Vice-Ministres pour assurer un système efficace d'application des règles officielles de discipline et de prévention des comportements fautifs. Selon ces mesures, chaque ministère et organisme doit établir son propre code de conduite à propos des contacts avec des personnes ou entités dont les intérêts sont touchés par la réalisation des tâches confiés aux fonctionnaires. Chaque ministère et organisme met en place son propre code de conduite à partir du modèle proposé par l'accord.

#### **Traitement rigoureux et juste des actes fautifs commis par les fonctionnaires**

- En janvier 1997, le Directeur général du Bureau des relations avec les salariés de l'ONP a promulgué une instruction sur le traitement strict et juste des comportements fautifs des fonctionnaires à l'intention des ministères et des organismes, leur demandant une fois encore, de traiter les actes répréhensibles des salariés avec rigueur et justice.

#### **Une révision des systèmes de sanction disciplinaire**

- En septembre 1998, l'ONP a soumis un avis sur la révision du système de sanction disciplinaire à la Diet et au Cabinet. En juillet 1999, la Diet a adopté une loi destinée à amender la loi sur la fonction publique nationale s'inspirant de cet avis. Selon les nouvelles dispositions, des sanctions disciplinaires peuvent être prises contre un fonctionnaire pour acte répréhensible dans le service public national, même après transfert dans l'administration locale, services particuliers, etc. -- lorsque le fonctionnaire réintègre l'administration nationale. Cela n'était pas possible aux termes de la législation antérieure.

- c) *Les projets actuellement en préparation relatifs aux problèmes déontologiques dans le service public japonais*

Des projets de lois destinés à promouvoir la discipline dans les rangs des fonctionnaires de l'Etat ont été présentés à la séance ordinaire de 1998 de la Diet. La Diet a adopté la loi sur l'éthique dans le service public national le 9 août 1999. Aux termes de cette nouvelle loi, les dispositions suivantes prendront effet le 1er avril 2000.

- Obligation faite aux hauts fonctionnaires qui reçoivent des cadeaux, faveurs, etc., d'une valeur dépassant une certaine somme de le signaler.
- Obligation faite aux hauts fonctionnaires de communiquer la valeur de leur portefeuille boursier et le montant de leurs revenus.
- Création du Conseil d'éthique du Service public national au sein de l'ONP chargé de la préservation de l'éthique dans le travail, par exemple formation, examen des rapports ci-dessus, enquêtes et répression des comportements contraires à la déontologie.
- Interdiction ou restriction de certains types de comportements par des instructions sur la déontologie des fonctionnaires du service public national établie comme une ordonnance gouvernementale.

## **II. Les valeurs essentielles du service public**

### **a) *Définir les valeurs essentielles du service public***

Les valeurs essentielles du service public sont les suivantes :

- "Tout fonctionnaire est au service de l'ensemble de la communauté et non d'un seul groupe" (Constitution du Japon, article 15, section 2).
- "Tout fonctionnaire, étant au service du peuple, assurera ses fonctions dans l'intérêt général et exécutera au mieux de ses possibilités les tâches qui lui seront confiées". (Loi sur le Service public national, article 96, section 1).

### **b) *Comment les valeurs essentielles du service public sont-elles communiquées aux fonctionnaires ?***

Les valeurs essentielles du service public sont communiquées aux fonctionnaires de la façon suivante :

- Elles sont automatiquement communiquées lors du recrutement.
- Elles sont normalement communiquées dans les cours de formation destinés aux nouveaux arrivés dans chaque ministère et organisme.
- Elles sont énoncées dans les lois de manière à ce que tous puissent les connaître aisément.

### **c) *La déclaration sur les valeurs essentielles de la fonction publique n'a pas été reformulée au cours des dix dernières années***

## **III. Normes de conduite dans le service public**

### **a) *Déclaration sur les normes de comportement attendue des fonctionnaires***

Les normes de comportement de la fonction publique sont précisées dans la loi sur la fonction publique nationale et les codes de conduite élaborés dans chaque ministère et organisme. Ils couvrent les aspects suivants :

- L'acceptation de dons et d'avantages, tels que rétribution, paiement, divertissement.
- L'utilisation d'informations officielles.

- Les déplacements officiels (loi sur les frais de déplacement du personnel de la fonction publique et autres articles).
- Le travail extérieur au service public et les restrictions en matière d'emploi dans des entreprises à but lucratif (article 103 de la loi sur la fonction publique nationale) (article 104 de la loi).
- Les restrictions en matière d'emploi après le départ de la fonction publique.
- Les conditions spéciales/autorisations relatives aux mouvements de la fonction publique vers le secteur commercial.
- La participation à la vie politique, notamment restrictions relatives aux activités politiques (article 102 de la loi sur la fonction publique nationale).
- Obéissance aux ordres donnés par les supérieurs hiérarchiques (article 98 de la loi sur la fonction publique nationale).
- Interdiction des actes susceptibles de discréditer la fonction publique (article 99 de la loi sur la fonction publique nationale).
- Interdiction de divulguer tout secret pouvant être porté à la connaissance des fonctionnaires dans l'exercice de leurs fonctions (article 100 de la loi sur la fonction publique nationale).
- L'acceptation d'une rémunération pour prononcer un discours ou rédiger un écrit de la part de personnes et d'entités dont les intérêts sont affectés par la réalisation ou la non-réalisation des tâches confiées aux fonctionnaires (Code de conduite).
- L'acceptation invitation à dîner ou déjeuner par les personnes ou entités mentionnées ci-dessus (codes de conduite).

Bien qu'il n'existe pas de dispositions particulières concernant l'utilisation de propriété publique dans la réglementation actuelle, on considère que l'article 99 de la Loi sur la fonction publique nationale couvre cette question. Si un fonctionnaire nuit à l'intérêt général en utilisant des propriétés publiques, des sanctions disciplinaires peuvent être prises à son encontre.

Il existe des **règles spécifiques** dans la fonction publique qui s'ajoutent aux règles générales applicables à l'ensemble des fonctionnaires. Par exemple, il est strictement interdit aux agents de l'administration fiscale de divulguer ou de détourner un secret parvenu à leur connaissance dans l'exercice de leurs fonctions. En outre, les principes ci-après s'appliquent aux fonctionnaires et aux responsables politiques qui travaillent à l'interface de l'activité politique et de l'activité administrative (article 102 de la Loi sur la fonction publique nationale) :

- Les agents de l'Etat ne sollicitent pas, n'acceptent pas ou ne se trouvent pas en situation de demander ou d'accepter des dons ou autres avantages pour un quelconque parti politique ou un objectif politique, et ne s'engagent dans aucune activité politique telle que définie par le règlement de l'ONP en dehors de l'exercice du droit de vote.
- Aucun fonctionnaire n'est candidat à un mandat public électif.
- Aucun fonctionnaire ne peut être cadre, conseiller politique ou exercer des fonctions analogues dans un parti politique ou une organisation politique.

Des normes de conduite minimum sont énoncées dans la Loi sur la fonction publique nationale ainsi que dans les codes de conduite élaborés dans chaque ministère et organisme.

***b) Conduite considérée comme inacceptable au regard de la loi pour les agents de la fonction publique***

Les types suivants de **comportement répréhensible** des fonctionnaires sont définis dans la législation pénale :

- Corruption active, passive, directe, indirecte ou tentative de corruption de fonctionnaires/actes de corruption commis par des fonctionnaires.
- Abus de pouvoir ou de la confiance du public.

**D'autres interdictions et restrictions** imposées aux fonctionnaires sont énoncées dans la Loi sur la fonction publique nationale comme suit :

- Interdiction de participer à des conflits du travail (article 98).
- Interdiction d'agir de manière à déconsidérer la fonction publique (article 99).
- Interdiction de divulguer un secret qui peut avoir été porté à la connaissance des fonctionnaires dans l'exercice de leurs fonctions (article 100).
- Interdiction d'occuper plusieurs postes publics simultanément sans y être autorisés par la loi ou par une ordonnance, et en cas d'autorisation, interdiction de recevoir une indemnité (article 101).
- Restriction relative aux activités politiques (article 102).
- Restriction relative à l'emploi dans des entreprises commerciales (article 103).
- Restriction relative à la participation à d'autres activités ou entreprises commerciales (article 104).

#### **IV. Institutions et procédures destinées à promouvoir un haut niveau de probité, à prévenir et à détecter les fautes professionnelles**

##### **a) Mesures utilisées dans le cadre de la gestion des ressources humaines pour promouvoir un environnement professionnel favorisant le respect de la déontologie**

Notamment :

- Il existe des règles/des directives/des politiques pour les procédures de recrutement et de promotion.
- Le recrutement et la promotion sont fondés sur le mérite.
- La transparence des procédures de sélection est assurée par la publication des règles/directives/politiques de recrutement et l'évaluation des procédures de sélection.
- Seuls les critères de sélection publiés et adéquats sont pris en compte lors du recrutement.
- Les considérations déontologiques sont prises en compte dans la procédure de recrutement. Par exemple, dans le cadre des entretiens, qui font partie des procédures de recrutement dans la fonction publique nationale -- les examinateurs doivent évaluer le système de valeur des candidats.
- Les comportements éthiques sont pris en considération dans l'appréciation des performances. Le comportement éthique du fonctionnaire considéré peut faire partie des éléments à évaluer lors de l'évaluation des performances, qui est effectué dans chaque ministère et organisme.
- Programme de formation relatif à la déontologie
- Rotation régulière ou remplacement du personnel.

Une **attention spéciale** est accordée aux fonctionnaires chargés de l'exécution du budget, de l'octroi de licences et d'autorisations. Ils ne sont pas incités à rester très longtemps à leur poste.

##### **b) Sensibiliser et former les agents publics aux questions déontologiques**

La formation dans le domaine de l'éthique est assurée par l'ONP, organisme central de gestion du personnel, ainsi que par chaque ministère et organisme public. Chaque programme de formation consiste

essentiellement en conférences et débats consacrés aux problèmes éthiques pertinents. Les conférences sont centrées sur la sensibilisation aux problèmes d'éthique et les débats sur l'amélioration des compétences permettant d'exercer son sens de l'éthique. Les programmes de formation assurés par l'ONP dans chaque ministère sont décrits de la façon suivante :

- L'ONP assure des cours de formation interministérielle destinés aux fonctionnaires en fonction de leur grade, et les programmes comprennent des études de cas concernant la sensibilisation à l'éthique. Seules les personnes recommandées par leur service bénéficient d'une formation. Cependant, tous les fonctionnaires de niveau 1 (c'est-à-dire nommés après avoir passé l'examen de recrutement de niveau 1) doivent suivre le cours de formation initiale à leur arrivée.
- L'ONP propose également un programme de formation destiné aux fonctionnaires de chaque ministère et organisme sur la façon d'organiser la formation dans le domaine de l'éthique dans leur propre service. Les stagiaires deviendront formateurs dans le domaine de la déontologie et formeront les agents de leurs propres services.
- Chaque ministère et organisme assure une formation aux problèmes d'éthique dans ses cours de formation interministérielle à l'intention des fonctionnaires de chaque grade, en fonction de leur propre calendrier.

Les agents publics qui ont des problèmes ou des cas de conscience de nature déontologique dans l'exercice de leurs fonctions peuvent consulter les personnes de leur ministère ou organisme chargé de promouvoir les règles de discipline.

**c) *Autres instruments pour promouvoir le respect de normes de conduite exigeantes et promouvoir la prévention***

Notamment :

- Identification et compte-rendu sur les situations de conflits d'intérêt, en particulier s'agissant de l'emploi après la sortie de la fonction publique et de l'acceptation de dons et d'avantages, tels que rétributions, paiements, divertissements.
- Obligation de motivation des décisions administratives.
- Existence de voies de recours contre des décisions administratives.
- Existence de délais de réponse maximum tolérés pour répondre aux demandes des usagers.

**d) *Transparence***

La divulgation d'informations personnelles (déclaration des actifs personnels, des intérêts financiers) est exigée des représentants élus et des membres du Cabinet. Les informations suivantes sont demandées lorsque ces personnes prennent leurs fonctions dans le service public et ce, chaque année :

- Actif et passif.
- Emprunts.
- Source des revenus et niveaux.
- Activités extérieures.

Les informations communiquées peuvent être consultées par le public sur demande. L'objectif est d'affermir l'éthique politique des représentants élus et des membres du Cabinet en révélant des informations -- telles que les actifs et passifs personnels -- au public et donc en contribuant au renforcement de la démocratie.

*e) Procédures à suivre pour dénoncer des actes répréhensibles ou faire part de soupçons de corruption*

Il existe des dispositions juridiques qui définissent la procédure à suivre pour dénoncer les actes répréhensibles commis par des fonctionnaires. Il n'existe aucune protection pour les agents de l'Etat qui dénoncent des malversations et il n'existe pas de procédures ni d'institutions spécifiques à la disposition du public pour dénoncer les malversations commises par des agents publics.

*f) Dispositif interne de contrôle susceptible de contribuer à l'amélioration de la déontologie dans la fonction publique*

Il n'existe pas de dispositif interne de contrôle susceptible de soutenir l'amélioration des comportements éthiques dans la fonction publique.

*g) Procédures disciplinaires pour traiter des cas de manquement aux normes de la fonction publique*

Lorsqu'un fonctionnaire entre dans l'un des cas suivants (article 82 de la Loi sur la fonction publique nationale), il est susceptible d'être licencié, suspendu, de voir son traitement réduit ou de subir un blâme.

- Lorsqu'il a enfreint cette loi ou des directives données au titre de cette loi.
- Lorsqu'il a agi en contradiction avec les devoirs de sa charge ou négligé ceux-ci.
- Lorsqu'il s'est rendu coupable d'un acte qui le rend indigne de servir le peuple.

S'agissant des possibilités de recours, l'article 90 de la Loi sur la fonction publique nationale prévoit que le fonctionnaire qui fait l'objet d'une sanction disciplinaire peut contester la sanction auprès de l'ONP en formulant une demande de révision ou une protestation en vertu de la Loi sur l'examen des oppositions à l'encontre des actes administratifs. L'article 92-2 prévoit qu'aucun recours en annulation ne peut être introduit tant que l'ONP n'a pas rendu de décision.

**V. A la recherche des comportements répréhensibles dans la fonction publique**

*a) Institutions et procédures permettant d'enquêter sur les malversations et de les poursuivre*

Les **principales organisations d'enquête** qui participent aux efforts de lutte contre la corruption sont notamment :

- La police
- Le Bureau du Procureur de la République.

Ce sont les **officiers de police** qui sont au premier chef chargés des enquêtes à mener dans le cadre des fonctions qu'ils exercent dans la police préfectorale. Selon la loi sur la police (articles 4 et 5), la Commission nationale de sécurité publique exerce un contrôle administratif sur la police nationale qui relève de son autorité. Si la Commission, elle, relève directement du Premier Ministre, celui-ci n'est pas habilité à commander ou contrôler la Commission directement. Les commissions de sécurité publique des préfectures exercent un contrôle administratif sur la police préfectorale en définissant les politiques et règles de base des activités de police. Cependant, ni les commissions préfectorales de sécurité, ni les gouverneurs des préfectures, ni les assemblées élues, ne peuvent superviser les dossiers individuellement ni les activités de la police préfectorale visant à assurer le respect de la loi. La police nationale emploie 1 405 officiers de police, 922 gardes impériaux et 5 323 civils tandis que la police préfectorale compte 226 401 officiers de police et 29 351 civils. L'enveloppe consacrée à la police nationale dans le budget

national se monte à 229 971 millions de yens et celle de la police préfectorale représente 3 469 256 millions de yens pour l'année budgétaire 1999/2000 (1er avril 1999-31 mars 2000).

Les **procureurs** ont compétence sur l'ensemble de la fonction publique. Ils sont habilités à mener des enquêtes sur les comportements répréhensibles et les actes de corruption menés dans le cadre de la fonction publique et de les poursuivre. Le Ministre de la Justice (qui est un civil) peut exercer un contrôle et superviser d'une manière générale les activités des procureurs. Cependant, en ce qui concerne les enquêtes et les dispositions concernant les dossiers pris individuellement, le Ministre de la Justice ne peut exercer son autorité que sur le Procureur Général. La sécurité d'emploi est garantie par la Loi relative aux procureurs, sauf dans les cas prévus par la Loi, aucun Procureur ne peut, contre sa volonté, perdre sa charge, être suspendu ou voir son traitement réduit sauf cas de sanctions disciplinaires. Les Procureurs sont habilités à déférer en justice les cas présumés de corruption. Actuellement, les Bureaux des Procureurs emploient 1 304 procureurs, 919 procureurs adjoints et 9 134 assistants et agents techniques. L'enveloppe pour l'année budgétaire actuelle (1er avril 1999 -31 mars 2000) se monte à 104 831 669 yens.

**b) *Les institutions compétences pourraient exercer un contrôle indépendant sur l'administration***

Au Japon, les tribunaux sont compétents pour juger de la légalité des dispositions administratives dans des cas particuliers. Ils exercent un contrôle sur les activités des organismes administratifs dans certaines limites. Les conditions ci-après doivent être réunies pour que les tribunaux examinent les procès pour révocation de décisions administratives :

- Les activités de l'administration tombent sous le coup de dispositions administratives.
- La demande de révocation du plaignant doit être fondée sur des arguments juridiques.
- Les procès doivent être intentés dans les délais prévus par la Loi.

**VI. Coordination et évaluation**

**a) *Coordination et gestion de la mise en œuvre de la politique de l'administration en matière de déontologie et de lutte contre la corruption***

En tant qu'organisme central chargé de la gestion du personnel, l'ONP doit définir les règles de base relatives à la discipline et aux questions concernant les sanctions disciplinaires. Le Premier Ministre, a également à connaître les questions concernant la discipline, bien qu'en pratique ce soit l'Agence de gestion et de coordination qui s'occupe de ces questions. L'ONP, conformément à la Loi sur la fonction publique nationale, prépare un rapport annuel destiné à la Diet et au Cabinet au sujet de ces activités. Les questions concernant la discipline sont présentées dans ce rapport.

Pour assurer la **cohérence** des mesures prises par le gouvernement dans le domaine de la déontologie et de la lutte contre la pauvreté, la procédure la plus généralement utilisée est l'analyse des échecs systémiques et des tendances qui se dégagent des affaires de nature criminelle et disciplinaire. Aucun plan national de prévention de la corruption et de promotion de la déontologie n'a été mis au point.

**b) *Evaluation de l'efficacité des mesures visant à promouvoir les conduites déontologiques et à prévenir la corruption***

L'ONP a examiné tous les aspects de la gestion des ressources humaines, y compris la préservation de la déontologie le cas échéant. Si une révision nécessite la modification d'une loi, l'ONP présente une recommandation au Cabinet et à la Diet.

## KOREA

### I. The general context for managing ethics in the public service<sup>7</sup> in Korea

#### a) *The principal ethics-related issues which have confronted the public service in Korea during the past 10 years, and especially within the past 18 months*

The principal ethics-related issues are:

- Misconduct and wrongdoing related to civil petitions.
- Transparency in the administrative procedure.

#### b) *Recent measures to improve ethical conduct in the public service*

These include:

- Amendment of the Public Service Ethics Act (11 June 1993): the registered property of senior public officials (Grade 1 and above) shall be open to the public, and the authority of the Public Service Ethics Committee is strengthened.
- Enactment of new laws, such as the Act on Special Cases concerning Forfeiture for Offences of Public Officials (5 January 1995); Act on Disclosure of Information by Public Agencies (31 December 1996); Act on the Framework of Administrative Regulation (23 August 1997); Civil Petitions Treatment Act (23 August 1997); Administrative Procedures Act (15 December 1997); Act on Combating Bribery of Foreign Public Officials in International Commercial Transactions (28 December 1998).
- Government reorganisation and outsourcing to achieve a small and efficient administration.

#### c) *Plans in preparation to address ethical issues in the Korean public service*

The following comprehensive anti-corruption measures are being discussed:

- Formulation of a code of conduct for public officials.
- Protection of whistle-blowers.
- Requirement that public officials report any wrongdoing they witness.
- Confiscation of ill-gotten gains.

---

7 . According to the National Civil Service Act, Korean public officials are classified into career service and non-career service. The career service means officials who are appointed in accordance with their record of performance and qualification, and whose status is guaranteed until their retirement. The categories of such officials are as follows:

- General Service: technical and/or research affairs as well as administration in general, classified by occupational groups and series of classes.
- Special Service: judges, public prosecutors, diplomats, policemen, fire-fighters, military personnel, professors and teachers.
- Technical Service: technical and skilled workers.

The non-career service includes elected officials and political appointees, contract personnel, etc.

- Reduction of regulatory powers of public officials to lessen the temptation to offer bribes.

## **II. Core values for the public service**

### ***a) Stating core values for the public service***

The following values are enumerated as duties of Korean public officials:

- Fidelity.
- Obedience.
- Kindness and impartiality.
- Confidentiality.
- Integrity.
- Dignity.

They are enumerated in the following legal documents:

- Constitution of the Republic of Korea.
- National Civil Service Act.
- Decree on the Service of National Officials.
- Public Service Ethics Charter.

### ***b) How stated core public service values are communicated to public servants***

The following forms are used:

- Core values are automatically provided when someone joins the public service.
- Any revisions of core values are distributed to all public servants.
- Core values are communicated through training of public servants such as job-training and in-service training.

## **III. Standards of behaviour for the public service**

### ***a) Statements of the standards of behaviour expected of public servants***

There is no single code of conduct, but the standards of behaviour expected of public officials can be found in many acts and decrees, all of which are available to all public officials. Standards cover the following points:

- Receiving gifts or benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Use of corporate credit cards.
- Work outside the public service.

- Restrictions on post-employment.
- Special conditions/permissions on movement from the public service to the for-profit sector.
- Involvement in political work.

There are no specific guidelines/requirements for public servants and political leaders working at the political/administrative interface. There is one exception, however, for those working at the political/administrative interface: the prohibition of political activities is loosely applied to them. Duties of public officials stipulated in the National Civil Service Act and the Decree on the Service of National Officials serve as their **minimum standards of behaviour**.

***b) Unacceptable conduct for public officials according to the law***

The following kinds of **specific misconduct** are defined for public officials by criminal legislation:

- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Abuse of office or public trust.
- Abandonment of duties.
- Divulgence of official secrets.
- Alteration of a public document, or drafting a false one.
- Illegal arrest and detention of citizens.

**Further prohibitions and restrictions** imposed on public officials by the National Civil Service Act and the Decree on the Service of National Officials include the following:

- Prohibition of deserting office.
- Prohibition of engagement in lucrative business.
- Prohibition of political activities.
- Prohibition of collective actions (e.g. petitions through the joint signature for improvement of public official's own benefits).
- Restrictions on holding concurrent employment.
- Restrictions on the employment of retired officials in job-related private companies.

**IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct**

***a) Measures used by human resources management to promote an ethical environment***

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.

- Considering ethical behaviour in the performance appraisal: ethics-related elements such as integrity and impartiality are accorded high importance in evaluating work behaviour.

**Special attention** is given to officials in positions particularly susceptible to corruption. For officials who are engaged in prosecution, police, inspection, customs and tax, the obligation to report on their properties annually is applied to a wider range of grades than other officials. They are also re-deployed regularly.

#### ***b) Informing and training public servants on ethics issues***

All public officials in the career service are required to take ethics training at the time of appointment and promotion. Public officials in tax and inspection affairs take additional special training on ethics. The training contains theories and case studies. The courses are provided by the Central Officials Training Institute (COTI), training agencies of various ministries such as the Tax Officials Training Institute (TOTI), and private professional training bodies.

According to the National Civil Service Act, public officials can request advice or counselling on their work-related ethical problems and dilemmas from the Government Personnel Appeals Commission (GPAC).

#### ***c) Other measures to promote high standards of conduct and assist prevention***

These include:

- Identification and reporting of conflict of interest situations, especially in areas of financial management, post public employment, receiving gifts or benefits such as fees, payments, entertainment.
- Providing redress against administrative decisions.
- Setting standards for timeliness to respond to requests.
- Anti-corruption provisions in bids for public contract (e.g. companies found guilty of corruption are disqualified/suspended from future tenders/bids).
- Specific controls on public procurement procedures.

#### ***d) Disclosure policy***

Disclosure of personal information (declaration of personal assets, financial interests) is required from:

- Elected officials.
- Senior public servants (assistant minister level and above).
- Directors, deputy directors and auditors of government-invested institutions.
- Governor, Deputy Governor and Auditor of the Bank of Korea.
- Director of the Financial Supervisory Service.
- Presidents and auditors of the National Agricultural Co-operatives Federation, National Fisheries Co-operatives Federation and National Livestock Co-operatives Federation, etc.

The disclosure requirements are more rigorous in the following particular sectors:

- Prosecution.
- Police.

- Customs administration.
- Tax administration.

The following information is required to be disclosed on an annual basis and when joining or leaving the public service:

- Assets and liabilities.
- Loans.
- Sources and level of income.
- Gifts.

Registered information is kept confidential except that of senior public servants (assistant minister level and above) which is publicised in the official gazette (public bulletins). Only the Public Service Ethics Committee has access to the confidential information for examining and detecting illicit enrichment.

***e) Procedures to report misconduct/suspected corruption***

Legal provisions define the general procedure for exposing wrongdoing, and internal rules determine the procedure within each organisation across the public service. There is no protection/safeguard available to public servants who expose wrongdoing. For the public, special procedures are available, such as complaint procedures, ombudsman, help desk, or telephone line to expose wrongdoing committed by public servants.

***f) Internal control to support the improvement of ethical conduct in the public service***

Financial and management control is ensured by internal audit and inspection. Internal control, required by law every 1 to 3 years, supports the improvement of ethical conduct in the public service. The management of the agency that is audited, the President of the Republic and the Board of Audit and Inspection (BAI) have access to the reports of the reviews. Internal control detects and corrects misconduct and irregularities, and provides momentum for systemic improvements when necessary. Follow-up mechanisms to implement recommended measures for systemic improvements are not required.

***g) Disciplinary procedures in case of a breach of public service standards***

Disciplinary measures are classified into: dismissal with pension reduction, dismissal, suspension, pay reduction, and reprimand. These are stipulated in the National Civil Service Act. The Government Personnel Appeals Commission reviews the appeals made by public servants against disciplinary actions, and the Commission's decision can be brought to administrative lawsuits if one disobeys it.

**V. Scrutinising misconduct in the public service**

***a) Institutions and procedures to investigate and prosecute misconduct***

Bodies in place **investigating** misconduct and corruption in the public service:

- The Board of Audit and Inspection (BAI), under the supervision of the President of the Republic, operates with jurisdiction over all public officials of central and local government. The

Constitution accords independence to the BAI in performing its duties (822 staff as of 1 July 1999).

- Public prosecutors operate with jurisdiction over all public officials. They retain independence in dealing with specific cases (1207 prosecutors and 2153 staff as of 1 July 1999). Police officers obey any official order issued by the competent public prosecutors in a criminal case (94,840 policemen as of 1 July 1999).
- Auditors inside each ministry (or agency); they are not independent.

Only public prosecutors can **prosecute** misconduct in court. No investigative or prosecuting bodies are empowered to bring suspected cases of corruption directly to court.

***b) Institutions in place to perform independent scrutiny of the administration***

These include:

- Parliament/Parliamentary committee.
- Ombudsman.
- Courts for judicial review.
- The Board of Audit and Inspection.

There are procedures/mechanisms available to bring wrongdoing to the attention of bodies exercising independent scrutiny on public service activities: citizens can submit petitions to scrutinising bodies for correction of wrongdoing by public officials and/or for disciplinary measures.

The Board of Audit and Inspection performs external audit (this independent organisation reports directly to the President of the Republic) for all affairs where public expenditure is used, once a year for central administrative agencies, and once every two years for other organisations. External audit reports are published routinely.

**VI. Co-ordination and self-assessment**

***c) Co-ordination and management of government ethics policy***

The following institutions are defined by legislation for co-ordination and management of government ethics policy:

- The Office for Government Policy Co-ordination (31 staff as of 1 July 1999) under the Prime Minister.
- The Ministry of Government Administration and Home Affairs (36 staff as of 1 July 1999).
- The following actions are taken to ensure the consistency of the government ethics and anti-corruption measures:
- Using risk assessment to steer policy development for prioritising and sequencing ethics measures.
- Providing national guidance and/or a checklist to develop prevention strategies in organisations.
- Assigning a central office responsible for oversight of all ethics related measures, including ensuring the consistency of legal regulations.

No national ethics plan or national corruption prevention plan has been developed. Non-governmental organisations such as the Citizen Coalition for Economic Justice (CCEJ) can be involved in the ethics policy process through petitions.

*d) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct*

The Board of Audit and Inspection and the Prime Minister's Office review and assess the effectiveness of the preventive measures if the occasion arises. The oversight of Citizen Organisations (NGO) over the activities of public servant and strengthened internal control can be considered as successful instruments for corruption prevention.

The major impediments to further reducing corruption in the public service are:

- A weak sense of responsibility among public officials which is caused by frequent change in posts.
- The general tendency of Korean people to prefer "mercy and harmony" to "strict implementation of law".

## MEXICO

### I. The general context for managing ethics in the public service in Mexico

#### *g) The principal ethics-related issues which have confronted the public service in Mexico during the past 10 years, and especially within the past 18 months*

Disparity between public and private sector wages is decreasing through recent plans of the federal administration. There is also better awareness of action taken by the administration.

#### *h) Recent measures and plans in preparation to improve ethical conduct in the public service*

Several amendments and additions have been made to the Federal Criminal Code of 1931 throughout the years, the last ones in May 1999. The National Plan of Development 1995-2000 and the Programme of Modernisation of the Public Administration 1995-2000 contain several lines of action to address ethical issues in the Mexican public service.

### II. Core values for the public service

#### *a) Stating core values for the public service*

Article 47 of the Federal Law of Responsibilities of Public Servants establishes such values. Furthermore, the Mexican Federal Constitution establishes guarantees for all individuals which may not be restricted or suspended, except in cases and under conditions established by the Constitution itself, thus protecting all persons individually or as a group.

Other articles in the Constitution establish: the right to choose an occupation; the free expression of ideas; the right to address petitions to the authorities; the right not to be judged by special laws or tribunals; that no law can have retroactive effect; the inviolability of person, family, domicile, papers or possession except by means of a legally based ruling from a competent authority; conditions for detention and imprisonment; basic rules for criminal process; and prohibition of confiscation of property except in special cases. Furthermore, Mexican citizens enjoy a number of special rights within which the right to petition the authorities is expressly established.

The Organic Law of the Federal Public Administration also sets rules in regard to efficiency, decentralisation, deconcentration, administrative simplification, and investigation of conduct of public servants which may call for the identification of administrative responsibility and the necessity for sanctions. These functions are assigned to the Ministry of Comptrollership and Administrative Development which is also in charge of receiving and registering the Patrimonial Declaration that all public servants are obliged to present yearly.

*b) How stated core public service values are communicated to public servants*

All public servants are aware of core values through the above-mentioned law, which was duly published in the Official Bulletin and printed by the above-mentioned Ministry of Comptrollership, so copies are plentiful and obtainable at no cost. Therefore, it is available to all public servants. Every state has similar laws and official bulletins where core values are published. Each state of the Mexican Republic has its own laws (mainly based on those applied in the Federal District) applicable within their own territorial jurisdiction. Nevertheless, federal laws such as the Constitution -- and in matters in which the federal tribunals are competent -- the Federal Criminal Code and others, are applicable throughout the whole territory of the Republic.

*c) Revisions of the statement of core public service values*

The National Plan of Development 1995-2000 dates from 1995, the Programme of Modernisation of the Public Administration 1995-2000 from 1996. Public servants across the administration and the public were involved in the development of these programmes. Several consultation fora were organised among public servants and representatives of the private sector in order to gather their opinions.

### III. Standards of behaviour for the public service

*a) Statements of the standards of behaviour expected of public servants*

There is a statement of the standards of behaviour expected of public servants. These expectations cover the following points:

- Receiving gifts or benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Work outside the public service.
- Restrictions on post-employment.
- Special conditions/permissions on movement from the public service to the for-profit sector.
- Involvement in political work.
- Lobbying (which is forbidden for a year after the end of public service, as well as other activities).

There are **specific guidelines/requirements** in addition to the general standards applicable to all public servants. These regulations are issued in every ministry or entity and through labour conditions in contracts. In each Secretariat (Ministry) “regular” public servants are subject to General Working Conditions, a printed ruling which specifies their rights and obligations. The “confidence” or trustworthy officials are subject to individual contracts which also contain their rights and obligations. There are specific guidelines for public servants and political leaders working at the **political/administrative interface**. The Federal Law of Responsibilities of Public Servants sets these obligations in full (article 47).

**Minimum standards** of behaviour for the public service are stated in the Federal Law of Responsibilities of Public Servants.

***b) Unacceptable conduct for public officials according to the law***

The following kinds of **specific misconduct** are defined for public officials by criminal legislation:

- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Partiality in official decision-making.
- Abuse of office or public trust.

The Federal Penal Code establishes (in Title Ten) which actions by public servants constitute a crime and defines and punishes the following:

- Unlawful exercise of public service.
- Abuse of authority.
- Coalition (an alliance or a union) of public servants to take measures against a law or regulation or to prevent its execution, or to resign their positions in order to suspend or impede public administration in all its branches.
- Undue use of attributions and faculties, such as unduly granting public service concessions or permits for exploitation, profiting or use of properties belonging to the Federation etc.
- Concussion which is committed by a public servant if – in the normal course of duties related to taxes, contributions, rentals, interests, salary or income – he/she (directly or indirectly) demands money, values, services or any other advantage which he/she knows not to be due or in a larger amount than permitted by law.
- Intimidation.
- Abuse of the exercise of functions.
- Traffic of influence.
- Corruption.
- Embezzlement.
- Illicit enrichment.

Title Eleven of the same code also establishes that actions by public servant to impede the administration of justice, and undue exercise of a right, constitute crimes. **Further prohibitions and restrictions** are imposed on public officials by the OAS and OECD conventions on corruption.

**IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct**

***a) Measures used by human resources management to promote an ethical environment***

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit in general terms, but there are exceptions.
- Taking ethical considerations into account in the recruitment process, such as verifying data regarding lack of responsibility (checking whether the entrant has a criminal record and whether he/she has been found incompetent according to the Federal Law of Responsibilities of Public Servants).

- Considering ethical behaviour in performance appraisal , such as verifying data regarding lack of responsibility (checking whether the public servant has been found incompetent according to the Federal Law of Responsibilities of Public Servants).

**Special attention** is given to officials in positions particularly susceptible to corruption: in the areas of public procurement, customs and tax administration. Public servants in these areas are audited and re-deployed regularly.

***b) Informing and training public servants on ethics issues***

Public servants are trained and informed on ethics issues in training courses oriented to medium and upper level officials that take place in every ministry and its subordinate agencies. These courses are compulsory for all public servants and vary in accordance to the tasks or position of the public servants, but they mainly focus on raising awareness.

Public servants may ask for help and/or advice from the Ministry of Comptrollership and Administrative Development (SECODAM), as well as from the Control's Internal Office (OIC) in each ministry or in its subordinate agencies, to solve their work-related ethical problems and dilemmas.

***c) Other measures to promote high standards of conduct and assist prevention***

These include:

- Identification and reporting of conflict of interest situations, especially in areas of financial management, post public employment, receiving gifts or benefits such as fees, payments, entertainment, or in other cases such as authorising the employment in the public service of someone who has been disqualified by a final resolution of a competent authority (Article 47 of the Federal Law of Responsibilities of Public Servants).
- Requiring the release of internal information related to ethical conduct and possible transgressions.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness for responding to requests.
- Specific controls on public procurement procedures.
- Risk assessment of the areas susceptible to misconduct.
- Anti-corruption provisions in bids for public contract.

Other measures are stated in the Federal Law of Responsibilities of Public Servants. For example a person may be temporarily disqualified for employment or a commission in the public service (Article 33 of the Law). When one disposition has a bearing on another law it is customary to state "other measures as established" or "in further terms as established" by such and such a law, whether those conditions or terms actually exist or not. This is necessary to avoid contravening another ruling.

Mexico's **public procurement procedures** are established in the Law of Acquisitions and Public Works which regulates all issues related to public procurement and includes provisions on circumstances that make suppliers and contractors ineligible to participate in future tenders, definitely or for a certain period of time. The Law also defines who cannot be considered for bids in public procurement procedures, including:

- Relatives or persons who have a personal or business connection with public servants involved in the procurement procedure.
- Public servants themselves, and companies in which a public servant is a member or associate.
- Persons, companies or any of their affiliates in an activity which, by its nature, may be in conflict with the contract under consideration.
- Those who -- by themselves or through affiliates -- elaborate judgements, appraisals or valuations for the solution of controversies between entities and suppliers of contractors.

This Law also establishes specific controls on public procurement procedures through the intervention of the General Comptroller in any part of the process. All documents and information related to any procurement procedure are kept for a period of five years.

#### *d) Disclosure policy*

Disclosure of personal information (declaration of personal assets, financial interests) is required from elected officials, senior public servants and all other public servants. Disclosure requirements are more rigorous concerning spouses' assets. The following information is required to be disclosed on an annual basis and when joining or leaving the public service:

- Assets and liabilities.
- Loans.
- Sources and level of income.
- Outside positions.
- Gifts.

The disclosed information is confidential and is used only by a competent court order to determine illicit enrichment.

#### *e) Procedures to report misconduct/suspected corruption*

Legal provisions define the procedure for exposing wrongdoing. There is no protection/safeguard available to public servants who expose wrongdoing. For the public, special procedures are available, such as complaint procedures, help desk, telephone line and internal control offices to expose wrongdoing committed by public servants.

#### *f) Internal control to support the improvement of ethical conduct in the public service*

In general terms, several internal control methods are related to ethics and are oriented to control financial and budgeting activities, human resources management and management in general. They are based on reports, questionnaires and/or auditing. Internal control supports corruption prevention efforts by enabling management to detect irregularities, identifying procedural problems and providing specific recommendations. Both general and specific guidelines from the reports produced through the permanent control programmes are used in the formulation of policies to prevent misconduct by public servants. The follow-up mechanisms used are those related to specific audit cases and areas of permanent monitoring programmes.

Internal control is required by law and by general policy. In principle, it is constant. The Chamber of Deputies undertakes an annual revision of the public budget. If the Chamber of Deputies does not approve the budget, it does not become effective and the previously authorised budget remains valid.

***g) Disciplinary procedures in case of a breach of public service standards***

The disciplinary procedures are defined in articles 49 to 78 of the Federal Law of Responsibilities of Public Servants. The administrative sanctions range from private or public summons, private or public admonishment, suspension, destitution, economic sanction to temporary disqualification from holding employment or a commission in the public service.

**V. Scrutinising misconduct in the public service**

***a) Institutions and procedures to investigate and prosecute misconduct***

Bodies in place **investigating** misconduct and corruption in the public service:

- An investigative body operates with jurisdiction over the whole public service.
- An investigative body operates with exclusive jurisdiction over one or a defined range of public service organisations.
- An investigative function exists inside individual public service agencies/departments.

The Federal Law of Responsibilities of Public Servants establishes these bodies functions and places responsibility with the Ministry of Comptrollership and Administrative Development (SECODAM). The Minister of Comptrollership or head of this department is responsible to the President of the Republic.

Bodies in place **prosecuting** misconduct and corruption in the public service:

- “Procuraduria General de la Republica” (PGR)
- “Procuraduria General del Distrito Federal” (PGDF)
- State Procuradurias, through their various branches (equivalent of the Attorney General’s offices in other countries)

The heads of these bodies are accountable, respectively, to the President of the Republic, the Governor of Mexico City and each of the governors of the 31 states. The PGR has over 16,000 staff members, the PGDF has about 10,000. Only the *Procuradurias* are empowered to bring directly suspected cases of corruption before a court.

***b) Institutions in place to perform independent scrutiny of the administration***

- Parliament/Parliamentary committee.
- Independent/external auditors reporting to elected bodies such as Parliament.
- Courts for judicial review.
- Independent office of ethics.

The annual external audit (by an independent organisation reporting to an elected body such as Parliament) covers financial and managerial areas. External audit reports are published routinely.

## VI. Co-ordination and self-assessment

### *a) Co-ordination and management of government ethics and anti-corruption policy*

The Ministry of Comptrollership and Administrative Development (SECODAM), a department of state defined by legislation with over 2000 employees and officials, is assigned to co-ordinate and manage the implementation of the government ethics policy. The SECODAM provides an annual report to the government on the state of ethics in the public service.

The following actions are taken to ensure the **consistency** of the government ethics and anti-corruption measures:

- Analysing systemic failures, trends in criminal and disciplinary cases.
- Providing national guidance and/or a checklist to develop prevention strategies in organisations.
- Assigning a central office responsible for oversight of all ethics-related measures, including ensuring the consistency of legal regulations.

A national ethics strategy as well as a national corruption prevention plan has been developed. These are declared in administrative documents such as the National Plan of Development 1995-2000 and the Programme of Modernisation of the Public Administration 1995-2000. Further sources are the Federal Law of Responsibilities of Public Servants and the Law of Acquisitions and Public Works. This strategy requires diagnosis, citizen participation, administrative decentralisation and evaluation of public management and ethical behaviour of civil servants at the organisational level, all of which are supervised by the Ministry of Comptrollership and Administrative Development. Non-governmental organisations were not involved in the preparation and implementation of ethics policy.

### *b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct*

All administrative units in the federal administration must submit reports on progress made under the Programme of Modernisation of the Public Administration, at least every six months. Measures considered as successful instruments for corruption prevention are auditing, inspections and evaluations, all of which give similar results. New information technologies are currently being used to systematise public services. For example the Ministry of Comptrollership used the Internet while developing the Compranet system which is intended to publish bids or tendering procedures for selling goods or effecting services to the government. This system is based on the Internet and gives details of every step up to the granting of a contract, plus a special procedure to follow in cases of complaint by any of the participants.

Major impediments to further reducing corruption in the public service include: the level of salaries, promotion practices, and the lack of career stability in the public service (a law to establish a career civil service is under consideration).

## NEW ZEALAND

### **I. The general context for managing ethics in the public service in New Zealand**

#### ***a) The principal ethics-related issues which have confronted the public service in New Zealand during the past 10 years, and especially within the past 18 months***

The relative fragmentation of the State sector since the mid-1990s through re-structuring, devolution of responsibility for employment, and greater autonomy at agency level, has meant that processes for acculturation and socialisation (concerning awareness and understanding of principles, conventions, and practice, including ethical values and standards) are not uniform or consistent. During the past 10 years there has been much greater activity at the interface between the public and private sectors, through contracting out, consultancy work, and partnership arrangements, leading to the importation of private sector analogues, and an emphasis on business values and standards.

The reforms of the past 10-15 years have sharpened the distinctions between the role of ministers of the Crown, and the role of chief executives of departments. The application of contract-like instruments has contributed to a reinterpretation of the notion of ministerial accountability, and some reordering of values. At the political level, with changes to the electoral process and an increase in the number of parliamentarians, there has been apparent change in the relationship between citizens and their elected representatives, leading to the not uncommon observation that standards of conduct in public life (and ethical values and standards) have “fallen”. However, the importance of leadership and modelling at the political level for the maintenance of ethical values and standards in public management is generally recognised in New Zealand.

So, the issues relate to:

- Competition between “traditional” public service values and “new public management” ones.
- Absorbing new values, and new ways of working, through heightened interaction with the private sector.
- Changes in the understanding of accountability and responsibility.
- A perceived absence of strong leadership and modelling at the political level.
- Fragmentation of the core public service, with a consequent lessening of “control” in the maintenance of standards.

#### ***b) Recent measures to improve ethical conduct in the public service***

By and large the reforms were concentrated on improving efficiency, effectiveness, and accountability. They were not motivated by a particular concern with any loss of integrity in the public service as a whole, or by breaches of ethical standards. Any loss in confidence and trust related more to matters of competence, than to matters of stewardship, honesty, or trustworthiness.

The measures that have been employed to sustain ethical conduct (initiated at a central agency level) have related to:

- Pre-emptive controls — codes of conduct, communication of expectations (of standards of conduct).
- Integrative controls — incorporation of standards into performance management instruments, promulgation of guidance material, etc.
- Diagnostic controls — evaluation of chief executive performance, and departmental performance assessment (particularly in matters of organisational integrity), and occasional reviews and audits.
- Interactive controls — incorporation of ethics-related content into conferences, leadership initiatives (such as public statements), and encouragement of dialogue across departmental boundaries.

*c) Plans in preparation to address ethical issues in the public service of New Zealand*

These include:

- The use of an ethics framework to help determine where and how efforts should be directed.
- Re-publication of guidance material.
- Refinement of audit and evaluation methodology.

## **II. Core values for the public service**

*a) Stating core values for the public service*

There is no single document that contains a succinct statement of core public service values. In most cases the values are implied, or expressed through principles (as, for instance, in the Public Service Vision Statement, or in the Public Service Code of Conduct).

The set of “core values” or of commonly held beliefs are concerned with:

- Justice and fairness.
- Responsibility and integrity.
- Openness and accountability.
- Efficiency and effectiveness.
- Stewardship and guardianship.

Put another way, they may be expressed as honesty, reciprocity, and fairness.

*b) How stated core public service values are communicated to public servants*

Core public service values are not communicated generally in any centralised or systematic manner. Nor do departments necessarily have planned induction programmes that incorporate statements of “core” public service values, or ongoing education and training programmes to communicate and reinforce “core” public service values (as distinct from departmental-specific values), though some of them do.

### **III. Standards of behaviour for the public service**

#### ***c) Statements of the standards of behaviour expected of public servants***

There are statements of expectations (of standards of conduct) for chief executives and statements of expectations of performance by departments. A Public Service Code of Conduct (setting minimum standards of conduct) applies to all employees of the core public service. An elaboration of these expectations is expressed in the Principles, Conventions and Practice Guidance Series (first published by the State Services Commission in 1995), a reference work for all public servants. Chief executives of government departments have responsibility for setting standards for their own employees, for issuing departmental codes of conduct, standard setting, discipline, and generally setting the tone to suit the nature of the department's business.

In most cases, these expectations specifically cover the following points:

- Receiving gifts or benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Use of corporate credit cards.
- Work outside the public service.
- Restrictions on post-employment.
- Special conditions/permissions on movement from the public service to the for-profit sector.
- Involvement in political work.

There is a general code of minimum standards (the Public Service Code of Conduct), and guidance material (Principles, Conventions and Practice Guidance Series), and from time to time attention may be focused on specific issues, such as frequent aeroplane flyer bonus points but departments issue their own guidelines (about expected standards of conduct) and directions to staff.

There is no special guidance for public servants and political leaders working at the political/administrative interface, but the Cabinet Office Manual (issued and maintained by the Cabinet Office) provides a basis for such guidance, and the Principles, Conventions and Practice Guidance Series also serves as a reference in this area.

#### ***c) Unacceptable conduct for public officials according to the law***

Apart from the normal criminal codes, the only offences that apply specifically to all public officials are contained in the Crimes Act 1961. These relate to:

- Judicial corruption (s.100).
- Bribery of a judicial officer (s.101).
- Corruption and bribery of a minister of the Crown (s.102).
- Corruption and bribery of a member of Parliament (s.103).
- Corruption and bribery of a law enforcement officer (s.104)
- Corruption and bribery of an official (s.105)
- Corrupt use of official information (s.105a)

- Use or disclosure of personal information disclosed in breach of s.105A (s.105B)

Corruption includes active, passive, direct, indirect and attempted corruption. The Public Finance Act 1989 (s.76) and the Public Finance Act 1977 (s.109) contain offence provisions related to the proper use of and management of public money. Some departmental officers (for instance, in the areas of inland revenue, defence, corrections, customs, and police) are subject to particular statutes.

#### **IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct**

##### ***a) Measures used by human resources management to promote an ethical environment***

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.

It is not possible to specify how, or whether, ethical considerations are taken into account in the recruitment or the promotion processes. In the areas of police, customs, debt management, border control, and so forth, **special attention** is given to measures to avoid corruption and any possibility of corrupt practices developing.

##### ***b) Informing and training public servants on ethics issues***

Some departments have induction programmes, but training and education on matters of ethics and ethics issues are mostly informal. Communication and transmission of public service ethical values and standards (as distinct from business-oriented values and standards) is rarely compulsory and not generalised. The tendency is for any attention in this area to be directed toward avoiding undesirable behaviour, rather than promoting desired behaviour. More attention is now being given to active promotion following some recent high public profile concerns.

The kind of guidance, advice, counselling or consultation available to public servants to resolve their work-related ethical problems and dilemmas varies. Mostly it involves reference to in-house persons (managers, legal staff and human resources personnel) for assistance. There are no designated ethics officers. Some organisations have help desk lines, but this is an exception rather than a rule. The State Services Commission is sometimes called on to provide advice, counselling, or guidance on ethics issues.

##### ***c) Other measures to promote high standards of conduct and assist prevention:***

These include:

- Identification and reporting of conflict of interest situations, especially in areas of financial management, post public employment, receiving gifts or benefits such as fees, payments and entertainment.

- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness for responding to requests.
- Anti-corruption provisions in bids for public contract (e.g. companies found guilty of corruption are disqualified/suspended from future tenders/bids).
- Specific controls on public procurement procedures.

There is no uniform or centrally-driven promotional effort. Each department is free to develop its own ways of transmitting organisational values and standards and building organisational culture. The socialisation processes (including education and training) vary from department to department, and linkages between ethical conduct and performance management are sometimes not explicit. Because human resources management is the prerogative of departments, there is considerable variation in method and approach throughout the public service.

*d) Disclosure policy*

There is no requirement for all public employees to complete a declaration or make a statement of interests, pecuniary or otherwise. However, there is a responsibility (implied or otherwise) for employees to declare actual, potential or apparent conflicts of interest in a given situation. In some cases - such as for chief executives, very senior managers within the public service, and specialist occupations (e.g. debt management, contract management, etc.) - there is a requirement to make declarations of interest.

Ministers of the Crown are required to make annual declarations in a register of interests. Where a conflict may arise, all members of Parliament are expected to declare private and personal interests (make a public statement, or withdraw from debate or voting).

*e) Procedures to report misconduct/suspected corruption*

Internal rules define the procedure within each organisation across the public service. There is no whistleblower protection law for public servants who expose wrongdoing as such, but the principle of action in the public interest - as incorporated in employment law - provides protection against recrimination, victimisation, etc. **For the public**, special procedures are available to expose wrongdoing committed by public servants, including complaint procedures (specific to each department, rather than general), ombudsman, help desk and telephone line (in some cases only).

*f) Internal control to support the improvement of ethical conduct in the public service*

Internal control is in place to support the improvement of ethical conduct in the public service to a limited extent. The reinforcement of organisational culture - through codes, guidance material, leadership, modelling, example-setting, etc. - is the main internal control. Critics have suggested that many controls are directed at institutionalising norms rather than internalising them. Structure, division of responsibility, internal checks and audits, external reporting and external audits, and accounting systems all support the proper use of public resources and the management of public funds.

Internal control is required by general policy. Internal control reviews are made regularly and the reports of the reviews are available to the public. Follow-up mechanisms to implement recommended measures for systemic improvements are required through assessments and reviews (including self-reviews) by a central agency, by reports to a responsible minister, and more publicly through parliamentary committees.

*g) Disciplinary procedures in case of a breach of public service standards*

Disciplinary measures range from reprimand to dismissal or disqualification from public office. The sources of these measures are legislation and agency documents. Legal redress is available to challenge the employer's decision.

**V. Scrutinising misconduct in the public service**

*a) Institutions and procedures to investigate and prosecute misconduct*

The **principal investigative organisations** involved in anti-corruption efforts include:

- Central agencies, such as State Services Commission.
- The Auditor-General.
- The Serious Fraud Office.
- Police.
- Special bodies (such as commissions of inquiry) to investigate allegations of corruption or misuse of public office.

Principal bodies in place **prosecuting** misconduct and corruption in the public service:

- Serious Fraud Office.
- Police.

When they have established a prima facie case, certain investigative and/or prosecuting bodies are empowered to bring suspected cases of corruption directly to court.

*b) Institutions in place to perform independent scrutiny of the administration:*

These include:

- Parliament/Parliamentary committee.
- Independent/external auditors reporting to elected bodies such as Parliament.
- Ombudsman.
- Courts for judicial review.
- State Services Commission.

The areas covered by external audit (audit by an independent organisation reporting to elected bodies such as Parliament) include the following: compliance and performance, accounting standards, financial reporting, management systems, matters of integrity, etc. External audits are made at least annually, and external audit reports are published routinely.

**VI. Co-ordination and self-assessment**

***a) Co-ordination and management of government ethics and/or anti-corruption policy***

There is no institution assigned to co-ordinate and manage the implementation of the government ethics policy.

***b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct***

Agreed expectations and standards are assessed routinely as part of a wider assessment of departmental performance. This assessment is conducted by the State Services Commission and covers matters of organisational integrity. The assessment is not particularly concerned with individual conduct, which is a responsibility of each departmental chief executive. The frequency of assessments varies.

The New Zealand Public Service enjoys a low level of incidences of corruption. However, it is not possible to ascertain what influences are the most effective in maintaining relatively high levels of responsibility among public employees.

The increased autonomy of departments, greater decentralisation and devolution, and reliance on private sector partnerships and involvement (through contracting out and so forth) are factors which may place some strain on the low level of corruption in the public service.

## NORWAY

### I. The general context for managing ethics in the public service in Norway

#### a) *The principal ethics-related issues which have confronted the public service in Norway during the past 10 years, and especially within the past 18 months*

- Allegations of "political appointments" to public offices (i.e. appointments made by the party in power) on the basis of political affiliations, often contrary to the nominations made by the public administration).
- The return to civil service positions of officials after serving in political positions (especially Minister or State Secretary), and the employment by private companies or organisations of former civil servants with key knowledge to the prejudice of the public interest.
- Lack of transparency: insufficient disclosure of documents.

#### b) *Recent measures to improve ethical conduct in the public service*

Norway ratified the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on 18 December 1998. This convention has been implemented into Norwegian law by extending the already existing provisions in the General Civil Penal Code regarding bribery of public officials to also include bribery of foreign public officials and agents of foreign public enterprises.

#### c) *Plans in preparation to address ethical issues in the Norwegian public service*

With regard to the second point under I.a above, there are plans to propose some restrictions, but at this point it is somewhat unclear what they will be. Although nothing is decided yet, they are not expected to be very far-reaching or drastic. In a more general way, there are plans to build an ethics infrastructure in line with the OECD Recommendation of 1998, and to develop a training programme for ethical problem-solving.

### II. Core values for the public service

#### a) *Stating core values for the public service*

The following values are listed in legal literature on administrative law and, on this basis, in an official report published in 1993 on public service ethics:

- Welfare and growth.
- Freedom.
- Equality and justice.
- Co-determination and co-influence.
- Security under the law.

- Efficiency.

In addition, the following set of values is found in a number of official documents, such as various kinds of official reports:

- Loyalty.
- Impartiality.
- Factuality/objectivity.
- Transparency.
- Legality.

As indicated above, the core values for the Norwegian public service are not expressly stated in legislation or quasi-legislation (regulations, codes of conduct, etc.), although the purpose of administrative legislation is often to promote or safeguard such values. The core values are taken for granted and referred to in various kinds of official documents (reports from the ministries to Parliament, annual reports of the Ombudsman, etc., and also in the background documents pertaining to legislation). Some directorates have issued value statements that are distributed among employees and to the public.

***b) The stated core public service values are communicated to public servants***

The following forms are used:

- Core values are automatically provided when someone joins the public service.
- They are provided when someone takes up a position in a different public service organisation.

Core values are normally communicated in these two ways, but there is no uniform way of doing so. Values are communicated in connection with various forms of training (induction training and other training), but usually in a cursory or *ad hoc* manner, i.e. there is seldom a special session devoted to values.

***c) The statements on core public service values have not been revised in the last decade***

The Public Service Ethics Report of 1993 does not involve any revision in respect of core public service values. The report quotes a standard textbook on administrative law which lists and elaborates the values that the public service is expected to promote (see Section II.a above). The list is not exhaustive, and the report emphasises that "it is not possible to provide a complete survey of the norms, objectives and values that can be associated with administrative activities". However, the report does touch upon some of the generally recognised public service values besides those mentioned above.

### **III. Standards of behaviour for the public service**

***a) Statements on the standards of behaviour expected of public servants***

Standards of behaviour expected of public servants are generally stated as requirements in the relevant legislation, regulations, circulars or other documents stressing or amplifying the following points:

- Receiving gifts or benefits such as fees, payments, entertainment.
- Use of official information.

- Use of official property/facilities.
- Official travel.
- Use of corporate credit cards.
- Work outside the public service.
- Involvement in political work.

Certain **minimum standards of behaviour** for the whole public service are laid down in the Public Administration Act (10 February 1967) relating to procedure in cases concerning the public administration.

Furthermore, there are **specific guidelines/requirements** for some groups, e.g. public procurement officials, tax and customs officials and health personnel. The Public Procurement Act of 1992 (which is currently being revised) is a codification of requirements of the Agreement on the European Economic Area regarding public procurement. In addition, there are various kinds of regulations containing ethical guidelines for central government procurement (whereas the Public Procurement Act applies to all public procurement). The Civil Service Act (Section 23) contains a legal basis for government agencies to lay down more specific rules in the form of regulations when needed. Such regulations are in place for the tax and customs officials. In addition to the legal provisions, the customs service has a set of ethical guidelines which is incorporated into a textbook that is used for training customs officials. For medical practitioners there is the Act of 1980 Relating to Medical Practitioners, and a new Act Relating to Health Personnel was recently passed in Parliament and is expected to enter into force in early 2001 (because extensive regulations must first be implemented).

#### *b) Unacceptable conduct for public officials according to the law*

The following kinds of **specific misconduct** are defined for public officials by criminal legislation:

- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Abuse of office or public trust.

Moreover, the Civil Service Act (4 March 1983) provides the legal framework for the employment of civil servants - appointed by a ministry, agency or other body - and senior civil servants – appointed by the King-. The Act lays down a number of non-criminal sanctions that apply to misconduct that is not classified as a criminal offence.

## **IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct**

### *a) Measures used by human resources management to promote an ethical environment*

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring selection procedures.

- Ensuring that only published/appropriate selection criteria are considered in recruitment.
- Taking ethical considerations into account in the recruitment process: certain virtues or qualities of candidates (e.g. teamwork spirit/co-operative attitude) regularly enter into the total assessment of their suitability for a position.
- Considering ethical behaviour in the performance appraisal. For example, Norway has a pay system for senior managers based on a performance appraisal that includes an interview every year, where ethical behaviour may be included, although it is not a compulsory part, and probably not very often made a part of the interview.

**Special attention** is given to officials in positions particularly susceptible to corruption in the areas of public procurement and tax administration:

- With regard to public procurement, the individual agency may give specific rules or guidelines regarding procurement beyond what is mentioned under III.a) above. This is done by many agencies, especially the larger ones with considerable costs involved. The Ministry of Labour and Government Administration is currently working on a common governmental policy regarding public procurement that will also include ethical guidelines.
- There are also specific regulations relating to tax officials aimed at avoiding corruption.

***b) Informing and training public servants on ethics issues***

As indicated above under II.b), public service core values are sometimes taught when people join the public service and when they take up a different position. Besides, ethics is a topic in some management training courses. As of today, there is no centrally organised or implemented ethics training, information or counselling. The Civil Service Handbook lays down that each agency (ministry or subordinate agency) is responsible for carrying out systematic development work aimed at strengthening the ethical consciousness and good administrative practice within its sphere of responsibility. However, it is not known to what extent this is done in each and every agency. The Directorate of Public Management (*Statskonsult*) offers an ethics course that agencies or individual civil servants may sign up for on a voluntary basis. Some agencies arrange their own ethics seminars or workshops, using their own personnel or external trainers or consultants. It is possible, however, that ethics work is not carried out fully to the extent that the Civil Service Handbook requires.

There is no specific central institution (office or the like) responsible for guidance, advice, counselling or consultation to help public servants resolve their work-related ethical problems and dilemmas. In line with the above-mentioned requirement in the Civil Service Handbook and in other relevant documents, it is considered a managerial responsibility to address ethical problems of this kind. Since public service ethics in general terms is the responsibility of the Ministry of Labour and Government Administration, this ministry has some responsibility for equipping managers to carry out their responsibility in the ethics field. In order to help the managers, the Ministry plans to build an ethics infrastructure and develop a training programme for ethical problem-solving.

***c) Other measures to promote high standards of conduct and assist prevention***

These include:

- Identification and reporting of conflict of interest situations, especially in areas of receiving gifts or benefits such as fees, payments, entertainment.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.

- Setting standards for timeliness for responding to requests.
- Anti-corruption provisions in bids for public contract (e.g. companies found guilty of corruption are disqualified/suspended from future tenders/bids).
- Specific controls on public procurement procedures.

***d) Disclosure policy***

Disclosure of personal information (declaration of personal assets, financial interests) is required from public procurement and tax officials. The following information is required to be disclosed when these officials join the public service or when their relevant circumstances change:

- Assets and liabilities.
- Sources and level of income.
- Outside positions.
- Gifts.
- Previous employment.

The disclosed information is confidential; only the employer has access to it. The main purpose is to avoid conflicts of interest and detect illicit enrichment.

***e) Procedures to report misconduct/suspected corruption***

There is no special procedure or obligation for public servants to report misconduct or suspected corruption committed by public servants. Public servants who expose wrongdoing have no right to protection, but they may be granted anonymity pursuant to provisions in the Public Administration Act of 1967 and the Freedom of Information Act of 1970.

***f) Internal control to support the improvement of ethical conduct in the public service***

There is no specific institution within the Norwegian public service responsible for supporting the improvement of ethical conduct in the public service. However, Norway does have ordinary management control and financial control.

***g) Disciplinary procedures in case of a breach of public service standards***

The following disciplinary measures are used in the public service:

- Written reprimand.
- Loss of seniority for a period from one month to two years.
- Demotion to a lower grade (permanently or temporarily).
- Summary discharge.
- Dismissal.

The disciplinary procedures are regulated by the Civil Service Act of 1983. Legal redress is available, firstly, in the form of appeal to the ministry concerned, or to the King in Council when the decision

regarding the disciplinary measure was made by the ministry. The civil servants and senior civil servants may take the decision to court and the court will decide on the legality of the appeal body's decision.

## **V. Scrutinising misconduct in the public service**

### ***a) Institutions and procedures to investigate and prosecute misconduct***

The investigation and prosecution of corruption follow the rules generally applicable to criminal investigation and prosecution. The prosecuting authority is independent of the Government and Parliament, and has powers to initiate, suspend and terminate an investigation or prosecution. An investigation can be initiated where there are reasonable grounds to inquire whether a crime has been committed, and will normally be terminated or suspended where there is a lack of sufficient proof to indict.

Norway gives corruption high priority, and it is unlikely that a case related to corruption will not be investigated and prosecuted on the basis of discretion. The corruption unit at ØKOKRIM (the National Authority for Investigation and Prosecution of Economic and Environmental Crime) consists of special investigators and a senior public official who are specialists in the field of international corruption.

### ***b) Institutions in place to perform independent scrutiny of the administration***

These include:

- Parliament/Parliamentary committee.
- Independent/external auditors reporting to elected bodies such as Parliament.
- Ombudsman.
- Courts for judicial review: the National Insurance Court for national insurance cases.
- Directorate of Public Management.

Audits by the Office of the Auditor General cover both financial management - on an annual basis - and performance management on an *ad hoc* basis. The reports of the Office of the Auditor General are published routinely.

## **VI. Co-ordination and self-assessment**

### ***a) Co-ordination and management of the government ethics and anti-corruption policy***

The Ministry of Labour and Government Administration is the central organisation responsible for co-ordinating and managing the government ethics policy. As indicated above, Norway gives a high priority to combating corruption and the establishment of ØKOKRIM (see above under V. a.) in 1989 bears witness to this. The Director General of Public Prosecutions has determined that corruption cases be given a high priority. Norway's measures in the ethics and anti-corruption fields are not so formalised and systematic. Norway has not developed a national corruption prevention plan/strategy in the sense of a wider government policy on anti-corruption.

***b) Assessing the effectiveness of measures promoting ethical conduct and preventing misconduct***

There is no special procedure in place for assessing the effectiveness of measures promoting ethical conduct and preventing misconduct. Nevertheless, ØKOKRIM does examine critically its operations in connection with their corporate activity plan. Generally, corruption is not considered a major problem in the Norwegian public service and detection is regarded as the most successful instrument for corruption prevention. ØKOKRIM sees no major impediments to further reducing corruption in the public service

## POLAND

### I. The general context for managing ethics in the public service in Poland

#### a) *The principal ethics-related issues which have confronted the public service in Poland during the past 10 years, and especially within the past 18 months*

In 1989, Poland began making very far-reaching changes to the political system. The introduction of democratic and market-oriented reforms and the decentralisation of State authority through the establishment of self-government made administrative tasks more difficult compared with the previous system. New phenomena have emerged in Poland such as unemployment, poverty, change in property ownership, economic restructuring, inefficiency and the necessity to reform social welfare, health care and its related social insurance system, the free market of goods and capital, freedom of international trade, etc. The co-ordination and completion of tasks now require that employees of public administration possess the skills to solve completely new problems. On the other hand, society focuses more and more attention on the officials who take decisions and settle the matters that should be governed by law, regulations and who act in the public interest.

Radical changes - such as the abolition of the rules of central management, implementation of a multiparty system, development of the institutions for local and professional self-government - have put employees of public administration in Poland in a troublesome situation that is full of conflicts and for which they were not prepared.

In the discussions on public administration, such terms as “public interest”, “social justice”, “freedoms of citizens”, “public service” (civil service) are permanently used. Yet, the criteria for the establishment of new meanings for those terms have not been prepared either in legislation or in the judiciary. The activity of a public administration employee often oscillates between the requirements of four areas: law, morality, professionalism, and organisation. The requirements in those four areas often conflict in which case the public officials resolve the problems independently. Problems of loyalty, dilemmas of responsibility, conflicts of interest, requirements for transparency are still new issues for the majority of public officials. In addition, the low social prestige of public officials as a profession is the result of the communist regime period when public administration served for the party machine interest and not for the society. A further problem is the disproportion between the level of salaries in the public sector and the private sector.

In the past 18 months, the management of public affairs has been accorded special importance by the following:

- The set of values which characterise a democratic State were specified in the new Constitution of Poland (2 April 1997) which came into force on 17 October 1997.
- The set of legislation to implement the administrative reform came into force on 1 January 1999. This resulted in the devolution of certain tasks of the State for execution by the local self-government bodies at regional (*voivodship*) and local (*poviat*) levels, following the constitutional principles of subsidiarity and social solidarity.
- The reform of systems for managing health care, social security and national education, started after 1 January 1999.
- A modern and competent public administration corps is being established. Methods to achieve this include the new recruitment procedures for civil servants and assessment procedures for

public officials which encourage and reward attitudes based on ethical values of a democratic society and professionalism approach according to civil service law came into force on 1 July 1999.

*b) Recent measures to improve ethical conduct in the public service*

In the past ten years, the following actions were taken:

- For values defined in the Constitution (adopted on 2 April 1997): identification of basic values held by the civil service (Art. 153) and ban on combining political and administrative functions (Art. 103).
- For organisational solutions: separation of politically neutral central offices which report to Parliament and not to the Government (stated in the Constitution); specifying those positions in State administration the staffing of which is influenced by a change of the Government (Act on Organisation and Mode of Work of the Council of Ministers, 8 August 1996); appointing a Parliamentary Committee for Ethics by the Sejm, i.e., the lower Chamber of Parliament (Sejm Resolution of 17 July 1998); establishing police teams to counteract corruption in 1997; establishing an institutionalised control system at the ministry level on 1 January 1997, at the Ministry of Finance focused on fighting against misconduct of tax officials in co-operation with the public prosecutor's offices and police.
- In the sphere of **constitutional rights and freedoms of public servants**: limitations on freedom of economic activity by public officials (Act on Limitations on Engaging in Economic Activity of 25 July 1992, replaced by the Act on Limited Economic Activity of 21 August 1997); limitations on political rights (the right to go on strike, membership in political parties, manifesting political beliefs and following one's political beliefs while performing duties, all referred to in the Civil Service Act of 18 December 1998), limitations on the right to privacy (obligation to present property declarations, obligation to present information to be included into the open register of benefits, referred to in the Act on Limited Economic Activity); and limited freedom on practising a profession and pursuing professional activity including a ban on performing tasks contradictory to public service, a ban on taking up activities and tasks contradictory to public service (Civil Service Act), a ban on seeking employment for two years in units dealing with the same affairs as the office in question (Act on Limited Economic Activity), and a ban on nepotism (Local Self-government Staff Act of 22 March 1990; the Civil Service Act).
- In the sphere of administrative procedures: withdrawal from ongoing investigations which deal with a given employee's rights and duties, and withdrawing a given unit from an ongoing investigation, where property interests of its manager are involved (amendments to regulations dealing with withdrawing a servant or an organ from an ongoing administrative case (Code of Administrative Procedures); securing impartiality and objectivity in selection of contractors for economic actions funded with public resources (Public Procurement Act, 10 June 1994).
- In the sphere of law enforcement and penal procedures: defining new types of acts as infringements (apart from accepting a bribe, protection fee and breach on service), namely profiting from money laundering, impeding or obstructing public tenders, abusing public trust (Penal Code, 6 June 1997); introducing into the procedure the institution of a witness incognito and a "crown" witness, a purchase and dispatch controllable by police in the course of an investigation against corruption; allowing access to information on balance and turnover records in bank accounts owned by persons guilty of corrupt acts (Banking Law, 29 August 1997); introducing the legal protection of personal data of citizens (Personal Data Protection Act, 29 August 1998).

*c) Plans in preparation to address ethical issues in the Polish public service*

These include:

- Initiating work on the ethical code for customs services (by the Main Office of Customs).
- Initiating work on the code of ethics for employees in government administration (by the Office of Civil Service).

**II. Core values for the public service**

*a) Stating core values for the public service*

Principal civil service values are regulated by Article 153 of the Constitution (2 April 1997) and in Article 1 of the Civil Service Act (18 December 1998). They are:

- Professionalism.
- Honesty.
- Impartiality.
- Political neutrality.

Such values are phrased in other legal documents:

- Act on Employees in State Offices (16 December September 1982).
- Supreme Chamber of Control Act (23 December 1994).
- Act on Limited Economic Activity by Persons Performing Public Functions (21 August 1997).
- The Labour Code Act (26 June 1974, with later amendments), especially Part IV, Chapter II on employees' duties.
- Regulations concerning the work of the Chancellery of the Sejm, which constitute an Annex to Regulation no. 21 by the Head of the Chancellery of the *Sejm* (20 August 1996).

All the above regulations concern exclusively State servants at the central level and do not apply to local government staff. The Constitution clearly states that the values apply to the civil service corps. They do not bear the character of a declaration, nor are they included in the text of the oath spoken by persons who enter the civil service corps. The Local Self-government Staff Act (22 March 1990) requires that self-government officials comply with the law, keep State and official secrets, inform the organisations and citizens, and behave kindly and properly in the office and outside while on duty.

*b) How stated core public service values are communicated to public servants*

Core values are automatically provided when someone joins the public service. Before taking up employment, public servants are familiarised with the respective regulations contained in the legal acts referred to above, as well as the work regulations of the office where a given employee starts employment. In many offices (though not in all), employees must sign a declaration confirming their knowledge of regulations concerning all employees' duties, including those containing a list of ethical values. The statement of core values is part of the employment contract/document, only in the Supreme Chamber of Control (a supreme audit institution, reporting directly to Parliament). There are training courses (also training on the job) concerning core values related to employment in the public administration, as indicated in legal acts.

*c) Revisions of the statements on core public service values*

The statements on core public service values were last revised in 1994 (revision of the Supreme Chamber of Control Act), 1997 (the Constitution of the Republic of Poland) and 1996-98 (the Civil Service Act). The process of administrative reform in Poland has not been concluded yet. Since 1 January 1999, a particularly important role in the State administration system has been played by local self-government bodies, for which no official list of core values has been developed.

Taking into account the status of legal acts defining core values for public administration (the Constitution and the highest level legal Acts), the reformulation of such declarations involved Members of Parliament with some input from invited experts in different fields, including experts in ethical matters. The only way to involve the public in the process of formulating declarations on values was a common referendum on accepting or rejecting the draft of the new Constitution as a whole after it had been passed by Parliament. It is possible to say, then, that in practice no consultations with society as a whole took place in this case.

### **III. Standards of behaviour for the public service**

*a) Statements of the standards of behaviour expected of public servants*

In Poland there is no single document for all employees in the public services. Standards of behaviour for public servants are defined in three basic legal Acts, which regulate the status of employees in public administration:

- The Civil Service Act (18 December 1998).
- The Act on Employees in State Offices (16 September 1982).
- The Act on Limited Economic Activity by Persons Performing Public Functions (21 August 1997), referred to as the anti-corruption Act.

In addition, there are number of regulations dealing with particular groups of employees in the public services. They are contained in other Acts dealing with particular institutions or services (e.g., the Supreme Chamber of Control Act, the Customs Service Act, the State Security Office Act, etc.) and service support (i.e. regulations on organisation) for particular offices.

Some very general statements dealing with the issues related to ethical values are contained in the Commune Self-government Act (13 March 1990) and in the Local Self-government Staff Act (22 March 1990):

- Before assuming their responsibilities, Commune Deputies take an oath: "I solemnly swear as a Deputy to work for the benefit and well-being of the commune borough, always act in accordance with the law and interests of the commune borough and its inhabitants, honestly and with dignity represent my constituency, take proper care of their affairs and take all necessary efforts to fulfil the commune's borough tasks."
- Deputies cannot take additional employment or accept donations which might undermine their constituency's trust in their honesty while performing their duties.
- Deputies cannot engage in economic activity by themselves or jointly with other persons, use community property or manage any such activity or act as representatives or plenipotentiaries in the managing thereof; nor can they be members of managing, audit or review authorities; nor can they act as trade plenipotentiaries on behalf of companies of commercial law with participation of

the commune legal persons, or economic entities, where such persons participate. Election or nomination of a Deputy to such positions of authority is illegal.

- Self-government officials are obliged to comply with the law, keep State and official secrets, inform properly the organisations and citizens, and behave kindly and properly in the office and outside while on duty.

The standards of behaviour expected of public servants cover the following points:

- Receiving gifts or benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Work outside the public service.
- Involvement in political work.

**Specific guidelines/requirements** (defined in service support) cover:

- Employees in State offices in management positions.
- Legal advisors (Principles of Ethics for Legal Advisors established by the National Council of Legal Advisors).
- Judges and prosecutors.
- Employees in customs services.
- State Security Office officers.
- Police officers.
- State Labour Inspection inspectors.
- Environmental Protection inspectors.
- Sanitary Control inspectors.
- Supreme Chamber of Control employees.
- Chief accountants and expert auditors.

Specific guidelines for public servants and political leaders working at the **political/administrative interface** concern persons holding top management positions (ministers and deputy ministers) and Members of Parliament (Limited Economic Activity by Persons Performing Public Functions of 21 August 1997, and Act on Performing the Parliamentary Deputies' and Senators' Duties of 9 May 1996). In addition, the State Tribunal Act (26 March 1982), allows for prosecution before the Tribunal of persons in those positions who abuse their responsibility or authority. From 1982 to 1990, the Act was not applied in practice; but after the change of the political system which occurred in 1990, the State Tribunal began to exercise its authority, and settled cases related to abuse of authority or responsibilities by ministers and officials holding top positions in administration. What is more, for some groups of employees who are not members of the civil service corps, there is an additional requirement to withdraw from party membership (e.g., the auditors).

In Poland there is no single document to cover all employees in public services. **Minimum standards of behaviour** for the public service are contained in a number of various legal Acts:

- The Civil Service Act (18 December 1998).
- The Act on Employees in State Offices (16 September 1982).

- The Act on Limited Economic Activity by Persons Performing Public Functions (21 August 1997).
- The Local Self-government Staff Act (22 March 1990).
- The Supreme Chamber of Control Act (23 December 1994).
- The Legal Advisors Act (6 July 1982). (It is different from the Principles of Ethics for Legal Advisors, which is internal regulation of the Legal Advisors Society).
- The State Security Office Act (6 June 1990)
- The Labour Code Act (26 June 1974, with later amendments), especially Part IV, Chapter II on employees' duties.
- Regulation by the Council of Ministers on the rights and duties of chief budget accountants, State budget units, State budget enterprises and supplementary domestic activity (2 May 1991).
- Regulations concerning the work of the chancellery of the Sejm, which constitutes an Annex to Regulation no.21 by the Head of the Chancellery of the *Sejm* (20 August 1996).

Comparison of standards of behaviour for employees in government administration and local self-government administration, as set forth in legislation:

Duties of public administration employees	Government Administration	Local Self-government Administration
Follow the Constitution and other legal regulations	X	X
Protect the interests of the State	X	
Protect human rights and citizens rights	X	
Take care of individual citizens' interests	X	X
Manage public resources efficiently	X	X
Perform tasks: <ul style="list-style-type: none"> <li>▪ Impartially</li> <li>▪ Honestly</li> <li>▪ Efficiently</li> <li>▪ Rapidly</li> <li>▪ Conscientiously</li> </ul>	X X X X	X X  X
Observe the obligation of State and business secrecy	X	X
Upgrade professional knowledge	X	
Behave with dignity on and off duty	X	X

**b) Unacceptable conduct for public officials according to the law**

Bans contained in legislation	Civil Servants <sup>1</sup>	State Administration Employees	Self-government Boards Members <sup>2</sup>	Local Self-government Staff
Ban on evading or abusing the law	X	X	X	X
Ban on holding trade union positions	X			
Ban on establishing or participating in political parties	X			
Ban on combining employment in the civil service with a Deputy's mandate	X		X	

Ban on nepotism in employment	X	X	X	X
Ban on following political sympathies or interests	X	X	X	X
Ban on manifesting political beliefs	X	X		
Ban on participating in strikes or actions of protest	X	X		
Ban on accepting material profits in connection with performing official duties	X	X	X	X
Ban on taking up additional employment contradictory to basic duties or detrimental to trust	X	X	X	X
Ban on taking up employment outside the public service without seeking prior consent from manager	X	X	X	X
Ban on revealing State or business secrets	X	X	X	X
Ban on following individual or group interests	X	X	X	X
Ban on indecent behaviour in and out of the office	X	X	X	X

<sup>1</sup> Concerns persons holding management positions in the civil service

<sup>2</sup> Concerns persons holding management positions in local Self-government administration

The following kinds of **specific** misconduct are defined for public officials by criminal legislation:

- Active, passive, direct or indirect corruption of public officials/corruption committed by public officials.
- Partiality in official decision-making.
- Abuse of office or public trust.
- False statements or testimony.
- Impeding or obstructing public tenders.
- Profiting from money laundering.
- Failure to observe the obligation of State and business secrecy.

**Further prohibitions and restrictions** are imposed on public officials by other legislation. On the grounds of the Act on Limited Economic Activity by Persons Performing Public Functions (21 August 1997), civil servants holding management positions in government and local self-government administration are bound by the following bans on:

- Membership in internal bodies of companies.
- Seeking employment or performing other activities with companies which might evoke suspicion of partisan or interest-driven attitudes.
- Membership in internal bodies of co-operatives, except for governing boards of housing co-operatives.
- Membership in governing boards of foundations pursuing economic activity.
- Holding more than 10% of stocks or shares that would exceed 10% of initial capital in each of the companies concerned.
- Engaging in economic activity alone or jointly with other persons, or managing such activity. This ban does not cover production activity in agriculture (involving vegetable or animal production) generated by a family farm.
- Taking up employment with an entrepreneur within one year (in some cases two years) after the holding of a position in the public service, or performing a function that affected that entrepreneur, if a given public servant performing the function was involved in adjudicating individual cases concerning that entrepreneur.

On the grounds of the Act on Employees in State Offices (16 September 1982) public servants employed with the State administration are bound by the following bans on:

- Employing in a State office their own spouses or relatives up to the second degree, or relatives to the first degree of a State administration employee, in case a reporting relationship were to come to exist between them.
- Taking up additional employment without seeking prior consent from the manager.
- Participating in strikes or other actions which interfere with the normal functioning of the office or participating in actions contradictory to duties of a servant employed with the State administration.

#### **IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct**

##### ***a) Measures used by human resources management to promote an ethical environment***

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.
- Taking ethical considerations into account in the recruitment process: verifying honesty (checking that the person has never been punished) by checking records in the Central Register of Convicted Persons.
- Considering ethical behaviour in the performance appraisal.

**Special attention** is given to officials in positions particularly susceptible to corruption, working in the following areas: public procurement, tax administration, customs administration, and audit of budget institutions and of public services. The measures used are the following: redeployment of employees, changing areas of activity and enhanced internal controls.

##### ***b) Informing and training public servants on ethics issues***

The following kinds of training are given:

- In the civil service: Director generals of offices in government administration are trained on ethical ways to manage public affairs.
- At the Supreme Chamber of Control: regular training offered to all employees; obligatory training in ethics for all newly employed staff members.
- In the customs service: the basic obligatory training is adapted to deal with customs issues related to ethics (recognition of ethical and unethical conduct, building professional awareness).
- In the tax service: training incorporated into an offer developed by specialised providers (e.g. National School of Public Administration).

There is no single organisation specialised in guidance, advice, counselling or consultation targeted at public service employees. For all professional ethics-related matters, employees may address their managers, legal and organisational units, or personnel units. In addition, since mid-1997 the Civil Service Bulletin provides information to all employees in public administration, among other, on ethics in the civil service, through articles, commentaries and interviews.

***c) Other measures to promote high standards of conduct and assist prevention***

These include:

- Identifying and reporting conflict of interest situations in the area of receiving gifts or benefits such as fees, payments, entertainment.
- Audit reports of the supreme chamber of control.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards of timeliness for responding to requests.
- Anti-corruption provisions in bids for public contract.
- Specific controls on public procurement procedures.

***d) Disclosure policy***

Disclosure of personal information (declaration of personal assets, financial interests) is required from elected officials, senior public servants, all civil service corps members, Supreme Chamber of Control staff members and those involved in managing audits, and local self-government administration staff members.

Disclosure in the form of declarations signed by employees in public services concerns personal property and property covered by common ownership as a result of marriage. Employees must supply information on: possessed monetary assets, real estate, stocks and shares in Commercial Code companies as well as property acquired by way of tendering from the State Treasury or another State legal person, a commune or an association of communes. The declaration must also cover information on the running of economic activity and performing functions in companies or co-operatives. Such declarations are confidential in character and kept for six years.

Persons holding political positions of nominated in the Government administration (members of the Council of Ministers, Secretaries and Under-Secretaries of State, heads of central offices and *Voivodes* and *Vice-Voivodes*, i.e., representatives of the Government administration at the regional level) are obliged to supply information for the open Register of Gains. The register includes information on all positions and commercial activities which entitle one to accept material gains, as well as on professional activity classified as self-employment, on facts of providing material support to a public activity run by the information provider, on donations the value of which exceeds 50% of the lowest pay, on domestic and foreign visits unconnected with currently performed duties, on other gains obtained and shares of foundations, companies and co-operatives, even if no monetary remuneration is involved. Such facts are communicated to the National Election Committee no later than 30 days after. Once a year the information quoted in the Register is made public in a separate publication.

Furthermore, there are more rigorous requirements concerning the disclosure of incomes and assets held which apply to tax services and the State security sector. This information is considered confidential.

The following information is required to be disclosed on an annual basis, when leaving the public service or when relevant circumstances change:

- Assets and liabilities.
- Loans.
- Sources and level of income.
- Gifts (only in the case of persons holding political position in the State administration).

The declaration is presented to the head of the office concerned (director general). The information contained therein is considered an official secret, except for the cases when the person submitting the declaration expresses, in writing, consent for disclosure. In very special cases (but not defined precisely in the law) the head of the office in question may disclose the information without authorisation by the declarer. The information is kept for six years. The head of the office analyses the data contained in the declaration and compares them to previous declarations. The analysis is aimed at detecting cases of illegal gain by public service employees.

***e) Procedures to report misconduct/suspected corruption***

Legal provisions define the procedure for exposing wrongdoing. No protection/safeguard is available to public servants who expose wrongdoing. For the public, special procedures are available, such as complaint procedures and an ombudsman to expose wrongdoing committed by public servants.

***f) Internal control to support the improvement of ethical conduct in the public service***

In the majority of organisations, there are internal control systems to check the correct functioning of all the units within bodies reporting directly to a minister (as the head of a given organisation) and to pass the information on findings to the organs authorised to make use of the information. For example, in the Customs Service, internal control deals among other things with checking the correctness of customs duties and the organisation of customs clearances; apart from internal disciplinary penalties (specified at section IV. g. of this chapter), it must notify prosecution units about suspected crimes. Institutionalised control system in the Ministry of Finance was established on 1 January 1997, and its scope of activity covers (among other things) preventing, disclosing and counteracting infringements on service duties, including crime and fraud committed by employees of the tax offices. Inspectors employed in this control system are obliged to co-operate with public prosecution units, the police and other offices. A special role is played by internal control systems dealing with public procurement and protection of secret information.

In the Ministry of Internal Affairs and Administration (MIAA), there is a Department of Control and Supervision. In particular services which report to the MIAA, inspectorates have been established whose activities are oriented at disclosing irregularities in the functioning of services and offices reporting to the MIAA located across the country, and then counteracting those irregularities. The police and border guards have units specialised in counteracting economic crime. Their task is to protect the economic interests of the State; a further operational aim is to recognise and disclose any phenomena that encourage corruption in public administration.

Furthermore, tasks classified under internal control are also performed by specialised organs of the State, acting within the government structures, such as the State Inspection of Trade, the State Inspection of Purchases and Processing of Agricultural Products, Sanitary Inspection, Tax Audit Offices, as well as inspection services which report to particular *Voivodes*. The tasks of the organs mentioned above are also defined in legal acts which provide the grounds for their functioning.

The supreme organ authorised to audit the financial activities pursued by other organs of the State administration and the enterprises which report to them, along with other structural units, is the Supreme Chamber of Control (SCC). It performs the external audit function, independently from the internal control structures functioning in institutions of the government administration. The SCC is also authorised to audit the activity of other specialised organs of State audit. The SCC plays a superior role *vis-à-vis* all those bodies, since its conclusions and recommendations are obligatory and must be implemented by the audited bodies.

If irregularities and cases of fraud in public administration are disclosed through the actions of internal control units and services, it is possible for the managing staff of offices and public institutions to identify ambiguities and holes in legal or procedural regulations as well as imperfections in organisational arrangements. Follow-up action can include detailed recommendations on systemic improvements and legal amendments aimed at removing the irregularities disclosed. The head of an audited unit receives a report that contains conclusions and recommendations. The head is obliged to express an opinion on post-audit recommendations and to present information on actions to be taken to restore a correct state of affairs inside the audited unit. Implementation is obligatory and is subject to verification audit.

Internal control is required by law and by general policy. Internal control reviews are undertaken once a year, though sometimes more frequently depending on particular needs. The reports of the reviews are accessible to organs, which supervise a unit audited, and in the case of SCC audit reports – Members of Parliament.

**g) Disciplinary procedures in case of a breach of public service standards**

Disciplinary punishments applied to public administration staff:

Types of punishment	Civil Servants	Employees of the Governmental Administration	Local Self-government Employees <sup>1</sup>
Reprimand	X	X	X
Rebuke	X	X	X
Rebuke with a warning		X	X
Freeze on promotion for two years	X	X	X
Moving to a lower position / lowering of the service grade	X	X	X
Ban on applying for competitions for management positions	X		
Ban on holding management positions for 2 - 5 years	X		
Expulsion from employment in State administration	X	X	X

<sup>1</sup> Members of local self-government administration boards are not subject to disciplinary liability. They are politically accountable, similar to persons holding political positions in the Government administration.

The sources of the disciplinary measures are:

- The Civil Service Act (18 December 1998)
- The Act on Employees in State Offices (18 September 1982)
- The Local Self-government Staff Act (22 March 1990)
- The Labour Code Act (26 June 1974, with later amendments)

All disciplinary matters are adjudicated by disciplinary commissions of the first and second instance. For an employee, there is an appeals procedure to an appeals disciplinary commission or a body of higher

instance. It is possible to appeal against expulsion from employment in State administration to the Supreme Administrative Tribunal.

## V. Scrutinising misconduct in the public service

### a) *Institutions and procedures to investigate and prosecute misconduct*

Bodies in place **investigating** misconduct and corruption in the public service:

- An investigative body operates with jurisdiction over the whole public service.
- An investigative function exists inside individual public service agencies/departments.

The institution whose audit competencies cover the whole public service is the **Supreme Chamber of Control (SCC)** which reports directly to Parliament. The SCC is authorised to audit incomes and expenditures, the activity of all organs of government administration, the National Bank of Poland, State legal persons and other State organisational units. It may also audit other economic entities if they are commissioned by State organs for the performance of tasks and are involved in public procurement procedures on behalf of the State or local self-government authorities. The SCC takes up audits on the recommendation of Parliament, or on its own initiative; the President or the Prime Minister may submit motions to carry out an audit, but the management of the SCC makes its own sovereign decision on whether and to what extent to take them into consideration. In its audit work, the SCC follows the criteria of legality and honesty, and in some cases also the criteria of effectiveness and economy. Information on audit findings is presented to the Parliament, while field representation offices of the SCC can present such information to the relevant *Voivodes* and local assemblies. In the case of a well-grounded suspicion that a crime or infringement is being committed, the SCC will notify the organ in charge of prosecuting infringements or crime, and inform the head of the audited unit, or its superior unit that such notification has been made. As of 1 July 1999, the SCC employs 1656 people in all units, including 1222 auditors. The legal basis for SCC activity is provided by the Constitution (Chapter IX - Organs of State Audit and Law Protection) and the Supreme Chamber of Control Act (23 December 1994).

Furthermore, in Poland the following institutions specialised in auditing selected areas of public administration activity are active at the national level:

The **State Labour Inspection (SLI)** provides oversight and control of labour law enforcement, and in particular the regulations and rules of labour health and safety, employment relations, remuneration for work and other benefits ensuing from such relations, working hours, annual leave, women's labour protection, employment for the young and the disabled, analysis of hazards at work and occupational diseases, and prosecution of infringements on employee's rights defined in the Labour Code. The SLI also handles as others issues connected with performing paid work, whenever required by law, and takes part in court action in certain cases, for example acting as a public prosecutor when a citizens group brings procedure concerning minor offences. The State labour inspectors performing their duties have the right to carry out their audit work without prior notification, at any time of day or night. The SLI reports directly to Parliament. Legal basis is provided by the State Labour Inspection Act of 6 March 1981.

The **Supreme Administrative Tribunal (SAT)** provides oversight of the activity of organs of the State administration (central organs of the State administration, field organs of government administration, organs of local self-government units as well as any other organs established by law to settle matters related to public administration). The SAT adjudicates grievances against administrative decisions, against decisions made in the course of administrative proceedings which can be subject to complaint, against

decisions made in the course of administrative execution which can be subject to complaint, as well as other decisions or activities of public administration which consider allowing, confirming or recognising an authorisation or a duty ensuing from the provisions of the law, resolutions by self-government units and decisions by government administration units adopting provisions on the grounds of local law and the decisions of self-government units and associations thereof made in the sphere of public administration, and decisions of oversight over the activity of self-government units. The SAT also settles complaints against action or negligence by a public administration organ, and provides answers to legal queries to be settled by the local self-government appeals councils. Legal basis is provided by the Supreme Administrative Tribunal Act of 11 May 1995.

The **General Inspector for the Protection of Personal Data** exercises supervision and control over the establishment of personal data registers by public administration institutions and controls the conformity of data processing with the regulations on personal data protection. The General Inspector reports to the Parliament. Legal basis is provided by the Personal Data Protection Act of 29 August 1998.

The **General Inspector of Tax Inspection** supervises the activity of tax inspectors. Tax inspection organs carry out audits. It audits efficiency, effectiveness and legality of expenditures made with budget resources and the correctness of calculation and use of budget allocations, studies the legality of use and decisions made regarding State property, and in particular reveals losses and other damages to this property. The general Inspector is authorised to audit those organs obliged to payments to the benefit of the State Treasury or State special purpose funds, making expenditures using resources provided by the State Treasury, those governing and managing State property, as well as Tax Offices and Chambers, taxpayers, collectors of taxes and other dues to whom provisions on tax obligations apply. The General Inspector reports to the Ministry of Finance. Legal basis is provided by the Tax Audit Act of 28 September 1991.

In Poland there is no special system of organs whose task would be to **prosecute** corruption and other irregularities in public administration. In the structures which report to the Ministry of Justice and *Voivodship* Offices, there are sections specialised in counteracting organised crime. Organised criminal groups will often rely on corruption of employees in these public services, and for this reason inquiries of serious cases of corruption are often pursued by such sections. At Police Headquarters, which reports to the Ministry of Internal Affairs and Administration, a section for economic crime was established on 1 May 1998; a team to combat corruption was then established. The *Voivodship* police station sections dealing with economic crime, teams for combating corruption have been active since 1997.

Cases of particularly serious law infringements by public services are subject to prosecution by the State Security Office. The tasks of the State Security Office include, among other things, preventing and detecting crime that threaten the economic foundations of the State and prosecuting persons guilty thereof, inquiring and preventing cases of infringement on State secrecy, and developing information and analyses for the supreme organs of State authority and administration, important for the security of the State.

Certain investigative and/or prosecuting bodies are empowered to bring suspected cases of corruption directly to court: audit/inspection bodies may submit motions to prosecuting bodies (such as the Prosecutor's Office), while these could send their motions directly to the courts.

***b) Institutions in place to perform independent scrutiny of the administration:***

**These include:**

- Parliament/Parliamentary committee.
- Ombudsman.

- The Supreme Chamber of Control whose auditors act as external auditors. However, it is not an entirely independent audit institution, but it is an office, which is part of the State administration subordinated to Parliament. The Management of the SCC is nominated for five years by the lower chamber of Parliament (Sejm) influencing the current political majority. The President of the SCC is obliged to present the audit reports to the Parliament (section V. a.).

Procedures/mechanisms available to bring wrongdoing to the attention of bodies exercising independent scrutiny on public service activities include a motion to the prosecutor or a constitutional complaint to the Constitutional Court in accordance with Article 79 of the Constitution.

External audit covers the whole of the functioning of a given organ of public administration, and in particular State budget execution and implementation of acts and other legal regulations dealing with financial, economic and organisational administrative activity from the point of view of legality, economy, effectiveness and honesty. The criterion of effectiveness of public activity is not applied to local self-government units. For the study of budget execution, external audits are performed on an annual basis; in other areas, audits are performed according to an agreed audit plan or on an *ad hoc* basis by a motion from Parliament or from the Prime Minister. External audit reports are published routinely.

## VI. Co-ordination and self-assessment

### a) *Co-ordination and management of government ethics or anti-corruption policy*

The Head of the Civil Service, together with the Office of Civil Service that reports to him, and the Civil Service Council (since 1 July 1999, i.e., since the date of effect of the Civil Service Act of 18 December 1998) - all institutions defined by legislation - have shared the task of developing a scheme of activities to enhance ethical attitudes among employees in the governmental administration, namely members of the civil service corps. Following the letter of the Act, the Head of the Civil Service is, among other things, responsible for observance of principles of ethics by civil servants. Both the Head of the Civil Service and the Civil Service Council report directly to the Prime Minister. As of 1 July 1999 the Office of Civil Service employed 88 people. In relation to other groups of State administration and self-government employees, there is no single institution at the moment in Poland in charge of co-ordinating actions in favour of professional ethics. So far no reports have appeared due to the fact that the Civil Service Act has only recently come into effect.

The following actions are taken to ensure the **consistency** of the government ethics and anti-corruption measures:

- Analysing systemic failures, trends in criminal and disciplinary cases.
- Providing national guidance and/or a checklist to develop prevention strategies in organisations.

In Poland there is no developed national ethics strategy in favour of ethical ways to manage public affairs or harmonising actions taken in the spheres of organisation, law, education and prosecution. There is no policy on how to report unethical actions. There is no permanent working body in charge of analysing organisational and legal weaknesses in public administration and improper actions by public services.

On 15 February 1999, Poland signed the European Anti-corruption Convention adopted on 27 January 1999. The Convention will become binding in Poland after ratification by Parliament. It will be necessary to harmonise Polish administrative and penal law with European standards in the sphere of counteracting corruption, as well as develop a national strategy for counteracting corruption, among others, in public services.

Non-governmental organisations were involved in the preparation and implementation of government ethics strategy: Transparency International-Poland undertook research work on combating corruption, keeps the public opinion informed, and holds training courses and seminars.

***b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct***

Efforts to evaluate effectiveness of the existing mechanisms are made by the Ministry of Finance and the Ministry of Internal Affairs and Administration, yet opportunities in this sphere are limited. At the moment there is no unitary assessment system, nor a single centre to co-ordinate anti-corruption actions in all public administration institutions.

Assessment of the effectiveness of particular anti-corruption instruments and mechanisms is difficult due to the specific character of corruption as a criminal activity. The criterion of detectability does not apply to this type of crime, since there are only a few cases when corruption is revealed by the very persons involved in it, while external audits are of a limited scope. Furthermore, the total number of corruption cases in State administration offices is very difficult to estimate, thus it is not possible to compare and assess the effectiveness of particular mechanisms. In 1995, a plan to establish a special Parliamentary Committee for Corruption was placed before Parliament, but it was rejected by the deputies on the reasoning that the most effective and proper organs to pursue this type of activity are the courts. According to a commonly shared opinion, the regulations contained in the Penal Code and the activity of external and internal audit units, combined with actions taken by organs of prosecution and courts, seem to be the most effective in this sphere, in spite of their many deficiencies. A positive improvement is the possibility to perform a controlled action of handing in or accepting a material gain by organs of prosecution; but this is too recent and the effects of their application are still not tangible enough to make them subject of generalisations or assessment.

Following the opinion expressed by a special team in the Ministry of Internal Affairs and Administration involved in the development of a report dealing with corruption in State administration, significant factors which encourage corruption in Poland include:

- Ineffective control mechanisms.
- A considerable share of State-owned entities in economy.
- Excessive control over economic turnover.
- Improper staffing policy regarding the selection of employees for public services.
- Low level of remuneration in public services.

Corruption in Poland is also strengthened by the growth of organised crime groups, which is encouraged by the absence of advanced market mechanisms and the fact that legal solutions fail to keep pace with economic and social changes. Some of the leaders of such criminal groups strive to infiltrate areas of legal and official activity. An integral part of this process is winning influence over representatives of public administration in various fields. Apart from classical corruption or threatening, efforts are made to gain influence by way of charitable activity or offering monetary and material donations to units that make part of particular offices. The following corrupt practices are still not covered by the provisions of the Penal Code in Poland:

- Passive bribery involving foreign public officials (e.g. In connection with international trade transactions).
- Bribery of foreign public officials by legal persons.
- Passive bribery of top-level representatives of international organisations.

- Passive or active bribery in the private sector.
- Fraudulent book keeping aimed at concealing corrupt activities.

## SWEDEN

### **I. The general context for managing ethics in the public service in Sweden**

#### ***a) The principal ethics-related issues which have confronted the public service in Sweden during the past 10 years, and especially within the past 18 months***

In 1998 the Swedish Government presented a Bill in which the Government defines the emphasis of forthcoming work on developing central government administration. The key words for the central government administration of the future are quality, service, skills and ethics.

During the last 20 years the Swedish Government has changed its principles for management of central administration from detailed regulation to performance management. The agencies have gained great freedom of action to use their given resources to attain the Government-defined objectives. The agencies have been entrusted with responsibility for making their own decisions. The Government's assessment is that public servants have a key role to play, through their function of implementing the decisions of elected representatives. The Government's view is that the best way to enhance awareness of the public servant's role and responsibility is to ensure that issues relating to ethics and the content of the public servant role be emphasised and continuously discussed in every agency, instead of having a "general ethical code" for the public service. However, it is the responsibility of each government organisation to form an opinion of the need for an ethical code for a particular action.

Questions have also arisen:

- Concerning work outside the public service, which may have a detrimental effect on the confidence between employer and employee.
- Concerning integrity in public procurement procedures.

#### ***b) Recent measures to improve ethical conduct and plans in preparation to address ethical issues in the Swedish public service***

As a result of an ongoing public debate and preparatory enquiries into work outside the public service, an investigation is about to start on questions related to work outside the public service which may have a detrimental effect on the confidence between employer and employee. The investigation will examine and analyse rules on work outside the public service and suggest appropriate amendments – possibly towards more restrictions on work outside the public service. The investigation will also examine if there is a need for special rules concerning certain categories of employees within the public sector, such as judges, and if it should be compulsory for public officials to report all types of work outside the public service.

A new agency, National Council for Quality and development, has recently been established. This agency will, among other things, be responsible for a basic training programme for public officials, including issues on ethics.

## II. Core values for the public service

### a) *Stating core values for the public service*

According to the Instrument of Government (*Regeringsformen*, RF 1:9), public authorities and all employees who exercise public functions shall respect principles of:

- Equality.
- Objectivity.
- Impartiality.

The Administrative Procedure Act (*Förvaltningslagen*) and the Swedish Code of Judicial Procedure (*Rättegångsbalken*) contain rules on challengeability.

### b) *How stated core public service values are communicated to public servants*

The Government's view is that the best way of enhancing awareness of public servant's role and responsibility is to ensure that issues relating to ethics and the content of the public servant role be emphasised and continuously discussed in every agency, instead of having a "general ethical code" for the public service. It is the responsibility of each government organisation to form an opinion of the need for an ethical code for a particular action. The Freedom of Press Act (*Tryckfrihetsförordningen*) regulates the right for all Swedish citizens to read public documents.

### c) *The statement on core public service values has not been revised in the last decade.*

However, in 1998 the Swedish Government presented a Bill in which the Government defines the emphasis of forthcoming work on developing central government administration. The key words for the central government administration of the future are quality, service, skills and ethics.

The Government intends to embark on an action programme to develop central government administration. This programme should be focused primarily on the following three areas:

- Quality, skills and ethics.
- Control and management.
- Provision of information.

The Government considers that more attention should be paid to issues relating to skills and education, in order to stimulate the agencies' supply of skills and promote quality work in central government administration. The Government therefore has established a new special agency for quality development and skills provision in the administration, the National Council for Quality and Development. The new organisation's work will focus on total quality management (TQM), ethics and development of public administration in strategically important areas.

### III. Standards of behaviour for the public service

#### *a) Statements of the standards of behaviour expected of public servants*

There is no statement of the standards of behaviour expected of public servants. However, there are **specific guidelines/requirements** within the public service. For example, there is an old Code of Conduct for judges (*Olaus Petris domarregler*) from the Middle Ages. This Code of Conduct does not have any official status, but is well known among judges in Sweden. Moreover, in the Swedish Code of Judicial Procedure (*Rättegångsbalken*), there is a mandatory requirement for judges to take an oath before practising. In this oath, the judges have to promise to respect principles of equality, impartiality, etc., and to avoid challengeability.

#### *b) Unacceptable conduct for public officials according to the law*

The following kinds of **specific misconduct** are defined for public officials by criminal legislation:

- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Partiality in official decision-making.
- Abuse of office or public trust.

In the Swedish Penal Code (*Brottsbalken*), there are provisions on breach of duty which cover all types of illegal activity by public officials in the course of their duties. **Further prohibitions** and **restrictions** are not directly imposed on public officials by other legislation, but according to the Tort Liability Act (*Skadeståndslagen*), the State is liable to pay damages for different kinds of damage caused by public employees' misconduct or negligence.

### IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct

#### *a) Measures used by human resources management to promote an ethical environment*

The following measures are regulated by law:

- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by auditing/monitoring selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.

However, the responsibility for human resources management lies within each individual agency. The agencies have different ways of promoting an ethical environment. There is no central government policy to give **special attention** to officials in positions particularly susceptible to corruption, but individual agencies are responsible for this matter.

In addition to the above mentioned measures regulated in the Public Employment Act (*Lag om offentlig anställning*), the Permanent Tenure Act (*Lag om fullmaktsanställning*) and the Employment Ordinance (*Anställningsförfordning*), there are also a number of laws applicable to the Swedish labour market in general as well as the public sector. Among these is the Act against Ethnic Discrimination (*Lag om etnisk*

*diskriminering*) and the Act Concerning Equality Between Men and Women (*Jämställdhetslagen*) which are of relevance for the human resources management.

***b) Informing and training public servants on ethics issues***

This is the responsibility of each individual agency.

***c) Other measures to promote high standards of conduct and assist prevention***

This is the responsibility of each individual agency.

***d) Disclosure policy***

Disclosure of personal information (declaration of personal assets, financial interests) is required from senior public servants. Disclosure is not confined to particular sectors. The following information is required to be disclosed when joining the public service or when relevant circumstances change:

- Assets and liabilities.
- Outside employment.

The disclosed information is confidential. It is used for the purpose of judging whether certain assets or outside employment may have a detrimental effect on the confidence between employer and employee.

***e) Procedures to report misconduct/suspected corruption***

There are no procedures or obligations for public servants to report misconduct/suspected corruption committed by public servants, and no protection/safeguard available to public servants who expose wrongdoing. For the public, special procedures are available, through the Parliamentary Ombudsman, to expose wrongdoing committed by public servants. The Parliamentary Ombudsman publishes reports on his/her investigations. Only the reports that are of general interest are published.

***f) Internal control to support the improvement of ethical conduct in the public service***

This is a matter for each individual agency as employer.

***g) Disciplinary procedures in case of a breach of public service standards***

In the Public Employment Act (*Lagen om offentlig Anställning*), there are provisions on disciplinary measures in the form of a warning or a salary reduction. These are only applicable for breaches which are significant. Misconduct or negligence may ultimately lead to notice of dismissal. Decisions on disciplinary measures and notices of dismissal may be challenged in court.

## V. Scrutinising misconduct in the public service

### a) *Institutions and procedures to investigate and prosecute misconduct*

Bodies in place **investigating** misconduct and corruption in the public service include:

- The Parliamentary Ombudsmen supervise - as one branch of the Parliamentary control of the executive - the application in public service of laws and other statutes.
- The Chancellor of Justice is a non-political civil servant appointed by the Government. The main duties of the Chancellor are to act as the Government's principal legal adviser, to represent the State as Solicitor General in cases affecting the State's interest, to exercise supervision on behalf of the State over all civil servants, including national as well as municipal officials, and to take action in case of abuse, and to ensure that the limits to the freedom of the press, which are established in the Freedom of the Press Act, are not transgressed.
- Public prosecutors investigate any actions by public employees which are considered to be criminal, in the same way as other crimes.
- Each individual agency internally investigates breaches of duty, which are not considered to be criminal.

Bodies in place **prosecuting** misconduct and corruption in the public service:

- Public prosecutors prosecute criminal actions committed by public employees before a public court in the same way as other crimes.
- Misconduct or negligence which are not considered as criminal are examined by a public official and brought before the managing directors of the agency involved (personalansvarsnämnd), the latter being appointed especially to decide on the matter.
- The Parliamentary Ombudsmen may in certain cases initiate legal proceedings against a state or local government official.
- The Chancellor of Justice acts as the only public prosecutor in cases regarding offences against the freedom of the press.

According to the general procedural rules, only public prosecutors are empowered to bring suspected cases of corruption directly to court.

### b) *Institutions in place to perform independent scrutiny of the administration*

These include:

- The Parliamentary Ombudsmen (Riksdagens Ombudsmän, JO).
- The Chancellor of Justice (Justitiekanslern).
- Swedish National Audit Office (Riksrevisionsverket).
- Parliamentary Auditors (Riksdagens Revisorer).

Anyone may report suspected crimes or breaches of duty. All public authorities are externally audited by the National Audit Office. External audit reports are routinely published.

## VI. Co-ordination and self-assessment

### *a) Co-ordination and management of government ethics or anti-corruption policy*

Active and passive bribery has been criminalised in the Swedish Penal Law for a long time. It is criminalised to receive, accept or demand a bribe or any other undue advantage. The receiver is defined as any employee. The legislation therefore covers corruption in the public sector as well as in the private sector. The Swedish anti-corruption legislation is also applicable to public officials other than employees, for example ministers, members of parliament and other public assemblies and any other person exercising public functions. The punishment for bribery is a fine or imprisonment for at most two years.

According to the Government the laws in force; the Instrument of Government (*Regeringsformen*), the Administrative Procedure Act (*Förvaltningslagen*), the Public Employment Act (*Lagen om offentlig anställning*), the Swedish Penal Code (*Brottsbalken*), are sufficient as ethical values for government employees in their role as public servants.

The Government recommends government agencies to enhance the effort to inform better and educate the public servants in ethics.

There is no institution assigned to co-ordinate and manage the implementation of a government ethics policy. No national ethics or corruption prevention plan/strategy has been developed. However, each individual agency decides upon whom to involve in the preparation and implementation of its ethics policy.

### *b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct*

Sweden has been spared from severe problems of corruption. It is a widespread opinion that the openness and transparency of the Swedish public administration have contributed to reduce the problems of corruption in the public sector. According to the Swedish Freedom of the Press Act, public documents are available to all Swedish citizens. This provides for an extensive control exercised by the citizens and even more by the mass media. Furthermore, two public institutions, the Chancellor of Justice and the Parliamentary Ombudsmen, supervise the public administration.

**SUISSE \***

**I. Le contexte général de la gestion de la déontologie dans le service public de Suisse**

***a) Les principaux problèmes relatifs à la déontologie auxquels le service public suisse a été confronté au cours des dix dernières années et plus particulièrement des 18 derniers mois.***

En Suisse, on ne constate - au niveau fédéral - aucune augmentation statistiquement visible de la corruption ; on note cependant que les médias et le public portent une attention plus grande à ce problème depuis la mise au jour de certains cas de corruption.

***b) Les mesures prises pour améliorer le comportement déontologique dans le service public.***

***Remarque générale :***

La création d'institutions chargées spécifiquement de promouvoir les comportements déontologiques n'est pas dans la tradition juridique et administrative de la Confédération. De façon générale, la gestion de la déontologie est considérée comme une tâche qui transcende plusieurs secteurs et peut difficilement être déléguée. Quant aux instruments visant à promouvoir l'éthique *stricto sensu* (codes de conduite, séminaires d'éthique, etc.), ils sont peu développés. En Suisse, il n'y a pas véritablement de politique en matière de gestion de l'éthique. En revanche, les instruments suivants concourent à empêcher la corruption :

- Principes de gestion et pratique de la gestion administrative : les processus et les structures de l'administration recèlent différents moyens (moyens juridiques, rémunération, conditions de travail, règles organisant les procédures de travail, obligation de faire rapport, etc.) Qui incitent les agents à développer les comportements souhaités ou les dissuadent, au contraire, d'adopter des comportements répréhensibles.
- Ensemble de la législation sur les fonctionnaires.

***Interventions parlementaires :***

De nombreuses interventions parlementaires ont été déposées qui demandent au Conseil fédéral d'adopter des mesures de lutte contre la corruption dans différents domaines :

**96.3457** - Motion Kurt Schüle du 1<sup>er</sup> octobre 1996 : cas de corruption, conséquences législatives.

Le Conseil fédéral est chargé de tirer toutes les conséquences législatives des cas de corruption survenus dans l'administration publique, et d'adapter en conséquence les dispositions du code pénal suisse en la matière.

**99.3013** - Postulat du 22 février 1999 de la Commission de l'économie et des redevances, convention de l'OCDE sur la lutte contre la corruption d'agents publics.

Le Conseil fédéral est invité à engager la procédure de ratification de la Convention de l'OCDE sur la lutte contre la corruption d'agents publics étrangers dans les transactions commerciales internationales. Le Conseil fédéral propose de classer le postulat.

**99.026** - Objet du Conseil fédéral. Code pénal et code pénal militaire : modification (corruption).

Message du 19 avril 1999 concernant la modification du code pénal suisse et du code pénal militaire (révision des dispositions pénales applicables à la corruption) et l'adhésion de la Suisse à la Convention sur la lutte contre la corruption d'agents publics étrangers dans les transactions commerciales internationales (Feuille fédérale 1999).

D'autres interventions portant sur des domaines particuliers comme les marchés publics ou la construction de routes nationales ont été déposées. En outre, les interventions suivantes sont particulièrement intéressantes :

**98.3347** - Motion Otto Zwygart du 26 juin 1998. Nomination d'une commission d'éthique. Réponse du Conseil fédéral :

- Les valeurs éthiques peuvent être prises en compte de diverses manières, par exemple en instituant des comités d'éthique ou en recourant aux spécialistes de l'éthique dans les commissions et les groupes de travail. Le Conseil fédéral estime cependant que la création d'une commission d'éthique n'est pas une bonne solution si le mandat de cette commission ne se limite pas à un domaine déontologique spécifique particulièrement complexe, mais englobe l'ensemble des problèmes de société se posant actuellement.
- Diverses commissions spécialisées existent déjà au niveau fédéral, ou sont en passe d'être créées, dans des domaines aussi divers que les questions féminines, le racisme, le génie génétique ou la procréation médicalement assistée. Il n'est pas utile de créer une commission de plus, dont le mandat général empiéterait nécessairement sur le travail de ces commissions spécialisées.
- En revanche, le Conseil fédéral est disposé à solliciter plus souvent le concours de spécialistes des questions d'éthique, là où il ne l'a pas encore fait, dans les commissions et groupes de travail qu'il instaure et à confier l'examen de problèmes de société particuliers à des commissions d'éthique là où cela se justifie. Pour s'occuper de ce genre de questions fondamentales, le Conseil fédéral a par ailleurs institué un état-major de prospective de l'administration fédérale qui comprend des représentants des services amenés à s'occuper de questions d'avenir d'ordre social, territorial, écologique et économique dans l'accomplissement de leurs tâches.

**93.3670** - Postulat Victor Ruffy du 17 décembre 1993. Recherches sur la corruption. Programme national de recherche.

De façon générale, les interventions parlementaires n'ont pas tant pour but de durcir les mesures de répression, que de renforcer la prévention (par exemple en encourageant les comportements déontologiques).

#### ***Réactions dans l'administration fédérale:***

Rapport final du groupe de travail "Contrôle de sécurité et corruption", Département fédéral de justice et police (DFJP), 1996.

L'augmentation des cas de corruption de fonctionnaires a conduit le chef du DFJP à instituer un groupe de travail (12.7.95). Ce groupe, présidé par la Police fédérale, a été chargé d'évaluer la situation à l'échelle suisse, de déterminer les actions à entreprendre et de proposer une stratégie. Il a examiné en particulier la question des contrôles de sécurité et est parvenu aux conclusions suivantes:

- L'ampleur de la corruption au sein de l'administration fédérale n'est pas alarmante. Il faut agir notamment sur la législation pénale, sur la législation fiscale, sur le droit de la concurrence, sur les activités de contrôle interne et externe de l'administration et sur le déroulement des procédures administratives, souvent compliquées.
- Mesures proposées : réglementation type pour l'acceptation de dons ; renforcement des effectifs du Contrôle des finances (analyse des risques) ; intégration des problèmes posés par la corruption dans les cours de gestion ; renforcement des contrôles dans les secteurs à risque (responsables hiérarchiques).

A partir du rapport du DFJP, le Conseil fédéral a confié les **trois mandats** suivants (décisions des 18 décembre 1996 et 15 janvier 1997) :

1. Élaborer une **réglementation type sur l'acceptation de dons** [Office fédéral du personnel (OFPER)/Département fédéral des finances (DFF)].
2. Analyser les **risques de corruption** et déterminer les **mesures de sécurité** à prendre dans l'administration fédérale [Service de contrôle administratif du conseil fédéral (CCF)].
3. Durcir les dispositions du **Code pénal** relatives à la corruption [Département fédéral de justice et police (DFJP)].

Les avancées ont été les suivantes :

1. On a renoncé jusqu'à présent à élaborer une réglementation type sur l'acceptation de dons, les situations et les besoins variant trop d'un département à l'autre.
2. Le rapport du Service de contrôle administratif du conseil fédéral (CCF) du 26 mars 1998 sur les risques de corruption et les mesures de sécurité au sein de l'administration fédérale a été publié. L'inventaire des activités à risque et recommandations (arrêté du Conseil fédéral du 20 mai 1998) est le suivant:
  - Vérification des mesures de sécurité par les départements.
  - Intégration du problème de la corruption dans les cours de gestion.
  - Élaboration d'un code de conduite qui serve à la fois d'instrument de prévention et d'outil de formation.
  - Analyse des risques de corruption et des mesures de sécurité dans le cadre du contrôle des tâches de la Confédération.

Un groupe de travail de l'Office fédéral du personnel (OFPER) a été chargé d'élaborer un code de conduite pour 1999. Ce code s'inscrira dans le projet « Organisation de la fonction du Personnel » (POP) et sera publié sous forme de deux manuels destinés respectivement aux collaborateurs et aux cadres de l'administration. Il sera mis en pratique davantage par le développement d'une culture d'entreprise que par l'adoption de sanctions au sens pénal du terme. Certains offices disposent déjà d'un code de conduite (par exemple, la Direction du développement et de la coopération). Très souvent, il n'existe pas de code de conduite en tant que tel, mais plutôt des directives sur le comportement à observer (face aux partenaires extérieurs lors des négociations, face aux clients, face aux destinataires des prestations, etc.). L'éthique en tant que telle est rarement traitée de façon explicite ; elle est plutôt considérée comme faisant implicitement partie de l'activité de l'agent. L'adoption de comportements adéquats est en effet

abordée de façon implicite dans l'exécution des tâches (plus précisément lors de l'appréciation du personnel, dans les séminaires, dans les cours de gestion, etc.).

Ces derniers temps, ce sont les réformes de structure (entreprises notamment dans le cadre du « *New public management* » ou par suite des restrictions budgétaires) et certains cas de corruption qui ont été à l'origine des efforts déployés pour promouvoir un comportement respectueux des règles éthiques.

Des actions ont été entreprises par les départements et les offices :

- Formation et perfectionnement : cours de gestion, formation sur des thèmes précis, activités de formation pour les nouveaux collaborateurs.
- Mise en place d'une culture d'entreprise dans les départements et les offices ou redéfinition de la culture en place : styles de gestion et modèles de communication francs et transparents (confiance, responsabilités clairement définies) ; développement de lignes directrices dans les départements et les offices ; cours de gestion et directives relatives à la gestion ; règles et normes de comportement spécifiques ; amélioration de la communication entre les départements et les offices ; systèmes de contrôle internes (contrôles de sécurité, enquêtes par sondage effectuées par des services d'inspection internes et autonomes, contrôle de gestion (*controlling*), contrôles multiples, séparation des fonctions, mesures de sécurité supplémentaires, etc.) ; réorganisation des processus de travail et des structures.

L'exemple du Département fédéral de l'environnement, des transports, de l'énergie et de la communication (DETEC) peut être mentionné, avec la décision sur l'institution de mesures urgentes obligatoires destinées à prévenir la corruption (30 mai 1997).

- 3° La révision des dispositions du **Code pénal** relatives à la corruption et durcissement des dispositions sur la corruption des agents suisses et étrangers sont les conditions nécessaires de la ratification de Convention de l'OCDE sur la lutte contre la corruption d'agents publics étrangers dans les transactions commerciales internationales, signée par la Suisse et par 32 autres Etats le 17 décembre 1997.

Extraits du communiqué du DFJP du 20 janvier 1999 :

« Le Conseil fédéral (...) a chargé le Département fédéral de justice et police (...) de (lui) soumettre un message dans les prochains mois afin que la Suisse puisse mettre en œuvre la Convention de l'OCDE le plus rapidement possible. En revanche, la révision de la corruption privée est séparée du projet. Elle fera l'objet d'un second paquet, qui sera traité plus tard, à l'occasion de la ratification de la Convention pénale sur la corruption élaborée par le Conseil de l'Europe. (...) Selon l'avis d'une forte majorité des milieux consultés : la corruption active d'agents publics (doit désormais être) punie comme un crime ; le délai de prescription correspondant (doit être) prolongé ; tout blanchissage d'argent provenant de la corruption active doit être soumis au droit pénal. ».

La proposition de punir les pratiques dites « d'alimentation progressive » (avantages non spécifiques accordés à l'agent pour l'exécution des devoirs de sa charge), qui sont à l'origine d'une corruption systématique particulièrement dangereuse, est également approuvée : « la nouvelle disposition pénale régissant la corruption active d'agents publics étrangers ainsi que l'adhésion de la Suisse à la Convention de l'OCDE (sont) largement approuvées ».

***Actions s'inscrivant dans la politique du personnel de la Confédération :***

Des principes directeurs en matière de politique du personnel ont été arrêtés par l'Office fédéral du personnel (OFPER) dans le cadre du projet « Organisation de la fonction du personnel » (POP). Ces principes sont l'instrument clé de la réorientation de la politique du personnel de la Confédération. Il est prévu de les mettre en pratique en 1999.

**Communiqué de presse sur la réorientation de la politique du personnel de la Confédération :**

Le Conseil fédéral entend encourager l'ouverture d'esprit de son personnel face au changement et renforcer le rôle dirigeant des cadres. Telle est la décision prise sur la base du rapport concernant le projet « Organisation de la fonction du Personnel » (POP). L'administration générale de la Confédération devrait dès lors rester à l'avenir aussi un employeur attrayant et disposer de collaboratrices et de collaborateurs motivés et flexibles. Les départements et la Chancellerie fédérale auront une plus grande responsabilité dans la gestion du personnel et les offices fédéraux une plus grande marge de manœuvre dans l'application des décisions. Les mesures de modernisation seront mises en place à partir de 1999. La gestion du personnel moderne et dynamique au sein de la Confédération vise trois buts principaux, à savoir encourager les changements stratégiques de l'administration, permettre des modes de travail économiques et promouvoir une culture d'apprentissage. Afin que la politique du personnel puisse produire ses effets, les spécialistes du personnel ne sont plus seuls responsables. Désormais, on exigera davantage des supérieurs hiérarchiques afin qu'ils assument leur rôle de dirigeants. Ceci est en premier lieu valable pour le Conseil fédéral qui s'engagera davantage en tant que collègue pour la politique du personnel. Mais les collaborateurs et collaboratrices ont également une plus grande responsabilité quant à leur développement professionnel et personnel.

Dans le cadre de la réforme du gouvernement et de l'administration, une organisation de projet interdépartementale placée sous la direction de l'Office fédéral du personnel (OFPER) a analysé en détail la fonction du personnel au cours de cette année. A cette occasion, plusieurs recommandations contenues dans le rapport des Commissions de gestion des Chambres fédérales de février 1998 concernant la politique du personnel de la Confédération ont également été mises en œuvre. Des principes directeurs en matière de politique du personnel ont notamment été élaborés. Ces principes sont contraignants mais leur application sera analysée en 2001, lors de l'entrée en vigueur de la nouvelle loi sur le personnel de la Confédération.

La nouvelle politique du personnel octroie davantage de compétences en matière de gestion aux départements et laisse une plus grande marge de manœuvre aux offices fédéraux dans l'application des décisions. Les unités d'organisation sont dès lors tenues d'examiner les conditions-cadres et les structures de leurs services du personnel. Il serait possible d'envisager la création de centres de prestations et de centres spécialisés qui seraient gérés en tant que centres de services. Ces derniers définissent leurs produits dans le cadre d'un accord déterminant la qualité et la quantité des prestations requises. Ultérieurement, les centres de services pourront également facturer leurs prestations sous certaines conditions. Il est en outre primordial d'accroître encore le professionnalisme des spécialistes du personnel par différentes mesures de formation et de développement professionnel. En tant que responsable de la politique fédérale du personnel au sein du Département fédéral des finances chargé des ressources, l'OFPER assume notamment la conduite stratégique ainsi que la formation et le conseil, fournit les bases et les instruments de la politique du personnel et assure une coordination générale ainsi que l'information du personnel.

La mise en œuvre de la politique du personnel présuppose des instruments nouveaux. A cette fin, le Conseil fédéral a notamment confié les mandats suivants:

- Développer un nouveau système salarial plus souple, tenant mieux compte des prestations individuelles.

- Introduire le « *management développement* » destiné en particulier à encourager la mobilité et le professionnalisme des cadres ainsi qu'à assurer la relève.
- Étendre le système d'appréciation du personnel, notamment en ce qui concerne l'appréciation des cadres par leurs subordonnés.
- Présenter régulièrement des chiffres clés concernant la politique du personnel afin que le Conseil fédéral puisse assumer plus efficacement sa fonction d'employeur (« *controlling* »).
- Renforcer le marketing en recourant à des mesures propres à améliorer la position sur le marché de l'emploi et l'image.
- Étendre la modulation des horaires de travail (horaire à l'année, mise à la retraite échelonnée, périodes sabbatiques).
- Élaborer une nouvelle réglementation pour la formation.
- Nommer des personnes de confiance pour les collaboratrices et les collaborateurs de l'administration générale de la Confédération.
- Maintenir en principe l'enregistrement du temps de travail dans l'administration générale de la Confédération. Les départements peuvent toutefois décider de supprimer éventuellement cette obligation pour les cadres supérieurs.

Les conclusions du rapport concernant le projet POP confirment le bien-fondé des réformes mises en œuvre dans l'administration générale de la Confédération. Par la nouvelle direction prise, le Conseil fédéral souligne le rôle du personnel en tant que facteur stratégique de succès et pilier culturel du processus de modernisation.

#### **Actions entreprises par les Commissions de gestion (selon le Rapport des Commissions de gestion sur leurs activités, mai 1999) :**

##### **Institution de personnes de confiance pour le personnel de l'administration fédérale :**

Dans leur rapport du 9 juillet 1998, les Commissions de gestion des deux Chambres ont recommandé au Conseil fédéral d'instituer une ou plusieurs personnes de confiance indépendantes pour le personnel de l'administration générale de la Confédération ; elles ont fait valoir en effet que les restructurations faisaient peser une pression accrue sur l'administration publique et qu'il était important, dans ces conditions, que le personnel de la fonction publique puisse s'adresser à des « personnes conseil » indépendantes. Si le rôle premier de ces personnes n'est pas de prévenir la corruption, elles peuvent néanmoins exercer une action salutaire dans ce domaine. Le 18 novembre 1998, le Conseil fédéral a fait savoir qu'il partageait l'avis des Commissions de gestion au sujet de l'utilité de personnes de confiance pour le personnel et il a chargé les départements de les instituer dans leurs domaines respectifs.

##### **Activités accessoires des fonctionnaires fédéraux et activités professionnelles d'anciens fonctionnaires, avec une analyse sous l'angle des conflits d'intérêts :**

L'application des dispositions légales sur les activités accessoires s'exerce correctement. Les départements fédéraux font généralement preuve d'une grande retenue dans l'octroi des autorisations, même si la mise en pratique de ces dispositions varie beaucoup d'un département à l'autre (c'est le cas notamment pour les activités d'enseignement). Aucun acte délictueux n'a été constaté. Des conflits d'intérêts peuvent surgir dans quelques rares cas ; ils concernent principalement les activités de conseil (conseil juridique ou fiscal, gestion de fortune, fiduciaire, etc.) ou de représentation. Les commissions proposent surtout de développer la réflexion sur l'éthique dans la fonction publique. Elles ont chargé l'Organe parlementaire de contrôle de l'administration (OPCA) de déterminer les actions à engager. Dans son rapport, l'OPCA montre que les démarches entreprises sont encore assez embryonnaires. Ses conclusions sont les suivantes :

- De façon générale, les services interrogés constatent une diminution de la confiance du public dans son administration (érosion qui fait suite à différents cas d'irrégularité).
- Ils estiment cependant que les valeurs essentielles du Service public (par exemple être au service de la collectivité, être proche du client, être à l'écoute du citoyen, veiller à ce que le droit soit respecté, veiller à ce que les tâches soient exécutées dans les règles) sont généralement respectées sans qu'aucun effort particulier ne soit fait pour promouvoir le respect des règles déontologiques.
- Les doutes quant à de possibles irrégularités s'expliquent principalement par les erreurs de gestion et de recrutement ainsi que par des compétences mal définies. Une attitude exemplaire des cadres de l'administration et des pouvoirs politiques ainsi que des responsabilités clairement définies seraient les stratégies les plus efficaces pour lutter contre de telles irrégularités.
- Jusqu'à présent, le « *New public management* » n'a pas eu pour effet d'augmenter les cas de corruption. Tant que les conditions d'accompagnement sont adaptées en conséquence, le « *New public management* » n'est pas un facteur de risque. Il peut même freiner la corruption.
- Les personnes interrogées considèrent que les mesures préventives les mieux à même de promouvoir des comportements adéquats sont les règles de conduite définies dans les principes directeurs en matière de politique du personnel et celles que fixe le code de conduite en cours d'élaboration. Ces mesures n'ont pas encore trouvé toute leur place dans la formation et le perfectionnement. En revanche, les départements s'emploient très activement à promouvoir le respect de l'éthique au sens large, notamment en organisant des séances d'information pour les nouveaux collaborateurs ou des séminaires sur la façon d'aborder les usagers des services publics. Ils s'efforcent également de moderniser leur « culture d'entreprise » par l'établissement de principes directeurs, par la définition de nouveaux modèles de communication et par la formation des cadres. Par contre, on ne peut pas parler de gestion de la déontologie (au sens où l'entend l'OCDE). L'administration fédérale jouissant d'une réputation satisfaisante, il n'y a pas d'urgence à introduire cette gestion. En Suisse, on a choisi plutôt d'intégrer les mesures préventives dans la nouvelle législation sur le personnel de la Confédération, parce qu'on considère que l'éthique est très étroitement liée à l'organisation et à la gestion des affaires administratives. Le comportement éthique est donc régi par des règles implicites.

## II. Les valeurs essentielles du service public.

### a) Les valeurs essentielles du service public.

Les valeurs essentielles du service public sont les suivantes :

- La fonction publique comme service public (l'administration au service de la collectivité), valeur défini dans la législation sur les fonctionnaires (article 21 et suivants du Statut des Fonctionnaires, article 24 et suivants du règlement des employés et projet LPers), dans les principes directeurs en matière de politique du personnel (voir plus haut), dans le Code de conduite (en préparation), qui entrera en vigueur fin 1999.
- Services en prise sur les besoins des clients, avec la gestion par mandat de prestations et enveloppe budgétaire (« *New public management* »).
- Services proches du citoyen, avec un système de milice, le fédéralisme, la démocratie directe.
- Respect des normes de droit, selon des dispositions du droit pénal sur la corruption et la loi sur le contrôle des finances.
- Exécution correcte des tâches, selon la loi sur le contrôle des finances.

- Gestion par objectifs, selon l'article 36 de la loi sur l'organisation du gouvernement et de l'administration (LOGA), et l'article 28 de l'ordonnance sur l'organisation de l'administration et du gouvernement (OLOGA).
- Information des collaborateurs, principes de l'Office fédéral du personnel (OFPER) et de l'article 12 OLOGA.
- Gestion efficace et rationnelle de l'activité administrative, selon les réformes visant à axer la gestion administrative sur les résultats.

Ces valeurs sont définies sous les formes suivantes:

- Recueil systématique du droit fédéral (publication sur support papier et sur Internet), par exemple : Statut des Fonctionnaires, règlement des employés, Code pénal, LOGA, etc.
- Instructions du Conseil fédéral, des départements et des offices (support papier, Intranet, Internet), lignes directrices en matière de gestion y comprises.
- Principes directeurs du Conseil fédéral en matière de politique du personnel (envoyés par courrier à tous les employés).

#### ***b) La communication aux fonctionnaires des valeurs essentielles du service public.***

Les méthodes suivantes sont utilisées :

- Les valeurs essentielles sont automatiquement distribuées à toute personne entrant dans le service public.
- Les valeurs essentielles, après chaque révision, sont distribuées à tous les fonctionnaires.
- Les valeurs essentielles sont communiquées par le biais d'instruments relevant des technologies nouvelles (tels que l'Internet).

#### ***c) La déclaration sur les valeurs essentielles de la fonction publique a été reformulée pour la dernière fois.***

La déclaration a été révisée dans le projet LPers de 1999. Plusieurs fonctionnaires issus de toute l'administration (l'organe travaillant au projet est un organe supra-départemental) ont été impliqués dans l'élaboration de ce projet. Une consultation des associations de personnel a été effectuée. Dans le cadre de la procédure de révision de la législation sur les fonctionnaires, le public a également été impliqué.

### **III. Normes de conduite dans le service public.**

#### ***a) Déclarations sur les normes de comportement que l'on est en droit d'attendre des fonctionnaires.***

Le code de conduite, une déclaration sur le comportement que l'on est en droit d'attendre des fonctionnaires, est en préparation (Office fédéral du personnel). Ces normes de conduite couvrent en particulier les aspects suivants :

- L'acceptation de dons ou d'avantages, tels que rétributions, paiements, divertissements.
- L'utilisation d'informations officielles.
- L'utilisation de propriétés ou d'installations publiques.
- Le travail extérieur au service public.

Il existe des **exigences supplémentaires**, avec les instructions/lignes directrices/directives de département (Département fédéral des affaires étrangères, Département fédéral de la défense, de la protection de la

population et des sports, Département fédéral de justice et police) ou d'office. Quant aux personnes travaillant à l'interface entre les responsabilités politiques et administratives, elles sont tenues par les exigences de gestion et conduite correcte des tâches par les fonctionnaires supérieurs et par le gouvernement en vertu de la loi sur les rapports entre les conseils et du Manuel de l'Assemblée fédérale.

Des **normes fondamentales** de conduite du service public précisées par la loi :

- Statut des fonctionnaires (du 30 juin 1927, Statut des Fonctionnaires), qui sera remplacé par la loi sur le personnel de la Confédération (Projet LPers).
- Règlement des employés, articles 24, 26 et 27 (interdiction d'accepter des dons ou autres avantages), article 28 (secret professionnel).
- Ordonnance sur l'engagement de fonctionnaires fédéraux dans des organisations internationales, article 2 (indépendance du fonctionnaire).
- Dispositions du Code pénal sur la corruption.
- Loi sur le contrôle des finances.
- Article 36 LOGA, article 28 OLOGA (gestion par objectifs).
- Article 12 OLOGA (principes régissant la direction de l'administration et principes directeurs en matière de politique du personnel).

Les situations variant beaucoup d'un département à l'autre, la Suisse ne dispose pas de réglementation qui traite spécifiquement de l'acceptation de dons. Mais le Code de conduite y fait référence, et les départements peuvent s'en inspirer lorsqu'ils établissent leur propre réglementation (instructions des départements ou des offices). L'article 19 du projet LPers et l'article 316 du Code pénal réglementent l'acceptation de dons et autres avantages.

***b) Types de conduites considérées comme inacceptables au regard de la loi pour des agents de la fonction publique.***

Les **types de comportements répréhensibles** suivants sont spécifiquement définis dans la législation pénale pour les agents de la fonction publique :

- Corruption active, passive ou tentative de corruption sur des agents de la fonction publique/effectuée par des agents de la fonction publique.
- Partialité dans la prise de décision dans l'exercice de fonctions officielles.
- Abus de pouvoir ou de la confiance du public.

D'autres types de comportement répréhensibles sont identifiés aux articles 313 (concussion), 316 (Accepter un avantage), 317 (Faux dans les titres commis dans l'exercice de fonctions publiques) et 319 (Assistance à l'évasion) du Code pénal.

Les **interdictions et restrictions** suivantes sont imposées aux fonctionnaires par d'autres types de législation :

- « Le fonctionnaire n'est pas autorisé à exercer une activité accessoire qui compromet l'accomplissement de ses devoirs de service ou est inconciliable avec sa fonction. » (Statut des fonctionnaires, article 15, activités accessoires).
- « Il est interdit au fonctionnaire de divulguer les affaires de service qui doivent rester secrètes en vertu de leur nature ou d'instructions spéciales. Le devoir de garder le secret professionnel subsiste même après la cessation des rapports de service. » (Statut des fonctionnaires, article 27, secret professionnel).

- « L'autorisation (d'exercer une activité accessoire) peut être accordée lorsqu'il n'y a pas d'incompatibilité et que tout conflit est exclu entre les intérêts du service et ceux qui sont liés à l'activité accessoire. » (Règlement des fonctionnaires, article 13, activités accessoires).
- « Ils (les membres du Conseil fédéral et le chancelier) ne peuvent pas non plus exercer les fonctions de directeur, de gérant ou de membre de l'administration, de l'organe de surveillance ou de l'organe de contrôle d'une organisation ayant une activité économique. » (LOGA, article 60, incompatibilité à raison de la fonction).

#### **IV. Institutions et procédures destinées à promouvoir un haut niveau de probité, à prévenir et à détecter les fautes professionnelles.**

##### ***a) Instruments utilisés par la gestion des ressources humaines pour la promotion d'un environnement favorisant le respect de la déontologie.***

Les instruments suivants sont utilisés :

- Il existe des règles/des directives/des politiques pour les procédures de recrutement et de promotion.
- Le recrutement et la promotion sont fondés sur le mérite.
- La transparence des procédures de sélection est assurée par la publication des règles/des directives/des politiques de recrutement, la publication des avis de postes vacants et l'évaluation des procédures de sélection.
- Seuls les critères de sélection publiés et adéquats sont pris en compte lors du recrutement.
- Les considérations déontologiques sont prises en compte dans la procédure de recrutement, grâce à des entretiens de candidature, des évaluations, des tests (par exemple des expertises graphologiques).
- Les comportements éthiques sont pris en considération dans l'appréciation des performances, grâce à des entretiens d'évaluation annuels destinés à apprécier les prestations de l'employé.
- Une politique salariale a été adoptée par le Conseil fédéral pour l'ensemble du personnel ou pour certaines fonctions et adaptée en fonction de la conjoncture.

Une **attention particulière** est portée aux agents publics qui occupent des fonctions particulièrement vulnérables à la corruption, avec :

- L'ordonnance du 20 janvier 1999 sur les contrôles de sécurité relatifs aux personnes.
- La réglementation des offices sur les secteurs potentiellement exposés à un risque de corruption : marchés publics, informatique. Les mesures prises sont les suivantes : contrôles multiples, services d'inspection internes, contrôles de sécurité.

##### ***b) Sensibilisation et formation des agents publics aux questions déontologiques.***

Dans les départements et offices, la prévention de la corruption est faite par des mesures internes, notamment par l'élaboration de directives, de lignes directrices et d'instructions. Ces mesures relèvent de la responsabilité de l'office principalement et, au-delà, du département (instruction, cours).

Le département fédéral des finances a élaboré le projet « Organisation de la fonction du Personnel » (POP). Le 20 mai 1998, le Conseil fédéral a chargé le département fédéral des finances d'élaborer un code de conduite. Ce document est préparé par un groupe de travail dirigé par l'OFPER. Il fixera des normes

déontologiques et le contenu en sera harmonisé avec les Principes directeurs en matière de politique du personnel. Le code de conduite sera diffusé et mis en œuvre de la même manière que ces principes (il sera intégré dans les manuels, remis aux nouveaux collaborateurs, etc.). (A ce sujet, voir le rapport concernant le projet POP, chapitre 4.14.2 « Code de comportement »). Il sert de base aux activités de formation et de perfectionnement proposées par l'Office fédéral du personnel, notamment aux cours de gestion.

La question de l'aide apportée aux agents publics pour résoudre les problèmes de nature déontologique qui se posent à eux dans l'exercice de leurs fonctions est généralement abordée dans les principes régissant la gestion de l'administration. Le premier interlocuteur est le supérieur direct ; viennent ensuite le service immédiatement supérieur, puis la Police fédérale. Il n'existe pas à proprement parler de conseils sur les risques de corruption ; les conseils en la matière sont intégrés à la gestion et à l'exécution des tâches. Car on s'attache surtout à perpétuer et à développer au quotidien une culture favorisant la confiance.

Jusqu'à présent, la possibilité de créer des structures de conseil et de médiation n'a été envisagée que pour le harcèlement sexuel (voir le rapport de 1998 du Département fédéral des finances, concernant le projet « Organisation de la fonction du Personnel » (POP), chapitre 4.8 « Personnes de confiance et section Consultation sociale »).

***c) Autres dispositions utilisées pour promouvoir le respect de normes de conduite exigeantes et la prévention de la corruption.***

Ces dispositions comprennent :

- Identification et compte rendu sur les situations de conflit d'intérêt (article 15 du statut des fonctionnaires et article 18 du règlement des employés).
- Obligation de motivation des décisions administratives.
- Existence de voies de recours contre les décisions administratives.
- Existence de délais de réponse maximum tolérés pour répondre aux demandes des usagers.
- Existence de dispositions de lutte contre la corruption dans les appels d'offres.
- Existence de contrôles spécifiques pour les procédures de passation des marchés publics.
- Évaluation des risques dans les secteurs les plus exposés.
- Compétences clairement définies en matière d'exécution des tâches et réglementation transparente des procédures de décision (notamment pour les tiers).
- Contrôle de gestion (*controlling*).
- Contrôles doubles ou multiples.
- Séparation des fonctions.
- Amélioration du classement des documents faisant état du traitement des dossiers.
- Rotation du personnel.

***d) Politique relative aux déclarations.***

Une déclaration d'informations personnelles est exigée de la part des fonctionnaires exerçant une activité accessoire (ordonnance du 30 juin 1987 concernant le revenu déterminant tiré d'activités accessoires et l'obligation de verser ledit revenu et articles 13 et 13 a du règlement des fonctionnaires)

La déclaration n'est exigée que dans certains secteurs, pour les diplomates, les gardes-frontière, les douaniers, les militaires et les dépositaires de secrets d'Etat.

Les informations suivantes sont exigées dans la déclaration annuelle, à l'entrée de la fonction publique, au moment de tout changement décisif de circonstances, au moment où l'autorisation visée à l'article 13 du règlement des fonctionnaires est délivrée et dans les conditions définies par l'ordonnance du 30 juin 1987 concernant le revenu déterminant tiré d'activités accessoires et l'obligation de verser ledit revenu :

- Origine et niveau des ressources.
- Activités extérieures.
- Cadeaux.

L'information est utilisée selon la voie hiérarchique. S'agissant de l'autorisation d'exercer une activité accessoire, par exemple, l'information est utilisée conformément à l'article 13 du règlement des fonctionnaires. Le supérieur hiérarchique a accès à l'information. Si l'agent est soupçonné d'avoir commis un acte délictueux la police fédérale utilise l'information.

***e) Procédures permettant de rendre compte des actes répréhensibles/de soupçons de corruption.***

Des dispositions juridiques définissent les procédures, et des règles internes définissent la procédure dans chaque organisation du service public. Aucune protection n'est assurée pour les agents de l'Etat qui dénoncent des malversations.

**Pour le public**, il existe des procédures spécifiques pour dénoncer les malversations commises par les agents publics, par le biais des possibilités conventionnelles de faire opposition contre les décisions d'une autorité administrative dans la procédure administrative.

***f) Dispositifs internes de contrôle pour l'amélioration de la déontologie dans les services publics.***

Les contrôles internes contribuent aux efforts de prévention contre la corruption avec :

- Un système de contrôle interne (SCI) dans les offices et les services d'inspection.
- Un contrôle de gestion (controlling) par les responsables hiérarchiques.
- Une surveillance exercée par le Contrôle fédéral des finances.
- Des contrôles spéciaux effectués par l'Office fédéral de l'informatique (OFI) ou par le Département fédéral des finances (DFP) dans le domaine de l'informatique.
- Une surveillance exercée par les départements.
- Un service de contrôle administratif du Conseil fédéral.

Ces contrôles internes contribuent à l'amélioration de la déontologie grâce au rapport direct du Contrôle fédéral des finances aux offices et services concernés en cas d'irrégularité et recommandations, et grâce aux autres organes de contrôle tels que les services d'inspection des départements et le Service de contrôle administratif du Conseil fédéral. Le suivi des mesures recommandées se fait dans le cadre de l'analyse des risques effectuée par le Contrôle fédéral des finances (définition de priorités dans l'activité de révision). Le suivi des insuffisances est assuré par les organes de contrôle généraux.

Ces contrôles internes, exigés par la loi, se déroulent à intervalles réguliers. La direction et les organes de décision et d'exécution aux différents échelons hiérarchiques, la Commissions des finances et la Commissions de gestion du Parlement, les Commissions spéciales du Parlement (par exemple les commissions d'enquête) ont accès aux rapports de contrôle interne.

***g) Procédures disciplinaires pour traiter des cas de manquement aux normes de la fonction publique.***

Les procédures disciplinaires sont les suivantes :

- Mesures prévues par la législation sur les fonctionnaires (par exemple en cas de refus de travailler ou de manquement aux règles de conduite, non respect des règles déontologiques y compris) et sanctions telles que l'avertissement/le blâme, la mise en situation provisoire ou la révocation (art. 30 à 32 Statut des Fonctionnaires et art. 31 à 44 du règlement des employés).
- Mesures prévues par les articles 312 à 317 (Abus d'autorité, Concussion, Gestion déloyale des intérêts publics, Corruption passive, Accepter un avantage, Faux dans les titres commis dans l'exercice de fonctions publiques), 319 (Assistance à l'évasion) et 320 (Violation du secret de fonction) du Code Pénal.

**V. Contrôle des actes répréhensibles dans la fonction publique.**

***a) Institutions et procédures permettant d'enquêter sur les malversations et de les poursuivre.***

Organismes mis en place pour **enquêter** sur la malversation et la corruption dans le service public :

- Un organisme d'enquête fonctionne avec compétence sur l'ensemble du service public.
- Un organisme d'enquête fonctionne avec compétence exclusive sur un organisme ou sur un ensemble Particulier d'organismes du service public.
- Une fonction d'investigation existe au sein de chaque agence/département du service public.

Les contrôles de sécurité relatifs aux personnes sont placés sous la responsabilité de la Police fédérale (DFJP). Le contrôle de l'établissement des comptes et l'analyse des risques sont placés sous la responsabilité du Contrôle fédéral des finances (CDF). Pour le reste, la responsabilité incombe aux directeurs d'office et aux chefs de département . L'indépendance n'est pas garantie. Dans les domaines spécialisés, les commissions sont responsables.

Organismes mis en place pour **exercer les poursuites** contre les malversations et la corruption dans le service public :

- En ce qui concerne les actes de corruption au sens défini dans le Code Pénal, la Police fédérale (DFJP) est responsable.
- Pour ce qui est des contrôles du Contrôle fédéral des finances (CDF), ce sont d'abord les responsables hiérarchiques qui sont responsables (compte rendu aux offices).

Certains organismes d'enquête ou de poursuite ont la compétence de saisir directement les tribunaux des cas de soupçon de corruption.

***b) Institutions compétentes pour exercer un contrôle indépendant sur l'administration.***

Ces institutions comprennent :

- Parlement/Commission parlementaire.
- Auditeurs indépendants/externes rendant compte à des organismes élus tels que le Parlement.

- Les tribunaux judiciaires.
- Office indépendant sur la déontologie.
- Médias et opinion publique.
- Organes non parlementaires de contrôle de l'administration (Service de contrôle administratif du Conseil fédéral, Contrôle fédéral des finances).

Il existe des procédures, des dispositions, permettant d'attirer l'attention sur des malversations éventuelles d'organismes chargés d'exercer un contrôle indépendant sur les activités de services publics, par la voie des rapports des réviseurs, des rapports d'évaluation, des autorités de recours, des oppositions.

Des audits externes sont exercés par :

- Le Contrôle fédéral des finances, organe semi-autonome entre le Conseil fédéral et le Parlement, qui vérifie que la comptabilité est tenue correctement et conformément aux dispositions légales (tous les domaines de l'administration), et étudie les domaines à risque identifiés comme tels dans l'analyse des risques.
- La Commissions de gestion (selon le problème relevé).
- D'autres commissions (par exemple les commissions d'enquête parlementaires).
- Dans certains domaines, la gestion intégrale de la qualité (Total Quality Management) est assurée par des contrôleurs externes (sur décision propre).

Ces audits externes sont effectués tous les ans (parfois à plusieurs années d'intervalle). Les rapports d'audit externe sont systématiquement publiés.

## VI. Coordination et évaluation.

### *a) Coordination et gestion de la politique de l'administration en matière de déontologie et de lutte contre la corruption.*

L'Office fédéral du personnel (Département fédéral des finances), institution définie par la loi, est chargé de mettre en œuvre la politique du personnel du Conseil fédéral. Ses ressources (sous-unités de l'office) sont les suivantes : développement de systèmes, droit du personnel, conseils et coordination, formation/développement du personnel. L'Office n'établit pas de rapport.

Les actions suivantes sont entreprises pour vérifier que les mesures prises par le gouvernement dans le domaine de la déontologie et de la lutte contre la corruption sont **cohérentes** :

- En ayant recours à l'évaluation des risques pour orienter les décisions politiques, définir les priorités et l'ordre d'adoption des mesures dans le domaine de la déontologie.
- En analysant les échecs systémiques, les tendances qui se dégagent des affaires de nature criminelle et disciplinaire.

Aucun plan en matière de déontologie ou pour la prévention de la corruption n'a été mis au point.

***b) Évaluation de l'efficacité des mesures visant à promouvoir les conduites déontologiques et à prévenir la corruption.***

Aucune évaluation d'ensemble ne permet d'apprécier l'efficacité des mesures prises dans les différents secteurs. Les évaluations effectuées portent sur les domaines particulièrement exposés aux risques de corruption (par exemple l'informatique).

Les instruments suivants sont perçus comme utiles pour la prévention de la corruption :

- Principes généraux applicables en matière de gestion.
- Contrôles de l'administration internes et externes.
- Activités de formation et de perfectionnement destinées à informer les agents et à les sensibiliser aux risques de corruption.
- Durcissement des dispositions pénales sur la corruption en Suisse et dans les relations d'affaires transfrontalières.
- Mise en place d'une politique du personnel plus cohérente (révision de la législation sur les fonctionnaires).

Les obstacles principaux à une lutte plus efficace contre la corruption dans le service public sont les suivants :

- Manque de temps pour opérer la sensibilisation voulue, les administrations étant très absorbées par les nouvelles tâches qui leur sont attribuées et par les projets en cours dans les domaines de la gestion et du personnel.
- Diverses lacunes dans les mesures de sécurité (voir projet n° 30 du Service de contrôle administratif du conseil fédéral, « Risques de corruption et mesures de sécurité au sein de l'administration fédérale », annexe 1).
- Négligences dans le recrutement du personnel.
- Conditions de travail (matérielles et non matérielles) peu favorables et climat de travail désagréable (absence de motivation, méfiance, anonymat, etc.).
- Absence de culture d'entreprise dans l'administration générale de la Confédération. Font également défaut des valeurs communes qui soient partagées à tous les niveaux de l'administration, depuis les membres du Conseil fédéral jusqu'aux agents occupant des fonctions subalternes (voir « La politique du personnel de la Confédération », rapport des Commissions de gestion des Chambres fédérales au Conseil fédéral du 12 février 1998, chapitre 337 « Information du personnel »).
- Le statut de l'administration dans la société et dans le monde économique a changé (ouverture, décentralisation, coopération).

**Chancellerie fédérale Service de Contrôle administrative du Conseil fédéral**

**Liste des points faibles éventuels des mesures de sécurité**

Mesures de sécurité	Points faibles éventuels
Hiérarchie des organes de décision	<ul style="list-style-type: none"> <li>• Éclatement des compétences entre les différents échelons, contrôle insuffisant</li> <li>• Lacunes dans l'attribution des compétences décisionnelles aux différents échelons</li> <li>• Trop grande distance entre l'échelon de la gestion et celui des opérations (règlement des affaires par notes)</li> </ul>
Réglementation de la procédure de décision	<ul style="list-style-type: none"> <li>• Les personnes concernées sont mal informées des compétences des fonctionnaires ou des objectifs des programmes (problème des informations d'initié)</li> <li>• Lacunes dans la réglementation des compétences en matière d'exécution des tâches</li> <li>• Absence de nouveaux instruments de gestion en cas de délégation des pouvoirs de décision</li> <li>• Extension des marges d'appréciation en cas de déréglementation de l'exécution des tâches (contrôle lacunaire du pouvoir discrétionnaire)</li> <li>• Délégation de décisions à des organisations de projet „subordonnées“</li> </ul>
Critères de décision	<ul style="list-style-type: none"> <li>• Observation lacunaire des directives concernant le règlement des affaires, notamment dans le cas de mandats législatifs assortis d'une marge d'appréciation</li> <li>• Lacunes dans la définition et le respect des objectifs qui dépassent le mandat législatif et le concrétisent</li> <li>• Motivation insuffisante des décisions ayant des conséquences pour des tiers</li> </ul>

Mesures de sécurité	Points faibles éventuels
Contrôle de gestion	<ul style="list-style-type: none"> <li>• Lacunes dans la définition d'objectifs contrôlables aux différents échelons</li> <li>• Interruption du flux d'informations entre les différents échelons de gestion (rapports lacunaires)</li> <li>• Absence d'instruments de contrôle modernes dans les nouvelles formes de gestion des affaires administratives (NGP, délégation des pouvoirs de décision)</li> <li>• Contrôle insuffisant de l'exécution des tâches et de l'assurance de la qualité</li> </ul>
Contrôle interne	<ul style="list-style-type: none"> <li>• Lacune dans la définition et l'observation des principes du contrôle des affaires</li> <li>• Enregistrement lacunaire des affaires (contrôle des abus de pouvoir)</li> <li>• Séries de contrôles trop longues ou contrôles exécutés sans autorité</li> <li>• Superficialité des contrôles effectués par des personnes surchargées</li> <li>• Abandon du contrôle des processus au profit d'un contrôle des objectifs</li> <li>• Manque de clarté ou éclatement des responsabilités en matière de contrôle</li> <li>• Contrôle formel trop important</li> </ul>
Documentation du règlement des affaires	<ul style="list-style-type: none"> <li>• Réglementation lacunaire du classement des documents et de leur gestion (notes concernant les communications téléphoniques, procès-verbaux, etc.)</li> </ul>
Principe du double contrôle	<ul style="list-style-type: none"> <li>• Absence de contreseings pour les activités particulièrement exposées à la corruption</li> </ul>
Séparation des fonctions	<ul style="list-style-type: none"> <li>• Absence de séparation entre la planification, la décision et l'exécution dans les secteurs particulièrement exposés</li> <li>• Absence de séparation des fonctions en raison du manque de personnel pour les activités particulièrement exposées</li> </ul>

Mesures de sécurité	Points faibles éventuels
Surveillance du département	<ul style="list-style-type: none"> <li>• Réglementation complexe de la surveillance</li> <li>• Contrôle lacunaire de la part des SG des départements (problème relatif aux compétences)</li> </ul>
Participation d'autres offices	<ul style="list-style-type: none"> <li>• Éclatement des compétences entre les offices (concentration dans certains d'entre eux)</li> <li>• Absence de directives concernant la délimitation des compétences</li> </ul>
Contrôle indépendant de l'administration	<ul style="list-style-type: none"> <li>• Surveillance lacunaire des CdG en raison du manque de ressources et des problèmes relatifs aux compétences</li> </ul>
Possibilités de recours des tiers	<ul style="list-style-type: none"> <li>• Absence de contrôle en cas de défaut de recours pour cause de corruption</li> <li>• Contrôle a posteriori (alarme tardive)</li> </ul>
Information et formation du personnel	<ul style="list-style-type: none"> <li>• Connaissance insuffisante des activités exposées à la corruption (incapacité de détecter les problèmes et les situations suspectes)</li> <li>• Liste incomplète des activités exposées à la corruption</li> <li>• Information insuffisante sur les règles de gestion applicables aux nouvelles forme de gestion des affaires administratives (NGP)</li> </ul>
Contrôles des systèmes informatiques et des télécommunications	<ul style="list-style-type: none"> <li>• Contrôle lacunaire des informations et de la compatibilité des systèmes de traitement des données</li> <li>• Responsabilités mal définies en ce qui concerne l'utilisation des banques de données en ligne</li> </ul>
Rotation du personnel	<ul style="list-style-type: none"> <li>• Rotation du personnel compromise par le manque d'effectif dans les activités particulièrement exposées</li> </ul>

## TURKEY

### I. The general context for managing ethics in the public service in Turkey

#### *a) The principal ethics-related issues which have confronted the public service in Turkey during the past 10 years, and especially within the past 18 months*

Issues include the following:

- Bribery and partisanship in the public sector.
- Lack of objectivity in recruiting civil servants.
- Not maintaining the real value of public personnel wages.
- Misuse of public resources as a result of political pressure.

#### *a) Recent measures to improve ethical conduct in the public service*

There have been some laws enacted by the Turkish Grand National Assembly (TGNA) and new regulations enforced by the Government. These include:

- The Law on Payments Made by Cheque (No: 3167- 19.3.1985).
- The Law on Disclosure of Assets and Combating Bribery and Corruption (No: 3628 – 19.4.1990).
- The Law on Banking Affairs (No: 4389 – 18.6.1999).
- The Law on Combating Organised Crime (No: 4422 – 30.7.1999).
- The Decree of the Council of Ministers on the Central Examination System for Entering the Public Service, (22.2.1999).
- The provisions concerned with combating corruption in the Government Programme and seventh National Five-Year Development Plan.

#### *b) Plans to address ethical issues in the Turkish public service*

In 1999, the Turkish Government regulated a new series of instructions related to hiring new personnel by centralised exam and requiring a special exam and training for promotion.

A reform of Personnel, General Health Insurance and Unemployment Insurance and legal arrangements concerning arbitration is being carried out by the State Personnel Presidency and the Commission of Personnel Management.

A draft bill proposes amendments to the Law of Prosecution Procedure for Public Servants, the amendments includes some liberalisation of this procedure by giving more directly-useable rights and duties to the prosecutors. The draft bill was approved by the Government and sent to the TGNA.

Studies related to the ombudsman are continuously carried out by the relevant institutions.

## II. Core values for the public service

### a) *Stating core values for the public service*

Core values are the following:

- Fidelity to the Constitution and Laws of the Turkish Republic.
- Impartiality and loyalty to the State.
- Fairness, honesty, equality and ethics.
- Legality (protection of public service by law and regulation of the missions of public officers by law).
- Obedience to austerity measures.
- Co-operation.

The values are stated in legal documents. The 1982 Constitution stated that public services are carried out by civil servants. The principles with which civil servants must comply while ensuring public services are indicated in article 128 of the 1982 Constitution and articles 1, 6, 7, 8, 9, 10, 11 of the Code of Civil Servants (Law No: 657).

### b) *How stated core public service values are communicated to public servants*

The following forms are used:

- Core values are automatically provided when someone joins the public service.
- They are provided when someone takes up a position in a different public service organisation.
- Any revision of core values is distributed to all public servants.
- All public servants take an oath when joining the public service.

### c) *The statement of core public service values has not been revised in the last decade*

## III. Standards of behaviour for the public service

### a) *Statements of the standards of behaviour expected of public servants*

The standards of behaviour expected of public servants are identified by the Constitution, laws and other regulations. They are available for public servants, politicians and all citizens who are interested. They cover the following points:

- Receiving gifts or benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Use of corporate credit cards.
- Obtaining a second employment.
- Restrictions on post-employment.

- Special conditions/permissions on movement from the public service to the for-profit sector.
- Involvement in political work.

There are some **specific requirements** for some professional groups such as members of Parliament, ministers, judges, the personnel of the Turkish Armed Forces, lawyers, officers of security services, engineers and architects, etc. There are no specific guidelines for public servants working at the political/administrative interface. Minimum standards of behaviour for public servants are stated in Law No: 657 on Code of Civil Servants and Law No: 3628 on Disclosure of Assets and Combating Bribery and Corruption.

***b) Unacceptable conduct for public officials according to the law***

The following kinds of specific misconduct are defined for public officials by the Turkish Penal Code:

- Misuse of office.
- Neglect of official duty.
- Embezzlement.
- Bribery.
- Arbitrary conduct.
- Falsification of official documents.
- Illegal intervention on bidding.
- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Partiality in official decision-making.
- Abuse of office or public trust.

Further prohibitions and restrictions are imposed on public official by other legislation. Mainly, non-observance of the principles, which are stated as core values for the public service, is considered as unacceptable. However, certain types of unacceptable conduct are identified in detail in article 125 of the Code of Civil Servants (Law No. 657), as follows:

- Receiving gifts more valuable than a certain amount (this amount varies according to salaries and wages).
- Performing commercial activities.
- Being a member of a political party.
- Discriminating in any way against race, language, religion, political opinion, sexuality, etc. in the course of public service.
- Going on strike.
- Disobeying obligations or legal orders.
- Using official properties for personal benefit.
- Behaving inappropriately with colleagues and citizens in the course of public service (e.g. disrespect to colleagues in action or words, humiliation, insults, interference in word or act, threats, physical attack, etc.).
- Performing collective actions (collective application or complaint).
- Taking personal advantage of any work relationships with any enterprises dealt with in the course of public service.

#### **IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct**

##### **a) *Measures used by human resources management to promote an ethical environment***

The following measures are used:

- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies and publicising vacant positions.
- Taking ethical considerations into account in the recruitment process: those who have committed felonies are not recruited, and objectivity (equality) is sought by means of a central examination system for entering public service.
- Considering ethical behaviour in the performance appraisal, with ethical rules and regulations in the performance appraisal reports.

Special attention is given to officials in positions particularly susceptible to corruption, in the areas of public procurement, custom services and tax administration.

##### **b) *Informing and training public servants on ethics issues***

The first year is a probation period for public servants. During this year they are trained and given information about public personnel law. Public servants can consult to the State Personnel Presidency to help resolve their work-related ethical problems and dilemmas.

##### **c) *Other measures to promote high standards of conduct and assist prevention***

Measures include:

- Identifying and reporting conflict of interest situations, especially in areas of post public employment and receipt of gifts or benefits such as fees, payments, and entertainment.
- Requiring the release of internal information related to ethical conduct and possible transgressions.
- Specific controls on public procurement procedures.

##### **d) *Disclosure policy***

Disclosure of personal information (declaration of personal assets, financial interests) is required from elected officials (except *muhtar*, the person who is elected by village people to be responsible for carrying out the decisions of the village council and maintaining public services concerning the village), senior public servants (every five years) and all public servants. The following information is required to be disclosed when joining or leaving the public service, when the relevant circumstances change, and every five years:

- Assets and liabilities.
- Loans.
- Sources and level of income.

- If the amount exceeds five times the net monthly salary, all payments to a public servant in the first degree.

Disclosure is confidential. Disclosed information is used to prevent public personnel from obtaining property illicitly, to fight against bribery and corruption, and to support investigation in the public service.

**e) *Procedures to report misconduct/suspected corruption***

Legal provisions define the procedure for exposing wrongdoing. Protection is not available to public servants who expose wrongdoing. For the public, special procedures are available to expose wrongdoing committed by public servants, such as complaint procedures, help desk, telephone line and various inspection groups.

**f) *Internal control to support the improvement of ethical conduct in the public service***

Internal control supports corruption prevention efforts. Within the central administration, the head of each agency (minister, under-secretary, governor, sub-governor) enjoys hierarchical control, including disciplinary authority over the acts, actions and persons of subordinates, from the point of view of expediency, legality and ethics. These controls can be specified as financial control, management control, etc. These control mechanisms (for example, inspection boards, see below) punish wrongdoing and reward civil servants who are successful in their public duties. Similar control mechanisms exist in municipalities and functionally decentralised agencies. Control is exercised by the hierarchical head of each agency, e.g. mayor, general director, rector, dean.

Internal control is conducted by the head of each agency by means of **inspection boards** directly attached to them. There is an inspection board in each ministry and in some independent under-secretariats (like Treasury, Foreign Trade and Customs) which conduct internal control as a whole to achieve pre-determined goals as stated in laws, agency documents, national development plans, and the political agenda of the government.

Internal control provides reports which include recommendations to overcome irregularities, procedural problems, and inefficiencies and to reconfirm moral values in public administration. No follow-up is required to implement recommended measures for systemic improvements. Internal control is required by law and by general policy. Internal control reviews are performed on an annual basis, but if necessary they can be performed any time. Inspection boards, the heads of the public agencies (ministers, under-secretaries, general directors, etc.) and parliamentarians have access to the reports of the reviews.

**g) *Disciplinary procedures in case of a breach of public service standards***

These disciplinary measures are as follows:

- Warning
- Condemnation.
- Deduction from salary.
- Freeze on promotion from one to three years.
- Disqualification from office.

Public officials have the right to make an objection to the higher disciplinary authorities (in all of the above-mentioned situations) within seven days and to bring their case to the administrative judgement courts within 60 days.

## V. Scrutinising misconduct in the public service

### a) *Institutions and procedures to investigate and prosecute misconduct*

The bodies in place **investigating** misconduct and corruption in the public service include:

- An investigative body operates with jurisdiction over the whole public service (external audit).
- An investigative body operates with exclusive jurisdiction over one or a defined range of public service organisations (external audit).
- An investigative function exists inside individual public service agencies/departments (internal audit).

There are bodies in place **prosecuting** misconduct and corruption in the public service: public prosecutors can directly and independently bring corruption cases to court. Certain investigative or prosecuting bodies are empowered to bring suspected cases of corruption directly to court.

### b) *Institutions in place to perform independent scrutiny of the administration*

These include:

- The Supreme Council of Public Administration which is an independent external audit institution reporting to TGNA. The Supreme Council of Public Administration supervises the incomes, expenses, goods and accounts of the State on behalf of the Assembly.
- Courts for judicial review.
- The State Supervisory Council: as one of the effective instruments for the fulfilment of the duty of scrutinising the administration, the Constitution provides for a special agency, the State Supervisory Council, that is an external control board attached directly to the President of the Republic and whose members and chairmen are appointed by him. The scope of this control is far-reaching, including enquiry inspections launched upon the request of the President.
- The Prime Ministry Inspection Board (PMIB): by means of this board, the Prime Minister may inspect all public organisations, public economic enterprises, public professional organisations, associations, foundations, co-operatives, unions and private companies. The scope of this control encompasses investigations, inspection organisations, and the PMIB also has the duty of regulating and co-ordinating the inspection system in Turkey.
- The Prime Ministry High Auditing Board: this board inspects only public economic enterprises and prepares an annual financial report on them.

External audit covers administrative, financial and legal areas. The frequency of external audits depends on the decision of the highest authority to which the inspection board is responsible (this could be the President of the Republic, the Prime Minister, a Minister), but the Supreme Council of Public Administration conducts annual audits. External audit reports are not published routinely.

## **VI. Co-ordination and self-assessment**

### **a) *Co-ordination and management of government ethics or anti-corruption policy***

There is no institution assigned to co-ordinate and manage the implementation of the government ethics measures and no national ethics or corruption prevention plans have been developed so far. However the analysis of systemic failures and trends in criminal and disciplinary cases are used to ensure the consistency of the government ethics and anti-corruption measures. Non-governmental organisations were involved in the preparation and implementation of ethics measures, through Chambers of Trade and Industry and through the press.

### **b) *Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct***

The following procedures are in place for assessing the effectiveness of measures promoting ethical conduct:

- The State Supervisory Council on the request of the President of the Republic.
- Judiciary procedures when confronted with a case.
- Non-governmental organisations, when the measure is in contradiction with their own interests. The NGOs act in different ways (press, action, stating public opinion, etc.).

Prevention measures are reviewed and assessed whenever necessary by non-governmental organisations, and by the State Supervisory Council on the request of the President.

The following measures are considered as successful instruments for corruption prevention:

- Training.
- Satisfaction with wages and with the working environment.
- Legislative prevention.

The major impediments to further reducing corruption in the public service include:

- The real value of public personnel wages has declined over time, due to the inflation rate.
- The merit and career system is not implemented in an efficient way.
- The judiciary mechanism has lost its effectiveness over time.
- The level of education both generally and internally is lower than expected.

## UNITED KINGDOM

### I. The general context for managing ethics in the public service in the United Kingdom<sup>8</sup>

#### a) *The principal ethics-related issues which have confronted the public service in the United Kingdom during the past 10 years, and especially within the past 18 months*

A wide range of issues was addressed in 1995/96, following the first reports of the Committee on Standards in Public Life, established in October 1994. That Committee reviewed questions of Parliamentary ethics (in particular, in managing declaration and conflicts of interest); and questions relating to Ministers (where they recommended certain changes to the framework set out in the Ministerial Code, and a check on appointments accepted by Ministers on leaving office); civil servants; public bodies (in particular, questions of political patronage); local government; and local spending bodies.

#### b) *Recent measures to improve ethical conduct in the public service*

There has been a major overhaul of various codes setting out the ethical framework in different areas of the public sector. The Ministerial Code has been revised, a new Civil Service Code was developed and promulgated (and has since been further revised); the guidance on management of conflicts and interests and other aspects of propriety for public bodies has been revised; and a new framework has been established for advice and investigation in relation to Parliamentary standards. The post of Commissioner for Public Appointments has been established, and the Commissioner has issued guidance on public appointments procedures. For local government, the Government brought forward proposals to introduce a new ethical framework. Details of this framework were set out in a discussion paper (Chapter 4. of "Local People, Local Choice" Cm. 4298) which also contained draft legislation to introduce the framework. The Government intends to introduce this legislation to Parliament at the earliest opportunity.

#### c) *Plans in preparation to address ethical issues in the public service of the United Kingdom*

The Committee on Standards in Public Life is currently reviewing implementation of its First Report (which addressed Parliamentary, Ministerial and Civil Service issues). A revised Civil Service Code has just been issued. A Local Government Code is in preparation. The Government is considering revised criminal offences of corruption and misuse of public office.

---

8. The first section covers all ethics issues related to public life and the rest of the chapter focuses on standards for the Civil Service, indicating where there are major differences for other areas of the public service.

## **II. Core values for the public service**

### ***a) Stating core values for the public service***

The Civil Service Code sets out the core values for the Civil Service, such as integrity, honesty, impartiality and objectivity. The First Report of the Committee on Standards in Public Life lists the Seven Principles of Public Life which apply across all sectors:

- Selflessness.
- Integrity.
- Objectivity.
- Accountability.
- Openness.
- Honesty.
- Leadership.

The Civil Service Order in Council (which is a legal document) sets out the principles for recruitment and selection of civil servants and requires the production of a Civil Service Code. For local government, legislation (currently before the House) will also require production of a Code. For appointments to public bodies, the Order in Council which established the post of Commissioner of Public Appointments also required production of a Code. These and other Codes, including the Ministerial Code, are all published documents.

### ***b) How stated core public service values are communicated to public servants***

The following forms are used:

- Core values are automatically provided when someone joins the public service.
- They are provided when someone takes up a position in a different public service organisation.
- The statement of core values is part of the employment contract/document.
- Core values, after revision, are distributed to all public servants.
- Instruments of new technology, such as the Internet communicate core values.

### ***c) The statement on core public service values was last revised in 1999***

In order to reflect the devolution within the UK, amendments were made in May 1999. This most recent revision of the Civil Service Code focused on the need to reflect changed circumstances following devolution to Scotland and Wales. Civil servants in Scotland and Wales, and those in the Cabinet Office responsible for advising Ministers on the Code were closely involved, but all departments were consulted. In addition, the trade unions were consulted, and Ministers approved the final version of the Code. The public at large was not consulted as part of this latest revision of the Code. However, as noted above, trade unions were consulted, and the revised Code is a published document. Account will be taken of any representations received from members of the public. The Committee on Standards in Public Life will also comment on the revised version (and has itself consulted the public as part of its current work).

### III. Standards of behaviour for the public service

#### *a) Statements on the standards of behaviour expected of public servants*

For the Civil Service, the Civil Service Management Code (particularly Chapter 4) sets out standards of conduct and core principles which must be reflected in departmental and agency handbooks. The Civil Service Management Code is in turn reflected in departmental handbooks, which form part of the contracts of employment of individual civil servants. These handbooks contain the detailed rules which reflect the particular needs and circumstances of the department or agency concerned. Similar documents exist for public body employees, local government etc. The standards of behaviour cover the following points:

- Receiving gifts and benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Use of corporate credit cards.
- Work outside the public service.
- Restrictions on post-employment.
- Special conditions/permissions on movement from the public service to the for-profit sector.
- Involvement in political work.

There are **specific guidelines** for members of the Government Information Service. Other groups are given guidelines on, for instance, interaction between civil service and professional standards.

There are specific guidelines for those working at the **political/administrative interface**. The Ministerial Code includes paragraphs on relations with the civil service, including the requirement to maintain the political impartiality of the civil service [section 5 (paragraph 56) of the Ministerial Code]. Special Advisers, who are personal appointments by Ministers, are appointed under a Model contract, which sets out their duties and limitations on their political activity. In addition, specific guidance is issued to Heads of Government departments on relevant issues such as contacts between civil servants and opposition parties, links with think tanks known to be affiliated to a particular political party etc. This guidance is currently being revised for wider dissemination.

Minimum standards of behaviour for the public service are not stated in legislation. The only legislative framework specific to the civil service is the Civil Service Order in Council which requires recruitment via fair and open competition and selection on merit. For local government, there is a framework of legislation requiring non-political behaviour by officers.

#### *b) Unacceptable conduct for public officials according to the law*

At present, with the exception of the “surcharge” regime for local government (which applies to both elected members and appointed officers), there is no specific regime for public officials as opposed to the private sector. The law on corruption of course, covers all staff and elected members. Consideration is being given to a new offence of Misuse of Public Office (there is currently a common law offence, which has been rarely used).

The following kinds of specific misconduct are defined for public officials by **criminal legislation**: active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials. The Public Bodies Corrupt Practices Act of 1889 criminalises direct active and possible

corruption. Indirect corruption (using an intermediary) is covered by the reference to offering or receiving an inducement “for any other person” as well as by conspiracy legislation. The general law on attempt covers attempted corruption.

Partiality in official decision-making and abuse of office or public trust are the kind of behaviour covered by the current common law offence of misconduct in a public office. This area of the law is now under review.

Under the Prevention of Corruption Act 1916, it is an offence for any public servant to accept any gift or consideration as an inducement or reward for doing (or not doing) anything in his or her official capacity; or showing favour (or disfavour) to anyone in his or her official capacity.

Under the 1916 Act, the courts will assume that any money, gift or consideration which a public servant receives from a person or organisation which has obtained (or is trying to obtain) a Government contract has been received corruptly unless the officer proves otherwise.

Civil servants, along with other Crown servants, are also subject to the Official Secrets Act 1989. Under the Act, it is an offence to disclose official information in six specified categories without lawful authority and also if the disclosure is damaging to the national interest. The six categories are security and intelligence, defence, international relations, foreign confidences, information which might lead to the commission of crime and the special investigation powers under the Interception of Communications Act 1985 and the Security Services Act 1989.

#### **IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct**

##### ***a) Measures used by human resources management to promote an ethical environment***

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.
- Taking ethical considerations into account in the recruitment process: there is a legal requirement for recruitment to the civil service to follow the principle of selection on merit on the basis of fair and open competition.

**Special checks** are carried out in areas of particular sensitivity and apparent conflicts of interest would be explored as part of the recruitment/appointment process. All new civil servants receive training and courses for senior private sector entrants to the civil service focus on this area in particular.

##### ***b) Informing and training public servants on ethics issues***

As mentioned above, training is given for all new civil servants, but courses for senior private sector entrants to the civil service focus on this area in particular. Departments provide induction material and

training, which should include the Civil Service Code and departmental ethics rules. Central training is also available.

There is a framework for discussion of ethics issues. In the first instance, civil servants should take these up with their line manager. If, however, there remains concern there is a route of appeal via the departmental Permanent Secretary to the Civil Service Commissioners. Furthermore, Parliament has recently passed Public Interest Disclosure (whistleblowing) legislation which covers all public servants.

***c) Other measures to promote high standards of conduct and assist prevention***

These include:

- Identification and reporting of conflict of interest situations, especially in areas of financial management, post public employment, receiving gifts and benefits such as fees, payments or entertainment.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness of responding to requests.

***d) Disclosure policy***

Disclosure of personal information (declaration of personal assets, financial interests) is required from elected officials, senior public servants, and those appointed to public bodies. The conflict of interest rules for Ministers are more stringent than those for members of Parliament in general. Within Government, disclosure requirements apply only to relevant interests. Requirements in, for example, the Department of Trade and Industry in relation to private business interests are therefore more stringent than in some other departments. The declaration is confidential.

Disclosure is required on an annual basis for members of Parliament, and when joining the public service or when the relevant circumstances change for public bodies, Ministers and civil servants. The following information is required to be disclosed:

- Assets and liabilities.
- Outside positions.
- Gifts.
- Ministers and civil servants must declare any interests where there is a risk of an actual or apparent conflict of interest with their official duties.

With the exception of disclosure by MPs and members of public bodies, all declaration is confidential. It is used as a basis for advice on managing any possible conflict of interest. Disclosure of gifts and hospitality is required in all sectors.

***e) Procedures to report misconduct/suspected corruption***

Internal rules define the procedure within each organisation across the public service. The Civil Service Code provides for civil servants to report matters including those that are illegal, improper or unethical. Legal protection is available to public servants who expose wrongdoing (Public Interest Disclosure Act 1999).

**For the public**, special procedures are available to expose wrongdoing committed by public servants, such as complaint procedures, ombudsman, help desk or telephone line.

*f) Internal control to support the improvement of ethical conduct in the public service*

Management is responsible for developing and implementing appropriate systems of internal control within the parameters set by central guidance such as “Government Accounting”. In central government corporate governance statements to deliver assurance about management review of the system of internal control have recently been introduced (currently restricted to review of internal financial control). All departments and other areas of the public sector have an internal audit function responsible for reviewing and reporting on the adequacy of the systems of internal control. In addition standards of ethics are overseen by the human resources function (e.g. rules in relation to conflicts of interest). Many departments are setting up Ethics Committees to oversee this area.

Internal control is required by general policy. The system of internal control operated by management should include preventative, detective, and corrective measures. Internal audit examines that system and makes recommendations on how to remedy weaknesses. An Audit Committee, which (depending on the nature of the organisation) will be comprised of members of senior management and/or non-executive members, often oversees the whole process.

Internal audit will follow-up recommendations they have made and report to senior management and/or an Audit Committee. Internal audit will normally prepare an audit needs assessment following an assessment of risk. If a formalised management risk assessment has been developed this may be the lead factor in determining internal audit activity. The frequency of review will reflect the perceived risk in a particular area. Heads of Internal Audit will normally deliver an annual overall opinion on the system of internal control. Departmental audit committees and equivalents, National Audit Office, which may include references to the work of internal audit in its reports to Parliament, have access to the reports of the reviews.

*g) Disciplinary procedures in case of a breach of public service standards*

Internal rules for civil service departments make clear that breaches of the organisation’s standards of conduct or other forms of misconduct, and any other circumstances which significantly disrupts or damages the performance or reputation of the organisation or the civil service, may be subject to the disciplinary procedures. The sanctions applied as a result of disciplinary proceedings are a matter for the department concerned in the light of the individual circumstances of each case. Public servants, along with all other employees who are dismissed, have the right in law to appeal to an Employment Tribunal provided they have a minimum of one year’s qualifying service.

**V. Scrutinising misconduct in the public service**

*a) Institutions and procedures to investigate and prosecute misconduct*

Misconduct would usually be investigated, in the first instance, by the Government department (or local authority etc.) as employer. Depending on the nature of the misconduct, this might be led by the internal audit function or the human resources function. If, however, there is any question of criminal activity, the police would be involved and would take responsibility for both investigation and (in conjunction with the Crown Prosecution Service) prosecution. If evidence of misconduct was identified by the National Audit

Office, as part of their scrutiny of a department, they would obviously investigate the evidence themselves in a similar way. Misconduct which falls short of a criminal offence, but offends against disciplinary requirements, is the responsibility of the Head of Department, advised by the Principal Establishment and Finance Officer. The Civil Service Management Code sets out the detailed requirements, including appeal arrangements.

***b) Institutions in place to perform independent scrutiny of the administration***

These include:

- Parliament/Parliamentary committee.
- Independent/external auditors reporting to elected bodies such as Parliament.
- Ombudsman.
- Courts for judicial review.
- Civil Service Commissioners.
- Commissioner for Public Appointments.
- Civil Service Appeal Board.

The National Audit Office (in respect of central government) and the Audit Commission (in respect of local government) are responsible for certifying published accounts and will examine regularity, propriety and value for money in the course of the audit reviews. External audits are conducted on an annual basis and audit reports are published routinely. Moreover, every department and local authority will have an internal audit capacity. On questions of conflict of interest, support is usually provided by the human resource function.

There are procedures/mechanisms available to bring wrongdoing to the attention of bodies exercising independent scrutiny on public service activities, for example, value for money reports presented to Parliament by the National Audit Office, qualification of accounts notes to the certified accounts or *ad hoc* mechanisms like an annual fraud return.

**VI. Co-ordination and self-assessment**

***a) Co-ordination and management of government ethics or anti-corruption policy***

There is no single institution assigned to co-ordinate and manage the implementation of the government ethics policy, but the Committee on Standards in Public Life oversees and advises the Government on standards across the public sector. This Committee has provided several reports on the state of ethics in the public service for Parliament (various reports are published as Command papers and presented to Parliament), and for Government. The Committee reports both annually and on individual inquiries which it carries out.

Actions are taken to ensure the **consistency** of government ethics and anti-corruption measures. For the most part, Government departments develop and operate their own systems. The Treasury develops policies on professional standards for internal audit and the framework in which external audit is conducted. The Treasury and Cabinet Office collect information and disseminate guidance on good practice.

There is no national corruption prevention strategy as such, although individual public sector organisations may have their own internal arrangements. However, public officials are subject to two specific statutes, the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1916, as well as to the common law offence of bribery of a public official. This legislation is currently being reviewed with a view to reform and modernisation. This review is also taking account of the UK's international obligations, amongst which is the OECD Convention of Bribery of Foreign Public Officials in International Business Transactions. As for the involvement of the public in preparing the policy, the Committee on Standards in Public Life consults widely in preparing recommendations, inviting written evidence and holding public oral hearings.

***b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct***

The Committee on Standards in Public Life (established in 1994) has now reviewed the implementation of recommendations in its early reports and current ethical standards across most key areas. Internal reviews have also been completed. Openness, declaration of interests, and effective audit are considered the most successful instruments for corruption prevention.

## UNITED STATES OF AMERICA

### I. The general context for managing ethics in the public service in the United States

#### a) *The principal ethics-related issues which have confronted the federal public service during the past 10 years, and especially within the past 18 months*

Some developments in the past 10 years that have raised ethics-related issues for the federal public service have included the following:

- Privatisation of federal government operations or programmes.
- Contracting out services formerly provided by the federal government.
- Increased public-private sector interactions and partnerships, including co-sponsorships.
- Downsizing of staffing levels and tightening of budgets.
- Streamlining legal and regulatory requirements.

With regard to the senior level (politically appointed officials), there have been a number of high profile civil penalty actions and settlements involving alleged violations of the criminal conflict of interest statutes during the past six years. In addition, in the past several years there have been a number of independent counsel investigations into the activities of senior officials in the administration.

In terms of more recurring or perennial ethical misconduct issues, administrative enforcement actions most frequently have arisen in connection with:

- Misuse of official position.
- Misuse of government property.
- Acceptance of gifts from prohibited sources.
- Conflicting financial interests.
- Conflicting outside activities.

A number of significant ethics issues have arisen in connection with **recent judicial decisions**. In 1999, the Supreme Court issued a decision that interpreted the illegal gratuities statute as requiring proof of a direct link between a gift and some official act. The administrative prohibitions on acceptance of gifts from prohibited sources or because of official position were not at issue in the case. These administrative rules, issued by the Office of Government Ethics (OGE) in 1993, remain fully effective. In 1995, the Supreme Court held that a law prohibiting the acceptance of honoraria, even where the subject matter of the activity did not relate to an employee's official duties, was an unconstitutional infringement of free speech. In 1995, the Court of Appeals for the District of Columbia Circuit issued a decision which held that an administrative rule barring an executive branch employee from accepting reimbursement of travel expenses, incurred in connection with an unofficial speaking engagement in which the speech related to the employee's official duties, was an unconstitutional infringement of free speech.

***b) Measures to improve ethical conduct in the public service during the past 10 years***

Several initiatives have been taken in the past 10 years to improve ethical conduct in the public service. On the legislative front, the **Ethics Reform Act of 1989** made significant changes in the legal framework of the executive branch ethics programme. The Reform Act:

- Amended the post-employment law and made other changes to the conflict of interest laws, including authority to enforce these criminal statutes through civil penalty actions.
- Provided a statutory basis for a confidential financial disclosure system.
- Authorised federal agencies to accept payment of travel expenses from private sources.
- Created a civil prohibition on acceptance of gifts from certain prohibited sources.
- Placed limitations on outside earned income and barred certain outside employment for certain senior non-career officials.
- Enacted an honoraria ban that was later found unconstitutional, in part, by the Supreme Court.

In addition, Executive Order 12674, issued in 1989, promulgated a statement of principles of ethical conduct, barred all outside earned income for certain full-time non-career Presidential appointees, and directed the Office of Government Ethics to undertake a number of major regulatory actions. The most significant of these implementing regulations was the issuance of a comprehensive, uniform code of conduct for executive branch employees that replaced a 1960s regulation on a scheme of conduct. This code became effective in 1993.

**Other significant regulations** issued by the OGE during the 1990s include:

- A regulation governing exemptions and waivers from the conflict of interest laws.
- A regulation setting forth requirements for ethics training for executive branch officials.
- A regulation governing the confidential financial disclosure system.
- A regulation implementing the tax deferral remedy afforded by the certificate of divestiture programme.

OGE also reviewed and concurred in agency requests for individual agency supplements to the uniform code of conduct. Finally, OGE issued regulations implementing the statutory provisions of the Ethics Reform Act dealing with outside earned income and outside employment. In 1993, President Clinton issued Executive Order 12843, which requires certain senior officials to take an ethics pledge regarding their post-employment activities.

***c) Plans in preparation to address ethical issues in the federal public service***

The Office of Government Ethics is evaluating the criminal conflict of interest laws to determine areas where technical improvements may be made through legislation. OGE is also currently developing a regulation to implement the revised post-employment statute and a regulation to implement the ban on supplementation of federal salary. OGE is developing new training materials to provide annual training to senior officials. Currently, there are also discussions among government officials and legislators regarding legislative alternatives to the statutory independent counsel system which recently lapsed.

## II. Core values for the public service

### a) *Stating core values for the public service*

The core values of public service are embodied in the statement of 14 ethical principles in section 101 of Executive Order 12674. These principles are restated in the Standards of Ethical Conduct for Employees of the Executive Branch and form the basis for the more specific standards embodied in that code of conduct. The core values are the following:

- Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.
- Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- Employees shall not engage in financial transactions using non-public government information or allow the improper use of such information to further any private interest.
- An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from doing business with, or conducting activities regulated by, the employee's agency, or whose interests may be substantially affected by the performance or non-performance of the employee's duties.
- Employees shall put forth-honest effort in the performance of their duties.
- Employees shall not knowingly make unauthorised commitments or promises of any kind purporting to bind the government.
- Employees shall not use public office for private gain.
- Employees shall act impartially and not give preferential treatment to any private organisation or individual.
- Employees shall protect and conserve federal property and shall not use it for other than authorised activities.
- Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official government duties and responsibilities.
- Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those -- such as federal, state, or local taxes -- that are imposed by law.
- Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, colour, religion, sex, national origin, age, or handicap.
- Employees shall endeavour to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

The core public service values are printed on posters, in pamphlets and available on the Internet as well.

### b) *The stated core public service values are communicated to public servants*

The following forms are used:

- Core values are automatically provided when someone joins the public service.

- They are provided when someone takes up a position in a different public service organisation.
- The statement of core values is part of the employment contract/document.
- Core values are communicated by instruments of new technology, such as the Internet.

***c) The statement of core public service values was last revised in 1989***

The statement of core values as reflected in the principles of ethical conduct in Executive Order 12674 were issued on 12 April 1989. These principles were restated in the standards of conduct which became effective on 3 February 1993.

Public servants participated in the process of issuing new standards of conduct. A series of meetings were held with ethics officials in executive branch agencies during the drafting phase of the project. Their comments and suggestions were taken into account in the proposed regulation, which was published for public comment. During the comment period, any interested person, including executive branch employees, could comment on the proposed regulation. OGE received approximately 1200 comments, the vast majority of which were from persons or organisations in the private sector. Each of these comments was reviewed and those raising relevant issues were discussed in the preamble to the final rule. In many cases, suggested changes were incorporated in the final rule.

**III. Standards of behaviour for the public service**

***a) Statements of the standards of behaviour expected of public servants***

The Standards of Conduct comprise the statement of the standards of behaviour expected of public servants. The Standards are issued as regulations and are made available to all public servants and the public. They cover the following points:

- Receiving gifts and benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Use of corporate credit cards.
- Work outside the public service.
- Restrictions on post-employment.
- Special conditions/permissions on movement from the public service to the for-profit sector.
- Involvement in political work.

Agencies, with OGE's concurrence, may issue special guidelines for specific groups.

***b) Unacceptable conduct for public officials according to the law***

Specific types of misconduct are defined by criminal legislation include the following:

- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Partiality in official decision-making.
- Abuse of office or public trust.
- Bribery and illegal gratuities.
- Representational activities in matters affecting the government.
- Acts affecting a personal financial interest.
- Supplementation of salary.
- Fraud or false statements in a government matter.
- Acceptance or solicitation of anything of value to obtain appointive public office for another.
- Acting as an agent of a foreign principal.
- Contracting with a member of Congress.
- Embezzling, stealing, purloining, or converting public money, property, or records.
- Disclosure of classified, proprietary, and other confidential information.
- Lobbying with appropriated moneys.
- Failing to account for public money.
- Solicitation of political contributions under certain circumstances.
- Misuse of government-paid postage.
- Counterfeiting or forging transportation requests.
- Concealing, mutilating, or destroying a public record.
- Unauthorised use of documents relating to claims from or by the government.
- Interference with civil service examinations.
- Maintaining, disclosing, or requesting or obtaining certain personal records under certain circumstances.

**Further prohibitions and restrictions** imposed on public officials by other legislation include the following:

- Gifts to official superiors (conduct provisions of the law dealing with government organisation and employees).
- Solicitation or receipt of gifts from specified prohibited sources (conduct provisions of the law dealing with government organisation and employees).
- Outside earned income and outside activities restrictions (Ethics in Government Act, as amended).
- Contracting officials seeking private sector employment (procurement integrity provisions of the Federal Procurement Policy Act).
- Disloyalty and striking (suitability and conduct provisions of the law dealing with Government organisation and employees).
- Excessive use of intoxicating beverages (suitability and conduct provisions of the law dealing with government organisation and employees).
- Prohibited personnel practices, such as discrimination on the basis of race, gender or religion (Civil Service Reform Act).
- Misuse of appropriated funds or government vehicles (appropriations law).

- Political activities (Hatch Act Reform Amendments).
- Retaliation against whistleblowers (Whistleblower Protection Act).
- Participation in the appointment or promotion of relatives (anti-nepotism statute).
- Arbitrary and capricious withholding of public records (Freedom of Information Act).

#### **IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct**

##### ***a) Measures used by human resources management to promote an ethical environment***

The following measures are used:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring the selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.
- Taking ethical considerations into account in the recruitment process by background investigations and reference checks and, in the case of some very high-level officials, the senate confirmation process.
- Considering ethical behaviour in the performance appraisal. However, there is no general requirement that ethical behaviour be specifically considered in performance appraisals, since lapses in ethical behaviour would more likely be dealt with through misconduct proceedings; nevertheless, ethical behaviour could be subsumed by the standards and elements by which an employee's performance is measured.
- Taking administrative disciplinary actions in cases of ethical misconduct.

Special attention is given to high-level officials, as well as other less senior employees involved in certain sensitive areas such as law enforcement, national security, and contracting. Such persons are subject to more intensive background investigations than other employees.

##### ***b) Informing and training public servants on ethics issues***

Each agency has an ethics training programme, established under requirements set by the Office of Government Ethics. The programme is designed to ensure that all employees are aware of the federal conflict of interest statutes, the Principles of Ethical Conduct for Government Officers and Employees, the Standards of Ethical Conduct and any agency rules supplementing those executive branch-wide rules, and how to contact agency ethics officials when the employee needs advice concerning ethics issues. Under this programme, every new employee receives an initial ethics orientation. Some employees (including Presidential appointees, employees in the Executive Office of the President, financial disclosure report filers, and others whose particular official duties warrant it) receive annual ethics briefings thereafter. Ethics officials make announcements on ethics issues as the need arises. Every agency has one or more ethics officials who are available in person, over the telephone, or via e-mail to answer questions in this regard.

*c) Other measures to promote high standards of conduct and assist prevention*

Measures include:

- Identification and reporting of conflict of interest situations, especially in areas of financial management, post public employment, receiving gifts and benefits such as fees, payments and entertainment.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness of responses to requests.
- Anti-corruption provisions in bids for public contract.
- Specific controls on public procurement procedures.
- Risk assessment of the areas susceptible to misconduct.

*d) Disclosure policy*

Senior officials, specified in the following paragraph, file **public financial disclosure reports**. These reports are freely available to the public upon request and anyone may gain access to them. Approximately 20,000 such reports are filed in the executive branch each year (plus several thousand in the legislative branch). Certain middle-level managers, and other employees such as contracting and procurement officials within the military and the civil service in the executive branch, are required to file **confidential financial disclosure reports**. Unlike public reports, the confidential disclosures are not available to the public but are kept within the individual agencies where they are filed. Agencies may designate as confidential filers any employee whose duties have substantial economic effect outside the government. In 1998 approximately 280,000 public servants were required to file a confidential disclosure report out of 4.2 million employees within the military and civil service.

Disclosure requirements are more stringent for senior-level officials, who must file public disclosure statements. This group includes: the President; Vice President; Presidential appointees requiring Senate confirmation; officials above GS-15 or the equivalent and military officers holding flag or general rank; administrative law judges; the Director of OGE and each agency's primary ethics official; the Postmaster General; and certain other political appointees. Disclosure statements completed by these officials require more detail and information and they are subject to public scrutiny.

The following information is required to be disclosed on an annual basis and at the time of joining or leaving the public service or when the relevant circumstances change:

- Assets and liabilities.
- Loans.
- Sources and level of income.
- Outside positions.
- Gifts.
- Previous employment.

Additional public disclosure requirements include compensation in excess of \$5,000 from any one source, and both public and confidential filers must report reimbursements and travel expenses and agreements or arrangements with either a past or future employer.

Financial disclosure for both public and confidential filers is used as a preventive instrument to identify potential conflicts of interest. Ethics officials review the contents of each disclosure report to determine whether an employee's assets and holdings conflict with his official duties. When a potential conflict is identified, ethics officials work with the filer to resolve the matter and eliminate the conflict. Those employees who are required to file either public or confidential reports do so upon entry into the public service and on an annual basis, and public filers also submit a report upon termination of office.

*e) Procedures to report misconduct/suspected corruption*

There are established procedures for public servants to report misconduct/suspected corruption committed by public servants. Legal provisions define these procedures; moreover, the executive branch regulation on standards of conduct requires such reporting.

Public servants who expose wrongdoing are protected by the Whistleblower Protection Act. The Office of Special Counsel (OSC) administers the Act, which provides employees who expose corruption or misconduct with legal protection from unfair reprisals or retaliation by agency officials. OSC receives complaints of such unfair practices and investigates them. Once an investigation is complete, OSC has the power to delay or restrain agency actions, and can seek legal remedies to protect employees, including litigation before the Merit Systems Protection Board (MSPB).

For the public, special procedures are available to expose wrongdoing committed by public servants, such as complaint procedures, help desk and a telephone line.

*f) Internal control to support the improvement of ethical conduct in the public service*

Internal control, required by law and by general policy, is in place to support the improvement of ethical conduct in the public service. The distinction between internal and external control within the federal government is the following:

- Internal means entities that are either responsible to, or report to, the head of an agency.
- External covers entities that have no direct supervisory oversight by anyone in the agency, for that reason, OGE's government-wide review function will be treated as an external control.

**Inspectors general** (IG) are placed within each major agency and department. The IGs are responsible for investigating fraud, waste and abuse within the agencies. They perform regular audits and reviews of agency programmes, expenditures and internal controls. Audit findings are summarised in a final report delivered to Congress.

Ethics officials also perform internal control functions within their agencies by administering financial disclosure, conducting training and providing counselling and advice to employees on matters relating to ethical misconduct. Agency ethics programmes also serve a vital internal control function by working with public officials to resolve potential conflicts of interest and by providing training, advice and counsel so that employees can avoid wrongdoing.

IG internal control efforts support corruption prevention efforts by ensuring that agencies and employees are not committing fraud, waste and abuse in complying with their statutory responsibilities. IG audits uncover this type of misconduct and thus serve as a mechanism to ensure that agencies meet the highest standards of honesty and integrity. Audits may result in improved agency procedures, as well as individual prosecutions.

Agencies are obliged to respond to recommendations for improvement contained in IG audits. IG offices conduct follow-up reviews to monitor agency progress in implementing the recommendations and reports to Congress on their findings.

IG investigations are conducted as necessary when a complaint is made against an agency or evidence of misconduct is brought to light and merits further scrutiny. IG offices also conduct programme reviews on a regular basis depending on the nature of the agency and the different programmes being reviewed. Likewise, OGE conducts agency ethics programme reviews on a regular basis throughout the executive branch.

IG reports are delivered to the agency head concerned and to Congress, and may ultimately become available to the public. OGE reports are delivered to the agency concerned, and are available to Congress and the public upon request.

*g) Disciplinary procedures in case of a breach of public service standards*

Disciplinary action – ranging from verbal admonishment, verbal or written reprimand, suspension, demotion, or removal – may be taken against civilian employees of the executive branch for conduct that violates administrative rules of ethical conduct, which may in some cases parallel the criminal code. Such administrative actions are authorised by law. Employees may challenge disciplinary actions taken against them administratively and in the courts. Certain high-level appointees may not be suspended, but may be removed by the President without any right of appeal.

The Office of Special Counsel (OSC) is authorised by statute to seek disciplinary action against federal officials who commit prohibited personnel practices, including removal from office, debarment from federal employment for up to five years, and a civil penalty of up to \$1,000 . OSC seeks disciplinary action by filing a petition against the individual with the Merit Systems Protection Board (MSPB). If the MSPB sustains the petition, the individual can seek review of the MSPB's order by the U.S. Court of Appeals for the Federal Circuit.

## V. Scrutinising misconduct in the public service

*a) Institutions and procedures to investigate and prosecute misconduct*

The **principal investigative organisations** involved in anti-corruption efforts include:

The **Federal Bureau of Investigation (FBI)** is the principal investigative arm of the U.S. Department of Justice. It is charged with gathering and reporting facts, locating witnesses, and compiling evidence in cases involving the violation of federal law except for matters that are assigned by legislative enactment or otherwise to another federal agency. The FBI has approximately 10,100 special agents and 13,700 other employees.

**Inspectors General (IG)** are used by many agencies either by statute or by the agency's own administrative determination. In general, IGs conduct investigations of fraud, waste, and mismanagement pursuant to authority granted by a federal law. This law ensures the independence of action of IGs by providing for separate administrative authority, direct reporting to Congress, and

protections against removal. An inspector general may investigate allegations of violation of ethics rules and laws as well as other federal statutes and regulations.

The **Office of Special Counsel** (OSC) functions as an independent investigative and prosecuting agency within the executive branch. OSC regulates political activity on the part of federal employees. OSC investigates and rules on allegations that employees have violated restrictions on political activity. In addition, OSC investigates allegations of prohibited personnel practices, especially cases of reprisal for whistle-blowing (the activity of reporting fraud, waste, and abuse, either inside or outside an agency). OSC employs approximately 90 employees.

The **General Accounting Office** (GAO) is the investigative arm of the U.S. Congress and is charged with examining all matters relating to the receipt and disbursement of public funds. While not part of the executive branch, GAO conducts investigations and audits for Congress to help ensure the accountability of the executive branch to the legislative branch. It also issues opinions which deal with a wide range of ethics matters. GAO performs audits of federal programmes and publishes reports on its findings and recommendations. GAO has approximately 3,400 employees.

**The responsibility of the Department of Justice for the prosecution** of misconduct and corruption in the U.S. Government:

The Attorney General, appointed by the President with the advice and consent of the U.S. Senate, is the head of the Department of Justice (DOJ) and the chief law enforcement officer of the federal government. Specifically, the Criminal Division within DOJ develops, enforces, and supervises the application of all federal criminal laws, including those pertaining to anti-corruption. The Division and 93 U.S. Attorneys are responsible for overseeing criminal matters under more than 900 statutes. The President of the United States appoints U.S. Attorneys. Each has authority over a specific geographic district within the U.S. and may employ a number of investigators and staff members to fulfil their mission.

The Public Integrity Section (PIS), a part of the Criminal Division, oversees the federal effort to combat corruption through the prosecution of elected and appointed public officials at all levels of government. PIS has exclusive jurisdiction over allegations of criminal misconduct by federal judges, and also monitors the investigation and prosecution of crimes concerning the electoral process and conflict of interest. PIS tends to alleviate problems of local favouritism and prejudice that may arise when a U.S. Attorney or an elected state prosecutor is responsible for prosecuting a political enemy or ally. PIS is staffed by approximately 90 lawyers.

**Prosecutions** refer to criminal and civil actions; however, there is also a possibility of actions against employees for violations of administrative standards. Those actions would be taken by the agency with the advice and/or recommendation of the inspector general or the designated agency ethics official. Certain investigative and/or prosecuting bodies are empowered to bring suspected cases of corruption directly to court.

***b) Institutions in place to perform independent scrutiny of the administration***

These include:

- Congress/ Congressional committee.
- Independent/external auditors reporting to elected bodies such as Congress.

- Courts for judicial review.
- Independent office of ethics.

As a general rule, all executive agencies are required by law to refer to DOJ cases that involve possible violations of federal criminal law including those involving violations of anti-corruption laws. In addition, the ethics codes in the executive branch oblige executive branch employees to “disclose waste, fraud, abuse, and corruption to appropriate authorities.” Moreover, there are a number of avenues available, both inside and outside executive branch agencies, for actually reporting wrongdoing. For example, IG offices operate complaint hotlines that government employees and citizens can use to report wrongdoing in government.

OSC provides a secure channel for federal workers to disclose information about various workplace improprieties, gross mismanagement, waste of funds, or abuses of authority. Although it is outside the executive branch, GAO also operates a hotline and receives calls from individuals alleging wrongdoing by employees of federal agencies.

Two of the principal agencies conducting external audits relating to anti-corruption efforts are the OGE and the General Accounting Office (GAO). **OGE** conducts regular on-site programme reviews of agency ethics programs. These reviews verify that agencies are complying with their statutory and regulatory responsibilities to administer all aspects of an ethics programme, including financial disclosure, ethics training, and counselling and advice. OGE audit teams also prepare a final report outlining programme deficiencies in an agency’s ethics programme, and containing recommendations. OGE also conducts single-issue reviews to detect problem areas for agencies in implementing ethics regulations or in operating their ethics programmes. Additionally, the executive branch has other specialised audit offices located within different agencies and departments that conduct internal audits to promote the economy and efficiency of agency operations and programmes.

OGE performs ethics programme reviews in all federal agencies over a four-year cycle. OGE does not publish its ethics programme audit reports, but the reports may be obtained by anyone through a written request made to OGE under the provisions of a specific federal law permitting access to government records.

Congress may separately initiate its own audit/evaluation of an agency’s programmes through its investigative arm, the **GAO**. GAO external audits and reviews are conducted as necessary and all components of agency programmes can be audited or evaluated. The majority of GAO audits and reviews are made in response to specific Congressional requests while some reviews are specifically required by law. However, some GAO audits are undertaken independently in accordance with GAO’s basic legislative responsibilities.

GAO summarises its findings to Congress in the form of written reports, opinions, and oral testimony. All of GAO’s unclassified reports are available to the public. Copies of GAO reports are also furnished to interested Congressional parties; federal, state, local, and foreign governments; members of the press; college faculty, students, and libraries; and non-profit organisations.

## VI. Co-ordination and self-assessment

### *a) Co-ordination and management of government ethics policy*

In general, the Office of Government Ethics (OGE) is responsible for co-ordinating and managing the implementation of the government ethics policy in the executive branch. OGE is defined by legislation as a separate agency within the executive branch of the federal government. The President, with the advice and consent of the Senate, appoints its Director for a five-year term. OGE employs approximately 80 staff members and has an operating budget of approximately \$8 million.

In 1988, Congress required OGE by law to submit **reports** biennially to Congress, summarising actions taken during the previous two years and providing any information which the Director of OGE considered necessary. In addition, each ethics official is required to submit an annual report (in survey form) and these reports comprise part of the biennial report to Congress.

The following actions are taken to ensure the consistency of the government ethics and anti-corruption measures:

- Analysing systemic failures and trends in criminal and disciplinary cases;
- Providing national guidance and/or a checklist to develop prevention strategies in organisations;
- Assigning a central office responsible for oversight of all ethics-related measures, including ensuring the consistency of legal regulations.

The President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) are two councils consisting of federal inspectors general and appropriate federal officers established by the President to co-ordinate and enhance governmental efforts to promote integrity and efficiency and to detect and prevent fraud, waste, and abuse in federal programmes.

Although there is no national guidance provided in this area, the Office of Government Ethics systemically evaluates failures and provides guidance for the executive branch of the federal government.

### *b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct*

OGE regularly assesses the effectiveness of its measures and rules based on regular contacts with agency ethics offices and other bodies within the ethics community. OGE gains helpful insight into how the ethics programme are being implemented in the field and what sort of challenges the agencies are facing in fulfilling their missions. OGE then uses this information to evaluate how its programmes and policies can be changed to best meet these challenges. OGE is required to submit a biennial report to Congress summarising its activities during the two years prior to the report's submission. This report provides the opportunity for OGE officials to evaluate and change, as necessary, the performance elements which guide and structure its ethics initiatives. Additionally, OGE is required by law to complete an annual performance plan. This process gives OGE an opportunity to identify measurable goals that it will accomplish in fulfilling its mission of promoting ethical conduct and preventing misconduct.

There is no established time period for reviewing and assessing the prevention measures. The measures are reviewed as deemed necessary and when pertinent information arises indicating a need to re-evaluate current measures. As noted earlier, OGE is required to complete an annual performance plan that necessitates some degree of assessment. This requirement is governed by the Government Performance and Results Act (GPRA) and is evaluated by both the Office of Management and Budget and Congress.

Financial disclosure is generally considered to be one of the **most effective means** of preventing conflict of interest and promoting transparency in the public service. However, without a clear and enforceable set of standards of conduct, effective use of financial disclosure would be impossible. Furthermore, these standards of conduct are the central element that allow meaningful counselling and training. Systems for detecting and punishing government employees for wrongdoing (including administrative actions such as reprimand, suspension, and termination) serve as another important tool for deterring corruption and reinforcing behavioural norms.

Lastly, ongoing agency programme on ethics training and counselling and advice play an important complementary role to financial disclosure by instructing government employees on what is expected of them and the rules they must adhere to in fulfilling their official duties. All of these programme elements together help to create an environment where corruption is not tolerated or condoned and one where executive branch employees are aware of their ethical responsibilities to avoid corrupt conduct.

OGE is not aware of any insurmountable impediments to further reducing corruption in the public service.