

Public Governance and Territorial Development Directorate  
Public Governance Committee

## WORKING PARTY OF SENIOR PUBLIC INTEGRITY OFFICIALS

Comments Received During the Public Consultation on the Draft Recommendation of the OECD Council  
on Public Integrity

*This note contains a concise summary and a full compilation of comments received on the draft Recommendation of the OECD Council on Public Integrity. An invitation for comments was sent to the policy communities and published on the OECD Website.*

*The open consultation took place from 22 February until 31 March 2016. Over fifty responses were received representing the relevant Committees, Working Parties and Networks, accession countries and key partners, international organisations and academic institutions.*

*This document only exists as a PDF file.*

For more information please contact Julio Bacio Terracino ([julio.bacioterracino@oecd.org](mailto:julio.bacioterracino@oecd.org))

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# COMMENTS RECEIVED DURING THE PUBLIC CONSULTATION ON THE DRAFT RECOMMENDATION OF THE OECD COUNCIL ON PUBLIC INTEGRITY

17 June 2016



**Summary**

This note contains a full compilation of comments received on the draft Recommendation of the OECD Council on Public Integrity. A concise summary of the comments is provided separately.

An invitation for comments was sent to the policy communities and published on the OECD Website. The open consultation took place from 22 February until 31 March 2016. Over fifty responses were received representing the relevant Committees, Working Parties and Networks, accession countries and key partners, international organisations and academic institutions.

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Norway: Ministry of Foreign Affairs  
Portugal: Presidência do Conselho de Ministros  
Slovak Republic: Department of Civil Service and Public Service and Control and Prevention of Corruption Section of the Government Office  
Spain: Anti-Fraud Office of Catalonia  
Spain: Instituto Nacional de Administración Pública (INAP)  
Sweden: Delegation to the OECD Regulatory Policy Committee  
Sweden: Ministry of Finance  
Sweden: Representation in the OECD Working Party on State Ownership and Privatisation Practices  
Switzerland: Federal Department of Economic Affairs, Education and Research

### Comments from other organisations and individuals

L'Association des Acheteurs Publics  
Tarek BAHRI  
BIAC (Business and Industry Advisory Committee to the OECD)  
European Commission: Smart Regulation and Work Programme  
European Ombudsman  
German Association of Political Consultants  
Hungarian Integrity Community

International Anti-Corruption Academy (IACA)

Michael JOHNSTON

Rutgers Center for Government Compliance and Ethics

National University for Public Service, Hungary

Ishat REZA

Loreta TAUGINIENÉ

TUAC (Trade Union Advisory Committee to the OECD) & Public Services International (PSI)

Transparency International

Transparency International Netherlands (TI-NL)

United Cities and Local Governments (UCLG)

University of Genova

Water Governance Initiative

## Comments from Countries

### Austria: Bundeskanzleramt / Öffentlicher Dienst und Verwaltungsreform

[...]

On behalf of Austria I would like to thank you for those marvelous recommendations concerning integrity!

Austria appreciates the Draft Recommendations of the OECD as they reflect our views on enhancing integrity in the Federal Civil Service of our country.

We are pleased to note the definitions and the very clear structure of the document and find similar approaches to the measures of implementations taken in Austria – especially the three pillars the public integrity system is organized around.

It is for Austria reassuring in our striving to optimize integrity to see the visions of the OECD in congruence to our ongoing process to counteract and prevent corruption on a very broad basis.

In Austria we have Codes of Conduct on several levels in the Federal Public Sector – the Federal one binds each employee of this sector and those from the ministries “specialize” the duties in their entities.

I just want to add, that Austria – to be precise: Anti-Corruption Law concerning judges and prosecutors - was reviewed by “GRECO” - a subgroup of the Council of Europe – last week and we are looking very much forward to getting the results, which will be submitted at the end of 2016. And in 2019/20 the whole senior civil service will be inspected by GRECO.

And last to mention that Austria is in preparation of a comprehensive “National Anti-Corruption Strategy” and therefore we welcome the Revised Recommendations even more!

Thank you for your intentions and efforts concerning this very difficult item and – please – proceed in that way!

Best regards,”

Bundeskanzleramt Österreich / Öffentlicher Dienst und Verwaltungsreform

Abt. III/1 – Allgemeines Dienstrecht

Mag.a Andrea Rumplmayr

Leiterin des Referates „Gleichstellungsrecht des Bundes und Fremdlegistik der Länder“

## Armenia: EU Delegation

Dear OECD Govintegrity initiative,

[...]

The issue of education on integrity seems missing in your document.

I'd like to raise the issue of education on integrity that has to permeate curricula at all levels of education starting from primary schools. Possibly, curriculum should be implemented through modern and student-centred methodologies (EG: games, cartoons, interactive presentations...). This approach is particularly important in countries where corruption is systemic and adults seem to be "lost generations".

I am happy if you'd like to know more about the project on integrity targeting youth that we are developing in Armenia together with a local educational institution (TUMO Centre). The aim is to extend its applicability beyond Armenia as it is going to be produced also in English.

Thanks for your attention.

Kind regards,

Alessandro Zanotta  
Economic Governance and PAR Adviser  
EU Delegation Armenia

## Belgium: Flemish Government

Dear Sir or Madame,

Thank you for sharing the draft recommendation. I agree with the recommendations in the draft document and they are very much in keeping with a policy recommendation I have recently sent our competent minister to ensure the further development of the integrity system at the Flemish government.

I therefore believe this draft is a valuable update which takes into account the higher level of complexity of our society and interconnectedness between the different stakeholders in society.

The draft document refers to integrity leadership. (cfr. III, 7). I believe it could be broadened to ethical leadership which also entails actively managing integrity by leaders.

A recent development in our organisation however is that traditional hierarchy is abandoned in favour of self-managing teams and a network organisation. In this context it is not very clear who is responsible for/take the role of integrity/ethical leadership. Also working remotely seems to add additional challenges to (ethical) leadership.

I very much look forward to discuss the recommendations with you and our colleagues at the forthcoming meeting of the working party of senior public integrity officials.

All best wishes,

**Kristien Verbraeken**

Coördinator Integriteitszorg  
Integrity Officer  
Vlaamse overheid  
AGENTSCHAP **OVERHEIDSPERSONEEL**

## Brazil: Ambassade du Brésil

Dear members of the OECD Secretariat,

In response to Director Rolf Alter's request, I list below the Brazilian Government's comments to the **draft Recommendation on Public Integrity**. We hope our suggestions may be of aid in developing the document even further.

Paragraph 4.b) – In order to cover the specific case of Brazilian legislation, we would like to suggest the inclusion of the term "civil" in the following manner: "Setting integrity standards in the legal system and organizational policies to provide a clear basis for – disciplinary, administrative, CIVIL, and/or criminal – investigation and sanctions"

Paragraph 4.c) – Taking into account that the paragraph makes mentions elective and appointed office, we would like to propose the inclusion of a reference to nepotism: "Setting clear and proportionate standards and procedures for high-risk positions and appointed or elected positions to prevent corruption and misconduct, including for the management of (latent) conflict of interests AND THE PREVENTION OF FAVORITISM AND NEPOTISM".

Paragraph 5.b) – We would like to include reference to youth as a special focus of the campaigns: "[...] campaigns to promote civic education, public values and ethics among citizens, IN PARTICULAR THE YOUTH".

Paragraph 7.a) – To avoid being excessively prescriptive concerning requirements for selection, appointment or promotion in a management positions, we would like to suggest the inclusion of the term "desirable" in the following manner: "Including integrity leadership in the profile for managers at all levels of the organization, and as a DESIRABLE requirement for the selection, appointment or promotion in a management position."

Paragraph 9.c) – We would like to suggest clarification concerning the channels through which "impartial advice and guidance" should be acquired: "In addition impartial advice and guidance (provided internal and/or external to the organization) should be made easy accessible to public officials, THROUGH PROPER, FORMAL CHANNELS".

Best regards,

Pedro Vieira Veiga  
Secrétaire d'Ambassade  
Service Économique  
Ambassade du Brésil

## **Canada: Employment and Social Development Canada**

Having reviewed the Draft OECD Recommendation on Public Integrity, Canada feels relatively comfortable with the spirit and intention of the document. The information concerning the three pillars as well as the multilevel governance and whole of society perspective to integrity is both well written and consistent. We look forward to reviewing any amendments made to the document going forward.

### **Drew Meerveld**

Junior Policy Analyst  
International Relations  
Strategic and Service Policy Branch  
Employment and Social Development Canada

## Chile: Contraloría Regional del Bío Bío

*The following comments were submitted by Luciano Guillermo Bascur Medina, Analista, on behalf of Unidad de Personal de la Administración del Estado, Contraloría Regional del Bío Bío*

### COMENTARIO: OCDE DE INTEGRIDAD PÚBLICA

La integridad es la columna vertebral de las estructuras políticas, económicas y sociales.

La integridad es la piedra angular de todo el sistema de buen gobierno

Partiendo de la base de estas 2 afirmaciones, podemos señalar que la buena gobernanza es un elemento fundamental para el desarrollo de la integridad Pública.

Si observamos las denuncias de corrupción en contra del ex Presidente de Brasil, la ex Presidenta de Argentina, el Gobierno del Presidente Maduro en Venezuela, el desprestigio de la clase política en Chile, por dar algunos ejemplos, resulta tan lejano pensar en un **Sistema de Integridad coherente y global**, (punto II de la recomendación)

La política y los poderes económicos siempre han estado vinculados y los conflictos de interés cada vez son más latentes, en este sentido creo que el antídoto, pasa por una sociedad más democratizada, donde haya una participación más activa de los ciudadanos en la toma de decisiones, desde esta lógica rescato el punto III de esta recomendación que hace mención a crear una **Cultura integral de la sociedad de la Integridad**, que no solo fortalezca principios y normas, a la vez el rol del ciudadano en los procesos internos de su Nación, que permita la creación de fuerzas emergentes y líderes, que contribuyan al reencanto global de la sociedad en un buen gobierno, un gobierno equilibrado, donde el hombre viva como piensa y no piense como vive.

En relación al punto IV. **Asegurar la responsabilidad y control efectivo y la ejecución de la integridad pública**. Considero que un rol importante lo juega la justicia, es fundamental contar un sistema judicial eficaz y oportuno, al servicio de toda la sociedad, con altos estándares de gestión y transparencia pública, que otorguen garantías. El desencanto de la ciudadanía con la justicia es generalizado, en todo ámbito, basta de juicios eternos con un final anunciado "Penas Remitidas". Que los corruptos y los ladrones de cuello y corbata paguen con penas de cárcel efectiva.

## Colombia: National Planning Department

Dear Sirs,

Please find below comments from the Government of Colombia to the Draft Recommendation of the Council on Public Integrity. It is worth to mention that we prepared such comments from our general perspective about regulatory policy and public consultation.

We agree with the OECD's Public Governance Committee that integrity is the backbone of the political, economic and social structure of any country; therefore, in recent years there have been significant efforts from the Government of Colombia to strengthen the institutional and legislative frameworks that ensure standards for the public function. That is the case of the following regulations:

- Anti-corruption Statute (Law 1474 of 2011), which strengthened mechanisms to prevent, investigate and punish acts of corruption, and aimed at increasing the effectiveness of public management control;
- Creation of the Secretary of Transparency in the Presidency of the Republic, which is in charge of the design and implementation of the National Government's anti-corruption policy;
- Law on Transparency and Access to Public Information (Law 1712 2014), that promotes transparency and access to information and open data;
- Decree 1083 of 2015, which sets the regulatory framework for Internal Control Systems in public entities.

Moreover, the structure of the Colombian State includes several control and monitoring agencies ("watchdog" organizations), which counterbalance the exercise of public management throughout the branches and levels of public power. Those organizations are, for instance, the General Comptroller's Office, District Comptrollers, the Attorney General's Office and Superintendencies, among others.

Although there have been accomplishments in setting institutional and legal frameworks for an integrity system in Colombia, there is still room for improvement in working as a coordinated and comprehensive system, more than as specific offices doing separate efforts.

In terms of creating a culture of integrity for all public officials (second pillar), Law 909 of 2004 develops the constitutional principles of equality, merit, morality, efficiency, economy, impartiality, transparency and publicity as the principles that should govern the exercise of public management.

As for the third pillar (establishing effective accountability through transparency and active participation), the Government of Colombia is working to grant stakeholders an active role in the development of public policies through the creation of a Unified System for Public Consultation (SUCOP, for its initials in Spanish). SUCOP will be a platform that will allow any person to make comments about regulation drafts, regulatory agendas and regulatory impact analyses. This should prevent officials from issuing regulation to benefit specific sectors or people without strong technical and/or analytical justifications.

Colombia will continue to follow the Recommendation on Public Integrity, and to work with OECD in the discussion, identification and implementation of best practices.

Kind Regards,

Andrés Trejos  
Director for Business Development  
National Planning Department  
Government of Colombia

## Costa Rica: Presidency

**Mr. Rolf Alter, Director, Public Governance and Territorial Development**

Good evening from Costa Rica. In order to participate in the process of public consultation of the Draft Recommendation on Public Integrity, considering that our country is participating in the accession process to the organization, we want to make our comments oriented in two different aspects, one in general terms, and another to make observations in the text that are subject of public consultation, both of them with the objective to make a constructive input to increase the relevance and impact of the final output of the process.

In general, although we understand that the Draft Recommendation is a principle-based text and that the practical guidance on HOW these principles may be implemented could be added a later stage, one suggestion will be to include the following concepts since now:

### **I. Structural Roles:**

1. Limited re-election (Local Governments)
2. Possibility of impeachment
3. Compensation:
  - Consistent system
  - Logical system
  - Result driven system
  - Fair system

### **II. Rule of Law:**

- Simple rule of:
- Tax exemption
- Subsidies
- Grants
- Political Campaign Financing

**III. Accountability:** Consistent system across the government entities.

In the other side of the comments:

- **II Section. Action 2:** The Recommendation could include some aspects related with use of incentives to promote institutional responsibilities to strengthen the effectiveness of the integrity system
- **III Section Action 8:** In order to create a merit based professional public sector dedicated to public sector values and good governance, we suggest that could be include a action directed the importance of which the remunerations of the government employees are adapted to reduce the risks of corruption and to avoid the conflicts of interest
- **IV Section. Action 12:** The Recommendation might include an action related to creating the suitable mechanisms in order that the oversight organizations realize the labours of supervision in a transparent way, assuring its independence of other entities should make them vulnerable to practices do not be transparent.
- **IV Section. Action 13:** The Recommendation could include some aspects related the private, academic. or foreign sector promote actions to attend capacity building needs of the civil society in country in context of weak or high government control of the existing one.

We hope this comments could be useful in this public consultation. With all of our respect,

Regards,

Juan Guillermo Murillo

## **Czech Republic: Ministry for Regional Development**

Dear colleagues,

Thank you very much for this “self-confident” document. I hope there will also be a political support to it. I am finding out the pillars clear and consistent and I do not have any comments to it.

Kind regards

**Tereza Kuncova**

Department of Regional Policy

## **Estonia: Ministry of Finance of the Republic of Estonia**

Dear members of the SPIO Secretariat,

This is to confirm, that Estonia supports the revised draft Recommendations of the OECD Council on Public Integrity. The Recommendation reflects well the current development needs and challenges in the area of public integrity. We also welcome the whole-of-the governance approach and references to the business and non-governmental sectors that have an important role in corruption prevention activities.

The document is also well in accordance with the Estonian Anti-Corruption strategy, which is also based on three similar pillars (improving transparency of decisions and actions, promoting awareness of integrity and strengthening the investigative capabilities) and covers also the business and non-governmental sectors.

In order to support the implementation and understandability of the recommendations, we suggest to elaborate additional practical guidelines or an exemplary list of the best practices which could inspire other countries and could be useful in consideration of new effective measures against corruption.

Congratulations for your excellent work!

Kind regards,

Anneli Sihver

Public Administration and Civil Service Department

Ministry of Finance of the Republic of Estonia

## France: Pole-emploi

### REMARQUES SUR LE DRAFT « PUBLIC INTEGRITY » DE L'OCDE

#### **3 Develop a strategic approach, outlining objectives and priorities that address risks and success factors, in particular through:**

Dans la cartographie des activités à risques, l'approche stratégique doit accorder une place particulière aux activités de passation et de gestion des marchés publics. Il est indispensable en cohérence avec a et b que cette activité fasse, dans chaque collectivité, l'objet de procédures officielles accroissant d'une part les obligations de transparence et de collégialité en fonction des enjeux financiers en cause et d'autre part de mécanismes de reporting mettant en lumière la typologie des modes de mise en concurrence employés, celle des titulaires ainsi que les modifications importantes de contrat en cours d'exécution.

#### **6. Support open organisational cultures responsive to integrity concerns, in particular through:**

il semble nécessaire d'insister, au sein de la culture « d'ouverture », sur la capacité donnée dans le domaine des marchés publics aux candidats ou aux citoyens d'exercer des recours contre des décisions d'attribution jugée illégale. Pour donner toute sa portée pratique à ce droit de recours, une communication rapide et complète des motifs de non sélection apparaît comme une condition indispensable.

#### **7. Invest in integrity leadership to demonstrate an organisation's commitment to integrity, in particular through:**

La manifestation organisationnelle du souci d'intégrité doit se traduire dans le domaine des achats par l'individualisation et l'autonomisation de l'activité de passation des marchés publics au sein des organigrammes des collectivités. Cette individualisation permet aux responsables les plus élevés de manifester leur engagement quant à la professionnalisation, l'éthique et la transparence de l'activité de passation et d'exécution des marchés publics. Sur le plan méthodologique, cette autonomie de la fonction est un gage d'implémentation rapide des meilleures pratiques et du maintien d'un niveau de formation indispensable au respect de de l'intégrité.

#### **10. Apply an internal control and risk management framework to effectively safeguard integrity in public organisations, in particular through:**

Concernant les processus de passation de marchés publics, il est indispensable que le management du risque débouche sur un corpus de processus se distinguant nettement des processus « spontanés » que l'on peut observer dans le secteur des achats privés. La convergence des méthodes constituent un risque du point de vue de l'intégrité alors même qu'elle est perçue comme source d'efficacité.

L'introduction de critères d'attribution « sociétaux » doit faire l'objet d'une gestion des risques particulière en ce qu'ils peuvent introduire une part d'arbitraire plus importante que les critères d'attribution traditionnelle comme le prix ou la valeur technique.

#### **11. Ensure that enforcement mechanisms respond effectively to all cases of irregularities, misconduct or corruption, in particular through:**

Pour améliorer la répression des irrégularités dans le secteur des marchés publics, il faut maîtriser la qualification pénale des écarts dans l'application des procédures obligatoires dans la gestion des marchés publics. Le favoritisme en France n'implique pas d'élément intentionnel. Il est alors facteur de détournement des meilleurs éléments par rapport à la fonction compte tenu du risque généré par cette incrimination. Il est nécessaire que les incriminations existent mais qu'elles ne dissuadent pas la prise d'initiatives et les arbitrages.

#### **12. Ensure effective external oversight and control that promote public accountability and integrity, in particular through:**

Les activités des corps de contrôle externe qui peuvent intervenir sur les marchés publics doivent être aisément disponibles pour le grand public.

Par ailleurs, Il est sans doute nécessaire que ces contrôles s'accompagnent de la collecte de données permettant de s'assurer et de communiquer autour de l'amélioration continue des processus de marchés publics quand celle-ci , évidemment a véritablement, lieu. En effet la légitimité des contrôles externes n'est absolument pas à remettre en cause au contraire. En revanche ; les irrégularités qui y sont identifiées constituent l'unique voie de communication des médias autour de l'activité de marchés publics. Cette précarité des modes de communication entretient d'une part le scepticisme des citoyens et décourage les collaborateurs travaillant dans ces disciplines d'autre part.

MARAVAL Philippe

Directeur des achats-marchés de Pole-emploi

## Ireland: Department of Justice & Equality

Dear Sir/Madam,

Please find attached observations recently received on the OECD's Draft Recommendation on Public Integrity.

The recommendations were circulated to all Government Departments in response to a request from the Department of Public Expenditure and Reform\*. Apologies for missing your deadline of 22 March.

Regards,

Crónan

Crónan Goodman | Drugs & Organised Crime Division | Crime & Security Directorate | Department of Justice & Equality, Ireland

\* Bernie Orr, Government Reform Unit, Department of Public Expenditure and Reform

### **Note regarding OECD/PEM Consultation on Draft Recommendation on Public Integrity**

Document no: GOV/PGC/INT(2015)3/REV3

We support the overall intent of the draft Recommendation and indeed have participated in OECD reviews of anti-corruption. We have some initial concerns as set out below.

- Definition of "conflict of interest". Our understanding is that there is no definition of 'conflict of interest' in law even though it is a term that is widely used and as such we would have concerns about the inclusion of one in this document. A term that is also used relates to a 'conflict of interest that could be reasonably perceived to exist' – perhaps this is something that needs to be considered but not necessarily defined?
- Definition of "public official". The definition included for "public official" appears very broad and we are not clear who it aims to cover. In Ireland the current ethics legislation, and the proposed Public Sector Standards Bill 2015, do not include judges. Separate ethical arrangements are being put in place in this regard given their independence from Government. We would ask that the wording of this definition be reconsidered to make it more clear who is being covered.
- Definition of "public sector". There should be some linkage between this definition and the previous definition of public official. Non-governmental organisations, which are referred to in the final sentence of this definition, would not normally be included in a definition of the public sector. We would ask that the wording of this definition be reconsidered.

With regard to the individual recommendations:

- Recommendation 1. a) it is not clear what is envisaged in terms of a 'whole-of-society' perspective to integrity. b): Ensuring that adequate resources are available to apply the integrity system is a matter for each individual organisation.
- Recommendation 2. b): Again this is a matter for individual bodies to manage delivering on just as it is for any other obligations/tasks.
- Recommendation 3. a): Clarity is required as to what are "relevant critical success factors" envisaged.
- Recommendation 3. b): Providing the measurement processes detailed here could prove very difficult and time consuming.

- Recommendation 4. d): In Ireland, the Ethics Acts and underlying codes provide obligations for those in public office.
- Recommendation 5: We feel that this recommendation needs reconsideration as it extends beyond the public sector to areas where we would not have a role. How is it envisioned that this recommendation would be implemented? We agree that all companies/organisations whether in the public or private sector should have corporate social responsibility and be ethical and have a culture of integrity but we would be concerned that what is proposed at present could have significant resource implications for governments.
- Recommendation 9: We agree strongly with this recommendation.
- Recommendation 11. b): Clarification is required here as regards what exactly is envisaged and how would it work in practice.

There is a concern in relation to sharing “personal” data between bodies. We would highlight that it can only occur where data protection rules and regulations are not breached.

- Recommendation 13. b): Should the media be stakeholders in relation to equitable voice in the development and implementation of public policy? If the media are considered as stakeholders does this not cut across their professional ethics in relation to their impartiality?
- Recommendation 13. c): More clarity is required here as regards what exactly is envisaged. Currently the proposed wording seems vague. We would have serious concerns if any funding commitment is created by this recommendation.

#### General Views

- In order to fulfil the ambitions of the recommendations, some practical suggestions on the manner in which they can be achieved by state bodies would be welcomed. In particular, where differences in the approaches to public integrity have been identified among Members, examples of initiatives that have been a success would be of great assistance to those who are tasked with promoting or monitoring public integrity within their organisations.

## Israel: Representation in the OECD Working Party on State Ownership and Privatisation Practices

*The following comments were submitted by Israel through consultations with the OECD Working Party on State Ownership and Privatisation Practices:*

- In section 2b, instead of the words "units and bodies" we offer to add the words: "units, bodies, entities and corporations".
- In section 7, we would like to offer an amendment that will specify additional organizational support, training and guidance to all employees and not only to managers, in order to increase awareness and skills for exercising appropriate judgement for integrity, in particular in case of conflict of interest, whistleblowing, or disciplinary issues. All of the aforementioned should be facilitated in a way that an employee will not be concerned regarding his position in the company if he decides to take action.

## Latvia: Department of Public Administration Policy, State Chancellery

Attached please find our comments and suggestions regarding the draft revised recommendation on public integrity, including some useful information on the developments in Latvia in this area.

With best wishes,

Inese Kuške

Department of Public Administration Policy, STATE CHANCELLERY, LATVIA

### Comments on the draft revised recommendation of the OECD Council on Public Integrity

#### General comments

Fostering integrity in the public sector is a matter of importance for the Government of Latvia. Therefore, we support and are grateful to be able to contribute to the work of the OECD in improving and further elaborating standards in the area of public sector integrity.

In Latvia most of public institutions and branches of power have their codes of ethics that are being disseminated and often ethics commissions are in place to support their implementation. Moreover, there are rules regarding ethics and conflict of interest prevention or related aspects of integrity in other legal acts.

The draft OECD recommendation on public integrity highlights that in order to be efficient in promoting public sector integrity, it is key to take a whole-of-government and even a whole-of-society approach. In this light, in 2016, Latvia started to work on the draft Public Service Employees Code of Ethics. This effort is led by the State Chancellery, with participation of the Latvian think-tank Centre for Public Policy "Providus". To develop the draft Code, three types of focus group discussions were organised, mobilising newly recruited civil servants, members of ethics commissions and high level officials. The groups discussed the content of the planned code of ethics and ways how it can be implemented. The draft was available on the Internet and the public could provide comments. At present, the work on the draft code of ethics continues, drawing also on the standards and approaches envisaged in the draft OECD recommendation on public integrity. It is hoped that the new code of ethics will set out principles of ethical behaviour that should be common for all public service, supplementing the specific standards in the already existing ethics codes of public institutions and other regulation, creating a comprehensive legal basis of integrity system in Latvia.

Besides, a whistle-blower protection law is currently being developed in Latvia and is hoped to be finalised in the course of 2016. The intention is to ensure in the legislation effective protection against reprisals as a result of reporting, in this way meeting the requirement set out in the draft revised recommendation of the OECD Council on Public Integrity (Point 6, c)).

#### Specific comments on the draft revised recommendation:

- The draft Code in its current title refers to "public integrity" and generally the text mostly refers to public sector, public policies and public sector employees (which is also the scope of the previous recommendation it will replace). Meanwhile, it also refers several times to measures that require involving or ensuring responsibility of the private sector and citizens (Points 1. a), 4. d) and 5.). For instance, the government is invited to communicate public sector values to the society and private sector and ensure they respect these public sector values (point 4.d)); the integrity system should include responsibilities for citizens and the private sector (point 5. a)). It would be therefore useful to clarify this broad scope of this recommendation. Perhaps already the Introduction can state that it also addresses private sector and citizens and that implementation of this recommendation depends from concerted action, not only of what the public sector can possibly do, but also there are responsibilities for the private sector and the general public;
- In the same light, it could be useful to clarify to what organisations refer the Points 6. and 7. There are the following sentences starting with: "support open organisational culture

responsive to integrity concerns..” and “Invest in integrity leadership to demonstrate an organisation’s commitment to integrity..”. Is it public sector institutions or also private sector organisations or any form of organisation by the society (business companies, NGOs and similar organisations);

- We believe the following measures foreseen under the Point 9. b) are particularly useful to promote integrity:

*“Offering induction and on-the-job integrity training to public officials throughout their career in order to raise awareness and develop essential skills for analysis of ethical dilemmas; and to make codes of conduct and other integrity standards practically applicable and meaningful in their own contexts”.*

To complement its civil servants training programme, the State Administration School of Latvia plans to introduce a new training course on public sector ethics. It would promote the upcoming OECD recommendation, as well as integrity rules and mechanisms in Latvia.

It could be useful for countries to share, within the OECD SPIO, for example, good practice in the area of induction, in-service or management ethics training, namely methodologies and concrete examples of programmes. Also sharing of lessons learned among public sector ethics training providers in each country could be useful.

- Point 11 and sub-point a) refers to “cases of irregularities, misconduct, corruption...” and to enforcement mechanism that would respond effectively ... “to reported cases”. The type of violations or behaviour referred to here can be clarified or explained in an annex. Also, here can be not only reported cases, but also cases detected proactively by institutions or uncovered by the media;
- Points 4 b) and 11 address the issue of enforcement and sanctions. Indeed, it is crucial for any integrity system to ensure it is respected by all persons seriously and that breeches do not remain unpunished. Sanctions is often what is also expected by the public in countries facing corruption and trust in the government problems. Meanwhile, a principles-based integrity systems – as promoted in this new recommendation - should be more oriented towards guidance, prevention, should not be used for setting prescriptive rules or for sanctioning individuals. How to balance this, could be useful to discuss in an annex or beyond the recommendation among practitioners;
- Point 6 a) could be supplemented also by a requirement to ensure that guidance on ethics is available in organisations (now it is said leadership should provide guidance, but it can be not responsive, not trusted or questions can be minor, technical). There can be, for instance, an ethical councillor/commission. Also, in this point the possibility to self-report a conflict of interest and abstain from a certain task at any time can be encouraged;
- The draft recommendation provides that each ministry and public body should have its leadership committed to create an ethical culture and be responsible to monitor the effectiveness of their integrity work. It would also be important to have a central oversight and measure the impact of integrity measures taken, for instance, on the level of respect towards public sector as employer, whether the level of misconduct is reduced, the level of trust in specific institutions and if they are believed to be more open and efficient, especially those working with business and citizens;
- We believe it could be useful to include an explanatory note, for instance, as annex to the recommendation. It would be beneficial to further elaborate main concepts of the recommendations. For instance, it would be useful to describe more in detail what a “comprehensive and coherent integrity system” or “all elements of the integrity system” include in practical terms, perhaps through some examples or models. It would also be beneficial to discuss how public service ethical norms are to be respected by citizens and private sector. It could provide practical examples of the risk-based approach to defining the integrity system, referred to in the recommendation. Guidance could also be provided, how to create within organisations (especially, if also private sector is also included, for instance, financial sector) linkages with similar requirements, such as internal audit, prevention of fraud,

corruption, or money laundering, corporate governance, etc. to avoid “parallel control systems”;

- Following adoption, it would be useful to monitor across countries how effectively integrity systems are created and what impact they have. It would also stimulate the countries to undertake these measures and, through examples of other countries, learn how it can be done.

## Lithuania: Office of the Government

Good afternoon,

I would like to inform you, that Lithuanian institutions are in agreement with this draft Recommendation on Public Integrity. This document incorporates a number of the points that would help Lithuania to enhance integrity and create clear standards and procedures that would encourage high standards of conduct and good governance.

We also hope to continue this discussion on integrity issues during the 53rd session of the OECD Public Governance Committee and symposium on 21-22 April 2016.

Please find attached some concrete comments and suggestions.

Best regards,

Rasa Tamošiūnienė

Office of the Government of the Republic of Lithuania

International and EU Affairs Unit

## **WORKING PARTY OF SENIOR PUBLIC INTEGRITY OFFICIALS**

### **Update of the 1998 Recommendation on Improving Ethical Conduct in the Public Service**

#### **Revised draft Recommendation**

*The draft Recommendation of the Council on Public Integrity has been elaborated by the OECD's Public Governance Committee, through its Working Party of Senior Public Integrity Officials (SPIO) and is being circulated publicly for consultation. It may still be subject to modifications, in particular to reflect, as appropriate, the relevant comments received through the public consultation. We welcome your comments, suggestions and constructive input to increase the relevance and impact of the final output of this work. Your comments will be made available to the public unless otherwise requested.*

*Comments should be sent by 22 March 2016 to [govintegrity@oecd.org](mailto:govintegrity@oecd.org).*

**For any questions please contact Ms. Terry Lamboo ([Terry.Lamboo@oecd.org](mailto:Terry.Lamboo@oecd.org)).**

**Complete document available on OLIS in its original format**

***This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.***

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**ElenaK ▾**

Page 3 15-Apr-2016 12:17:59 PM

It is a genuine challenge to create rules, regulations, risk management, and mechanisms of oversight and at the same time, make sure that they are not counter-effective.



**ElenaK ▾**

Page 6 23-Mar-2016 9:31:06 AM

It is very vague. Which values? Perhaps a "safer" approach would be to refer to ethical norms, principles and appropriate conduct?



**ElenaK ▾**

Page 6 23-Mar-2016 8:29:32 AM

This term does not translate easily into the national language. Therefore, a more precise definition is needed. Especially because it is key to the recommendation



**ElenaK ▾**

Page 7 23-Mar-2016 8:25:33 AM

Personal behaviour of countries?  
Perhaps a more precise element should be added, e.g. public officials



**ElenaK ▾**

Page 7 23-Mar-2016 9:31:41 AM

What are public service values? Are they to be defined by every adherent independently?



## INTRODUCTION

No country is immune from the adverse impact of corruption and wrongdoing on prosperity and wellbeing. Integrity is the backbone of political, economic and social structures and the recognition that breaches of public integrity continue to plague us has resulted in an increased interest in Member and non-Members countries in upgrading their integrity frameworks.

As a result, the OECD Council invited the Public Governance Committee to update the first international instrument in the area of managing ethics and enhancing integrity: the 1998 OECD Recommendation on Improving Ethical Conduct in the Public Service (1998 Recommendation). The revisions to the 1998 Recommendation are extensive, as it incorporates new insights. For this reason, it is proposed to abrogate the 1998 Recommendation and replace it with the draft Recommendation of the Council on Public Integrity. The 1998 Recommendation is not legally binding but there is an expectation that Members and non-Members having adhered to the Recommendation will do their utmost to implement it. The OECD stimulates learning through benchmarking and voluntary peer reviews to monitor progress in implementing the Recommendations in specific country contexts. Once adopted, the Recommendation would also be open for adherence by OECD non-Members.

The draft Recommendation specifically promotes a comprehensive and coherent progressive integrity framework that is applicable to all stages of the policy cycle. It is founded on the notion that an integrity system can only be effective if countries balance a value-based and compliance-based approach, and if the system is relevant given the actual risks of misconduct and corruption. Moreover, a culture of integrity needs to be supported by clear standards and laws; yet er-elaborate formal regulations and procedures may be counter-effective as they may raise unnecessary administrative costs, reduce privacy, institutionalise distrust, and may reduce ethical reasoning to a culture of just following rules and procedures. This notion is also reflected within the draft Recommendation: it is a principle-based text. Practical guidance on how these principles may be implemented within a given context could be added at a later stage by providing a toolbox of good practices.

In addition, the scope of the Draft Recommendation explicitly includes a whole-of-government approach addressing public sector employees, as well as appointed or elected public officials. As such, it takes into account the insight that public trust in governments is based on the integrity of public decision making and service delivery in the whole public sector, including state owned enterprises or Public-Private-Partnerships. The draft Recommendation is further based upon the notion of integrity as a shared responsibility of individual public bodies for their own organisation, and of central bodies (which may exist at the national level, but may also be available at the subnational level) for the elements of the integrity system which include laws, regulations, policies, organisations and officials specifically contributing to public integrity. Given the variety of multilevel governance arrangements in countries, integrity systems can be tailored to meet the needs of different government structures. Also, given the variety of specific sectors, public officials or high-risk officials and tasks, the principle of a coherent and comprehensive integrity system does not imply uniformity across the public sector as it allows for co-existing integrity sub-systems (at the central and subnational level) where relevant and effective.

The draft Recommendation also takes into account that integrity risks arise out of the various interactions between the public sector, the private sector, civil society and citizens at all stages of the political and policy process. This interconnectedness therefore is best addressed through a whole-of-society approach to enhancing integrity and reducing corruption. This is ultimately dependent upon efforts of public officials to refrain from misconduct, but a risk-based approach to integrity would also take into account the role of business and citizens in unethical interactions with public officials. Moreover, efforts to

reduce corruption by public officials can only be effective within a broader culture of integrity where fraud and abuse of public resources by business and citizens alike is seen as unacceptable. Establishing a culture of integrity within society would require a concerted action by public and private sectors and civil society alike.

Finally, in order to address the challenge of the actual implementation of measures promoting integrity, general management principles have been incorporated to ensure effective coordination of the system. Most importantly, the draft Recommendation aims to avoid a check-box approach based on one-size-fits-all-solutions, with the understanding that an effective integrity system must be founded on strategic goals and priorities that are informed by a risk-based approach.

## STRUCTURE OF THE DRAFT RECOMMENDATION

Central to the draft Recommendation is the shared aspiration and commitment by Member States and adherents to create a comprehensive integrity system, which builds a culture of integrity and provides accountability, and which contributes to effective governance, trust within society and inclusive growth. The public integrity system is thus organised around three pillars:

1. **Ensuring a coordinated and comprehensive integrity system** by taking political and administrative responsibilities for a strategic integrity system for all public officials, based on ethical standards.
2. **Creating cultures of integrity** through a whole-of-society approach to support ethical awareness and responsibilities for all public officials (elected officials, managers and public servants).
3. **Establishing effective accountability** through internal control and regulatory oversight to ensure compliance of the public sector, private sector and citizens with standards of public integrity, and through transparency and active participation by civil society in the public decision-making process.

## **DRAFT RECOMMENDATION OF THE COUNCIL ON PUBLIC INTEGRITY**

**HAVING REGARD** to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

**HAVING REGARD** to the Recommendation of the Council for Improving the Quality of Government Regulation [C(95)21/FINAL], the Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Sector [C(2003)107], the Recommendation of the Council on Principles for Private Sector Participation in Infrastructure [C(2007)23/FINAL], the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions [C(2009)159/REV1/FINAL], the Recommendation of the Council on Principles for Transparency and Integrity in Lobbying [C(2010)16], the Guidelines for Multinational Enterprises [C(76)99/FINAL as amended by C/MIN(2011)11/FINAL], the Recommendation of the Council on Regulatory Policy and Governance [C(2012)37], the Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships [C(2012)86], the Recommendation of the Council on Effective Public Investment Across Levels of Government [C(2014)32], the Recommendation of the Council on Public Procurement [C(2015)2], the Recommendation of the Council on the Policy Framework for Investment [C(2015)56/REV1] and the Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises [C(2015)85];

**HAVING REGARD** to the important work done on anti-corruption and good governance by the United Nations, embodied in particular in the United Nations Convention against Corruption and the United Nations Sustainable Development Goals, and by several **regional** organisations;

**RECOGNISING** that public integrity is the backbone of political, economic and social structures and thus essential to economic and social well-being and prosperity for individuals and societies as a whole;

**RECOGNISING** that public integrity is vital to public governance, safeguarding the public interest and reinforcing such fundamental values as commitment to a pluralistic democracy based upon the rule of law and respect of human rights;

**CONSIDERING** that corruption and other integrity breaches, of which no country is immune, have become increasingly complex since the adoption of the 1998 Recommendation of the Council on Improving Ethical Conduct in the Public Service including Principles for Managing Ethics in the Public Service [C(98)70], which this Recommendation replaces;

**RECOGNISING** that integrity risks exist in the various interactions between the public sector, the private sector, civil society and citizens at all stages of the political and policy process, therefore this interconnectedness requires an integrative approach to enhancing integrity and reducing corruption;

**RECOGNISING** that integrity is a cornerstone of the overall system of good governance, and that updated guidance on integrity should accordingly promote coherence with other key elements of public governance;

**RECOGNISING** that national practices on promoting integrity vary widely across countries in light of the specific nature of integrity risks and their distinct legal, institutional and cultural contexts, and while countries will determine and manage their national integrity system in light of these country-specific circumstances, they can benefit from the present Recommendation;

**CONSIDERING** that enhancing public integrity is a shared mission for all levels of government, though different mandates and levels of autonomy apply in line with national legal and institutional frameworks; therefore, this Recommendation is relevant to all levels of government for fostering public trust;

On the proposal of the Public Governance Committee:

***I. AGREES that, for the purpose of the present Recommendation, the following definitions are used:***

- **Conflict of interest** involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.
- **Corruption** refers to the abuse of a position or office for private interests;
- **Integrity** refers to the consistent alignment of and adherence to stated values, principles and norms;
- **Integrity system** includes the laws, regulations, policies, organisations and officials specifically contributing to public integrity and could be tailored to specific type of sectors and public officials thereby creating co-existing **integrity sub-systems**;
- **Misconduct** refers to behaviour breaching standards and rules that can be formally sanctioned, either through disciplinary, administrative, criminal or civil law;
- **Public official** refers to any person who performs a public function or provides a public service, i.e. someone who holds a legislative, executive, administrative, or judicial position of any kind, whether appointed or elected;
- **Public sector** includes the legislative, executive, administrative, or judicial bodies at the central and subnational level, including public corporations, state owned enterprises and Public-Private Partnerships. It could also include entities that deliver in-kind services (e.g. health, education, and public transport) although these can be contracted out or privately funded in some countries. It could also include non-governmental organisations performing governmental functions, generally in receipt of funding or other support from government.

***II. RECOMMENDS that Members and non-Members having adhered to this Recommendation (hereafter the “Adherents”) ensure a coherent and comprehensive integrity system.***

**To this end, Adherents should:**

1. Demonstrate commitment at the highest political and management level to enhance integrity and reduce corruption, in particular through:

- a) Establishing a coherent and comprehensive integrity system that takes into consideration a multilevel governance and whole-of-society perspective to integrity, that defines, supports, controls and enforces integrity and that is integrated into the wider management and governance framework.
- b) Ensuring that all public organisations have effective legislative and institutional frameworks, adequate resources and support to take responsibility for adequately applying the integrity system.
- c) Demonstrating **exemplary person**  **behaviour**, maintaining a high standard of propriety in the discharge of official duties.

2. Promote institutional responsibilities across the public sector to strengthen the effectiveness of the integrity system, in particular through:

- a) Establishing clear and effective responsibilities for leading and implementing all elements of the integrity system.
- b) Ensuring that government units or bodies (including autonomous or independent ones) responsible for the development, implementation, enforcement, and/or monitoring of elements of the integrity system have adequate mandate, capacity, expertise and resources to effectively fulfil their responsibilities.
- c) Fostering effective mechanisms for horizontal and vertical collaboration between government bodies, and where possible with and between subnational levels of government through formal or informal means to share lessons from good practices, to avoid overlap and gaps.

3. Develop a strategic approach, outlining objectives and priorities that address risks and success factors, in particular through:

- a) Setting strategic objectives and priorities for the integrity system based upon a clear risk-based approach to irregularities, misconduct and wrongful acts, and that takes into account relevant critical success factors.
- b) Providing transparent and up-to-date measurement processes, including credible and relevant data, benchmarks and indicators that measure the level of implementation, performance and overall effectiveness of the integrity system.

4. Set standards that promote ethical conduct for public officials, in particular through:

- a) Setting integrity standards that not only focus on minimum standards, but that also encourage high standards of conduct, good governance, adherence to **public service value**  and an open culture that facilitates learning.

- b) Setting integrity standards in the legal system and organisational policies to provide a clear basis for -- disciplinary, administrative, and/or criminal -- investigation and sanctions.
- c) Setting clear and proportionate standards and procedures for high-risk positions and appointed or elected positions to prevent corruption and misconduct, including for the management of (latent) conflict of interests.
- d) Communicate public sector values and standards internally in public organisations, and to the private sector, civil society and the public with the expectation that these partners also respect those values and standards.

**III. RECOMMENDS that Adherents build a culture of integrity.**

**To this end, Adherents should:**

5. Promote a whole-of-society culture of integrity, partnering with citizens and the private sector, in particular through:

- a) Including in the integrity system the role and responsibilities of citizens and the private sector for respecting public integrity values, in particular by providing incentives to uphold those values as a shared responsibility.
- b) Raising awareness in society of the benefits of integrity and ethical behaviour to reduce tolerance of corruption and misconduct, and carry out, where appropriate, campaigns to promote civic education, public values and ethics, among citizens.
- c) Engaging all relevant stakeholders in the development and regular update and implementation of the integrity system to ensure relevance and effective performance.
- d) Engaging with the private sector to uphold integrity in business operations and in the impact of business actions.

6. Support open organisational cultures responsive to integrity concerns, in particular through:

- a) Encouraging an open organisational culture where ethical dilemmas, integrity concerns, and errors can be discussed freely and where leadership is responsive to providing timely advice and resolving these issues.
- b) Providing alternative channels for reporting irregularities and misconduct, including the possibility of reporting to a body with the mandate and capacity to conduct an independent investigation.
- c) Providing clear rules and procedures for reporting irregularities, concerns about misconduct and wrongful acts that cover a wide scope of wrongdoings, and ensure in legislation and practice effective protection against all types of reprisals as a result of reporting, for all who carry out activities relevant to an organisation's mission.

7. Invest in integrity leadership to demonstrate an organisation's commitment to integrity, in particular through:

- a) Including integrity leadership in the profile for managers at all levels of the organisation, and as a requirement for selection, appointment or promotion in a management position. In

addition, assessing the performance of managers with respect to the integrity system at all levels of the organisation.

- b) Supporting managers in their role as ethical leaders by establishing clear mandates, providing organisational support (internal control, human resources instruments, legal advice etc.), training and guidance to increase awareness and skills for exercising appropriate judgement for integrity, in particular in case of conflict of interest, whistleblowing, or disciplinary issues.

8. Create a merit based professional public sector dedicated to public service values and good governance, in particular through:

- a) Effective, transparent and consistent human resource management policies that promote a public ethos, a merit based professional public sector, prevent favouritism and nepotism and address risks for abuse of position and misconduct.
- b) Ensuring that central units or bodies (including autonomous or independent ones) responsible for the development, implementation, enforcement, and/or monitoring of elements of the merit based system within their jurisdiction have the mandate, expertise and resources to effectively fulfil their responsibilities.
- c) Foster management frameworks that promote managerial responsibilities to identify and mitigate integrity risks.

9. Provide sufficient guidance and timely advice for public officials to support a culture of integrity, in particular through:

- a) Providing public officials throughout their career with clear and up-to-date information about the organisation's policies, rules and administrative procedures relevant to maintaining high standards of integrity.
- b) Offering induction and on-the-job integrity training to public officials throughout their career in order to raise awareness and develop essential skills for analysis of ethical dilemmas; and to make codes of conduct and other integrity standards practically applicable and meaningful in their own contexts.
- c) Providing informal guidance and consultation mechanisms to help public officials apply integrity standards in their daily work, and to respond properly to conflict of interest situations. In addition impartial advice and guidance (provided internal and/or external to the organisation) should be made easy accessible to public officials.

***IV. RECOMMENDS that Adherents ensure accountability, and effective control and enforcement of public integrity.***

**To this end, Adherents should:**

10. Apply an internal control and risk management framework to effectively safeguard integrity in public organisations, in particular through:

- a) Ensuring an effective control environment with clear objectives that demonstrate managers' commitment to integrity and public service values, and that provides a reasonable level of assurance of an entity's efficiency, performance and compliance with laws, regulations, and

standards. In particular, the internal control system should help to improve the performance – coherence, effectiveness and efficiency – of the integrity system.

- b) Ensuring a strategic approach to risk management that includes assessing integrity risks and addressing control weaknesses on a risk basis. This includes building in warning signals – such as red-flags – within critical processes, and an effective monitoring and quality assurance mechanism of the risk management system, including fraud and corruption risks.
- c) Ensuring control mechanisms are coherent with effective and clear procedures for responding to credible suspicions of violations of laws and regulations, and facilitate reporting to the competent authorities without fear of reprisals.

11. Ensure that enforcement mechanisms respond effectively to all cases of irregularities, misconduct or corruption, in particular through:

- a) Applying fairness and objectivity in the disciplinary or administrative process and through defining responsibilities and ensuring institutional capacity, at the organisational and central level where relevant to respond effectively and timely to reported cases.
- b) Fostering effective mechanisms for collaboration and exchange of information between relevant internal bodies and external public authorities where concurrent disciplinary and criminal cases would increase the timeliness and proportionality of enforcement mechanisms.
- c) Providing transparency within the organisation and to the public, about the outcomes of cases and the effectiveness of the enforcement mechanisms, in particular through developing relevant statistical data on cases, while respecting confidentiality and other relevant legal provisions.

12. Ensure effective external oversight and control that promote public accountability and integrity, in particular through:

- a) Ensuring that autonomous or independent regulatory and investigative entities defend the public interest through the impartial enforcement of laws and regulations applying to both public and private organisations, as well as citizens.
- b) Ensuring that external oversight entities are autonomous or independent, with adequate authority, mandate, capacity, expertise and resources to fulfil their responsibilities, including the right to impose sanctions, as established in law.
- c) Facilitating organisational learning and building public trust by providing adequate response (including redress where relevant) to the sanctions, rulings and formal advice by oversight bodies and regulatory entities.

13. Safeguard integrity and the public interest in the broader decision-making process, in particular through:

- a) Promoting transparency and an open government, including actively providing access to information and open data, and active responses to request for information.
- b) Ensuring inclusion by granting all stakeholders - civil society organisations, businesses, the media and the general public - equitable voice in the development and implementation of public policies. Including promoting integrity and avoidance of policy capture through

management of conflict-of-interests, and transparency of lobbying activities and of financing of political parties and election campaigns.

- c) Enabling a civil society that includes 'watchdog' organisations, citizens groups and independent media, in order to ensure effective accountability.

***V. INVITES the Secretary-General to disseminate this Recommendation.***

***VI. INVITES Adherents to disseminate this Recommendation within the public sector.***

***VII. INVITES non-Adherents to take account of and adhere to this Recommendation.***

***VIII. INSTRUCTS the Public Governance Committee to monitor the implementation of this Recommendation and to report thereon to the Council no later than five years following its adoption and regularly thereafter.***

**México: Instituto Nacional de Administración Pública**

Mexico City, March 22, 2016.

Ms. Makeda Yohannes  
Network Secretariat Co-ordinator

Dear Ms. Makeda Yohannes:

With reference to the invitation to comment the *"Recommendation of the Council on Public Integrity"*, we fully support the Draft Recommendation.

For Mexico the subject is of most importance, since recently it has been approved a Constitutional Amendment to fight corruption "El Sistema Nacional Anticorrupción". This Constitutional Amendment is in the process of legal implementation at the federal Congress.

We agree as the most important issue upgrading integrity frameworks. INAP is strongly involved in the effectiveness of the Rule of Law, the fight against corruption, transparency, accountability and good governance.

Sincerely yours,



Gerardo Gil-Valdivia  
Secretary  
National Institute of Public Administration  
Mexico

## Morocco: Institution du Médiateur

*Morocco's Institution du Médiateur provided the following comments :*

Ci joint le projet de recommandation ou j'ai ajouté en rouge le mot bon gouvernance et moralisation.

Je n'ai pas d'autre remarque mais j'insiste de consacrer des paragraphes à la bonne gouvernance comme élément clé pour lutter contre la corruption.

Fatima Kerrich

Chef de la section de la communication, de la coopération et de la formation  
Institution du Médiateur du Royaume

## Netherlands: Dutch Ministry of the Interior and Kingdom Relations

Dear Mr. Bertok,

Enclosed you find the reaction of the Dutch ministry of the Interior on the draft OECD recommendation on public integrity.

We have forwarded this recommendation to multiple Dutch public organizations, such as the Dutch Ministries, executive agencies, scientific organizations and other relevant stakeholders. In this document we have combined the multiple reactions that we received of these stakeholders and we have included some of the general thoughts and suggestions on the draft Recommendation. This leads to a coordinated reaction of different Dutch public organizations.

As an addendum we have attached the reaction of the group of Dutch executive governmental organizations. In our opinion this is a good illustration of the so called 'Dutch approach', with an accent on bottom up processes and facilitating the embedment of integrity at an organizational level.

We are conscious that our comments refer especially to the Dutch context and that not all aspects of the approach that is chosen in The Netherlands might be applicable in other countries. Nevertheless we think that common learning and the exchange of views and practices between countries is very meaningful.

With kind regards,

Emilie Schreuder, Member of the Managementteam,  
Direction Organisation- and Personnel Policy of the Central Government  
Ministry of the Interior and Kingdom Relations

### **Reaction of the Dutch ministry of the Interior on the OECD draft Recommendation of the Council on Public Integrity**

The Dutch Ministry of the Interior has received the draft Recommendation of the Council on Public Integrity. We have forwarded this recommendation to multiple Dutch public organizations, such as the Dutch Ministries, executive agencies, scientific organizations and other relevant stakeholders. In this document we have combined the multiple reactions that we received of these stakeholders and we have included some of the general thoughts and suggestions on the draft Recommendation. This leads to a coordinated reaction of different Dutch public organizations.

### **Overall agreement**

First of all, the overall agreement of the Ministry of the Interior and the other involved stakeholders is that the draft Recommendation is welcomed positively and that it is seen as a useful Recommendation for the Dutch Public Sector. The involved stakeholders mention that the recommendations are recognizable for their organization and for the way they deal with integrity. This means that the Recommendation is suitable for the involved stakeholders and that quite a lot of the elements are already (partly) in place for the Dutch public sector. The general opinion is also that the document has improved a lot compared to the previous recommendation from 1998.

### **Whole of society approach**

One of the concepts that received a relatively high amount of responses is the 'whole of society' approach that is used in the recommendation. The use of the whole of society approach received both positive and more critical attention. While we recognize this point of view and regard it as important for the current society in the Netherlands, we would also like to be careful with the creation of high expectations due to the broad focus of this concept. Since the recommendation focuses on public integrity, we would like to see a main focus on the public sector itself and the part central government has to play and limit the attention for other aspects. If the ambition to include a broad whole of society approach is there, then we recommend to describe this ambition more specifically. From an integrity point of view, we do think that it is important to explicitly pay attention to the necessity for transparency, equal treatment and neutrality when dealing with for example private companies.

## **Awareness of risks and wrongdoings**

Furthermore, in our view, the applicability of the recommendation can be further enhanced by putting more emphasis on service delivery of the public sector. Besides creating awareness and supporting participation by civil society, improving service delivery in the public sector is key. Service delivery is ensured by a combination of countervailing powers and adequate financial management that is aware of risks and keen on the (continuous) delivery of the attributed public services.

A development worth mentioning in this respect is the discussion in Parliament on a draft law on whistleblowing that have just ended. On March 1, 2016 the Dutch Senate adopted this law on whistleblowing covering the public sector and the private sector. This law, called "Centre (Huis) for Whistleblowers" will provide legal protection for whistleblowers in the public sector and in the private sector and aims to establish an institution where wrongdoings can be reported and investigated.

## **Hard and soft controls**

The current draft Recommendation shows a relatively high focus on the creation of tight rules and hard controls, partly through the creation of laws and regulation. This is something we acknowledge and see as important elements of an integrity system. However, we would also like to draw attention to the importance of using other measures/approaches, such as the creation of a culture that stimulates the use of ethical behavior, for example through moral schooling and making things discussable in organizations. These are examples of measures at an organizational level, so the direct influence of central government is limited. Therefore, we suggest to invest in the (international) exchange of practices and in developing common learning processes.

Another reason why we are cautious for the formulation of very detailed rules and regulation is related to the way the Recommendation will be benchmarked in different countries in the future. In the Netherlands, not all legislation is described in great detail, which is why we want to raise awareness for the fact that a great emphasis on rules and controls and basing the benchmarking on these rules and controls can also have negative impact for countries that pay more attention to other ways to implement integrity systems. The Dutch context is probably more suitable for a bottom-up approach, with diversified and focused systems of integrity. The central government has the role of monitoring this approach, but does not place very detailed oversights on the involved public organizations. There is a basis of mutual trust. A very tight and specific formulation might be counterproductive for the Netherlands, although we can imagine that this can be useful in other countries. We therefore want to create awareness for the multiple ways that countries can give meaning to their systems of integrity.

## **Final remarks**

Lastly, there are some other, more specific, remarks that we would like to bring to your attention:

- The definition of corruption that is used in the document is rather small since it only refers to the abuse of a position or office for private interests. A broader definition, as used in the dissertation of dr. Michelle Schut could be relevant as well: "Corruption is generally defined as the improper and unlawful misuse of entrusted power and public office or public responsibility for private, group or sectional gain, harming the interest of the public.'
- Recommendation IV, 10b and recommendation II, 3a and b are seen as important and valuable.
- Page 3 of the Recommendation mentions three pillars of the public integrity system. The first of these pillars, 'ensuring a coordinated and comprehensive integrity system' describes that this system should be based on ethical standards. Since there are many ethical standards that can be thought of and since these can even differ within sectors or organizations, the question arises what ethical standards are meant in this specific instance.
- The draft Recommendation on Public Integrity could also form starting points for the exchange of information and interventions related to public integrity between organizations and between countries.

*Attached: comments by the Charter Group for Public Accountability of The Netherlands (see next page)*

Peize, The Netherlands 18 march 2016

Hereunder the Charter group for Public Accountability of The Netherlands comments on the draft Recommendation of the Council on Public Integrity as elaborated by the OECD's Public Governance Committee.

The Charter group for Public Accountability (in Dutch: Handvestgroep Publiek Verantwoorden, or HPV) unites eleven national public service providers from immigration and naturalization agency IND, Dutch Cadastre het Kadaster to the Social Insurance Bank SVB. The Charter group's remit is centered on working to advance and improve public accountability, governance for public service providers and improving (academic) research and understanding of those subjects.

The Charter group was formed in 2000 when a number of public service providers signed the Charter, committing them to accountability not just vis-à-vis the government, but to their customers and to society. These public service providers occupy a position on the intersection of government and Dutch society, a position that requires a careful and profound public accountability strategy. Transparency, trustworthiness, attentiveness to the wishes and needs of stakeholders, availability of services and participation are central axioms in how to conduct their activities as public service providers. These axioms are written down in a charter and a governance code for public service providers. A charter focusing on main principles of public service. A charter monitored externally by stakeholders of the specific organization. A governance code focused on leadership and management of public services and creating public value. Giving public accountability a central position and real substance in public services. A governance code monitored internally by a yearly survey of members' annual reports on their services and organization.

The Charter group's governance code is uniquely written by and for public service providers, our members. Not by central government, not by national Inspectorates, not by owners and not by associations of non-executives. It is there to help the boards of public service providers to ensure the delivery of the best public service possible.

Integrity is one of eight important and recognized principles<sup>1</sup> of public service. Integrity has an extremely important place in the governance of our services benefitting citizens and corporations in The Netherlands and beyond. Integrity is therefore next to transparency the driving force of the three most important chapters of our governance code.

From this perspective the following comments are made on the OECD's draft proposal on public integrity.

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<sup>1</sup> Transparency, integrity, participation, civilized contacts with citizens, legitimacy, effectiveness, efficiency and accountability

### **On: To ensure a coherent and comprehensive integrity system**

On first glance the Charter group sees the attractiveness for such a statement. It is bold, action orientated and seemingly all encompassing. In practice however national and comprehensive systems tend to be bureaucratic, invasive and inflexible to future needs. Systems like that also tend to concentrate on their own system needs and tend not to be open to the needs of society and organizations operating within that system.

The Charter group therefore is favorable to bottom-up, diversified and focused systems of integrity. Designed and used in the context in which people and their organizations have to work. Organizations need integrity to service their public, their clients properly. It's the basis of mutual trust. It is in their own interest to have high integrity and implement focused integrity policies and systems servicing their organizations. The actual content of those sectorial or organizational policies and how those are implemented should be of concern to the parties having to implement those integrity systems. It is our vision that central government should focus on promoting local, sectorial integrity policies and solutions. And not focus on a 'grand' central system that would be outdated the moment it is implemented.

Central government should in the end underline its commitment to integrity by ensuring a substantial free press, transparency i.e. good and effective FOIA laws and effective penal and/or civil laws on breaches of integrity.

### **On: build a culture of integrity**

Building a culture of integrity is a cornerstone of what the Charter group does and promotes. To help its members to know of, develop, try-out and adhere to new insights on governance and within that governance of integrity of the people working in public services, their organizations. To help its members to engage their stakeholders in monitoring and commenting on performance on amongst other subjects, integrity.

Stakeholder driven engagement is, or should be the norm for modern governance of public service providers in developed countries like The Netherlands. Stakeholder engagement, peer accountability are words that mean a sea change in the way public service providers will have to operate in the near future. It means that stakeholders have to be engaged to interact with and within the governance of the public service provider. In a way which is much closer to the heart of decision making in a public organization than ever before.

But again, this will not work within a nationally implemented 'integrity system' as mentioned in the draft. As stated above the Charter group's experience sees that systems like that just don't work. At least not when delivering public services to a highly mobile, dynamic and empowered population such as in The Netherlands.

The Charter group therefore prefers a central government that promotes a culture of integrity by helping and promoting sectorial and/or local initiatives. Central government should promote and create tolerance for and room in policy development

for sectorial and/or local integrity initiatives. Oversight is not that complicated; just enter into discussion with representatives of (sectors of) public service providers, use their stakeholder engaging monitoring systems and trust each other. As a Dutch proverb goes, “trust comes on foot, and leaves on a horse” i.e. working on mutual trust and integrity is complicated and takes a very long time, losing it is sometimes only 10 tweets away. So it is of the utmost importance to public service providers themselves to ensure that their integrity is high and monitoring is working effectively.

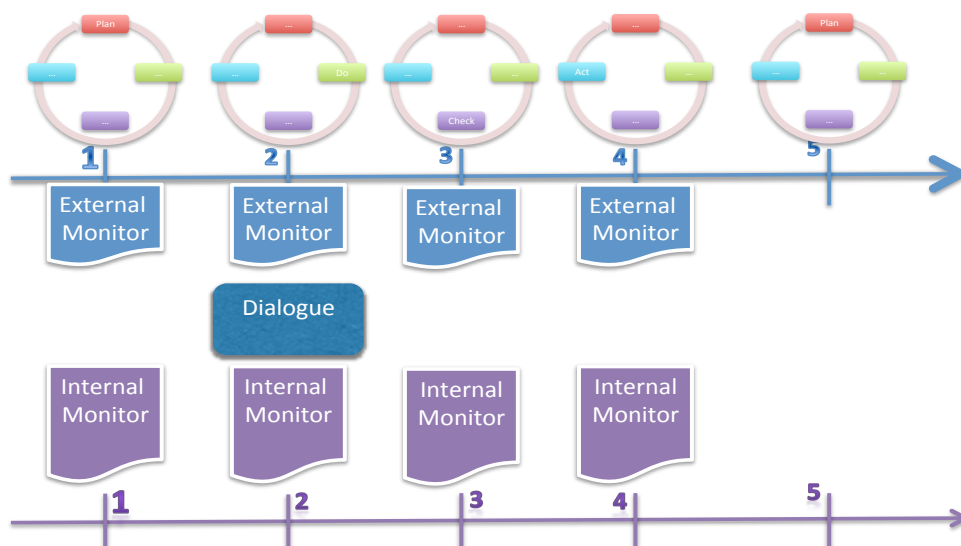
### **On: ensure accountability, and effective control and enforcement of public integrity**

With regards to the sections of this chapter of the draft that can be implemented by public service providers individually or organized as a group, the Charter group concurs. As it recommends largely the same as the Charter group’s governance proscribes in its governance code for its members. The Charter group sees the proposals in this section as a given.

Monitoring and learning however are to be facilitated by sectorial and/or local initiatives. The Charter group monitors its members’ performance; reports on it within the group and members are facilitated to learn from another member’s performance. As learning and transparency are often anathemas, the individual results of this monitor are not shared outside of the Charter group’s membership.

The external monitor on members’ performance however is stakeholder focused and is geared to external accountability, to peer accountability. Both monitors are part of an integral system of monitoring as in the picture seen here.

## Dialogue Agenda



Oversight on effectiveness is firstly a task of the public service providers itself with engagement of their stakeholders. Through its annual report, through applicable self imposed monitoring, through dialogue with stakeholders. Secondly, central government i.e. ministries, who often own these public service providers, should take note that integrity policies and systems have been implemented. Thirdly, as already stated above: central government should in the end underline its commitment to integrity by ensuring a substantial free press, transparency i.e. good and effective FOIA laws and effective penal and/or civil laws on breaches of integrity.

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## Netherlands: Dutch National Integrity Office (BIOS)

*The following comments were submitted by Alain Hoekstra on behalf of the Dutch National Integrity Office:*

Thank you for the revised, and improved, draft recommendation of the Council on Public Integrity. In addition to our prior input, I hereby send you our most important comments on this latest version:

p.2

The second paragraph states that an over reliance on formal regulations and procedures has certain disadvantages. We would, however, like to stress that an over reliance on informal, more cultural oriented, integrity approaches have shortcomings as well (according to recent literature). Since the document proposes a balance between two strategies, we ask you to mention these shortcomings as well (for instance):

- a value-based strategy without clear norms and rules and sanctions has no bite (Huberts, 2014: 179).

- one should be aware of a too enthusiastic and radical switch towards the values-based approach..." (OECD 2009: p.13).

- The integrity approach is focused on a 'high' moral with little attention for integrity breaches (Ministry of the Interior, 2014).

p.2

Although we recognize that a 'whole-of-society approach' would be an ideal situation, we notice that the existing recommendations largely reflect on integrity management within public sector organizations. A more encompassing, societal, approach requires much more detailed recommendations and instructions in that regard.

p.3

Although we largely agree with the content of the three pillars we would certainly name them differently. They should, instead, be labeled: hardware (rules, procedures etc.), software (culture, awareness etc.) and operating system (coordination, monitoring etc.). The current third pillar 'establishing effective accountability' does not seem to be connected with the other two pillars. Moreover one could argue that control and oversight makes part of the current first pillar; the system.

## Norway: Ministry of Foreign Affairs

Thank you very much for the opportunity to comment on the «Revised draft Recommendation» - “Update to the 1998 Recommendation on Improving Ethical Conduct in the Public Service”. Our comments have been elaborated by the Foreign Service Control Unit.

In our view, the draft is well structured and we commend the comprehensive approach which encompasses:

- Coherent and comprehensive integrity system
- Build a culture of integrity
- Ensure accountability, and effective control and enforcement of public integrity.

However, the definitions (part I) need some more elaboration.

The draft contains good language about the importance of «public integrity», but lacks a clarifying definition of what this is. “Integrity” is defined as “consistent alignment of and adherence to stated values, principles and norms”. It may be useful to state somewhat more clearly what kind of values, principles and norms that could qualify in this context. Some principles, values and norms may be quite problematic and possibly destructive.

In the document “misconduct” refers to “standards and rules”, not to “values, principles and norms”, - hence the link between integrity and misconduct is unclear.

Part II and III refer to “irregularities, misconduct and wrongful acts” as well as “wrongdoings”. Are they considered to be synonymous? Part I highlights “conflict of interest” and “corruption” without linking them to integrity, irregularities, misconduct and wrongful acts. As we see it, conflict of interest and corruption are two examples of misconduct, but we wonder why these two are specifically singled out without being accompanied by other forms of misconduct such as bribery, embezzlement, theft, nepotism, etc, etc?

We believe it is essential to get the terminology right and apply it consistently throughout the document. Otherwise, the confusion may hamper implementation.

Kind regards/

*Lornts Finanger  
Senior Adviser  
Section for Development Policy  
Department for Economic Relations and Development  
Norwegian Ministry of Foreign Affairs*

## Portugal: Presidência do Conselho de Ministros

*The Presidência do Conselho de Ministros submitted the following comments on behalf of Mr. Sousa Rego:*

[...] we welcome this new draft approach to such challenging subjects, as ethics and integrity in the public sector.

We believe this revision will offer a significant step forward in this regard.

## **Slovak Republic: Department of Civil Service and Public Service and Control and Prevention of Corruption Section of the Government Office**

*Attached you can find the response of the Department of Civil Service and Public Service (hereinafter "DCSPS") of the Government Office of the Slovak Republic (hereinafter "Government Office") and also the response und suggestions of the Control and Prevention of Corruption Section (hereinafter "CPCS") of the Government Office to the forwarded draft below.*

Mgr. Martina Mráziková  
Department of Civil Service and Public Service  
Government Office of the Slovak Republic  
<http://www.vlada.gov.sk/>

You can find the response of the Department of Civil Service and Public Service (hereinafter "DCSPS") of the Government Office of the Slovak Republic (hereinafter "Government Office") and also the response and suggestions of the Control and Prevention of Corruption Section (hereinafter "CPCS") of the Government Office to the forwarded draft below.

|                                                    |
|----------------------------------------------------|
| The response of the DCSPS of the Government Office |
|----------------------------------------------------|

The DCSPS of the Government Office agrees with individual points and suggestions of the draft. We have no objections or comments to the presented draft and support adoption of this "new tool" to foster and secure the integrity system in the civil service. A new Civil Service Act is currently being prepared in the Slovak Republic. Its aim is i. a. to introduce new legal institutes and measures to create good conditions for the establishment of an effective integrity system.

Consolidation and support of integrity in the civil service should be particularly ensured by:

1. introduction of civil service principles (in particular: principle of political impartiality, legality, transparent recruitment, efficient management of civil servants, impartiality, professionalism, transparent and equal remuneration, stability and fair treatment),
2. establishment of the Civil Service Council, which will be responsible for the supervision of civil service principles,
3. introduction of a new recruitment process for the civil servants through more transparent selection procedure,
4. introduction of the Assessment Centre Method for the assessment and evaluation of skills and knowledge of a candidate, who applies for a general manager position,
5. demanding a higher level of probity from candidates, who apply for a position with a higher degree of responsibility and possible danger of corruption,
6. implementation of a new dismissal examination process under particular conditions stated in the new Civil Service Act (e. g. civil servants of the Government Office can request examination of their dismissals by the Civil Service Council in certain cases),
7. implementation of the civil servant evaluation and establishment of measures in case of unsatisfactory results.

|                                                   |
|---------------------------------------------------|
| The response of the CPCS of the Government Office |
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Corruption is one of the key issues that need to be addressed by mutual co-operation at the level of the Government, business community, as well as general public. OECD has done excellent job in the field of corruption prevention and the integrity as well strengthening the fight against corruption.

Corruption is not a problem of just a single country; it is a widespread phenomenon adversely affecting the prosperity and wellbeing of any society as a whole. Prevention programs and strengthening of the integrity of the public sphere play a major role in eliminating this anti-social phenomenon.

The Government Office appreciates the update of the 1998 Recommendations on Improving Ethical Conduct in the Public Service, which supports progressive integrity framework that is applicable to all stages of public life, including public sector employees, as well as appointed or elected public officials.

The main benefit of the proposal of the Recommendation is that it contributes to the establishment of a culture of integrity and supports the promotion of global efforts in the fight against corruption.

The Government Office supports the idea that the State policy of integrity needs to be supported by clear standards, rules, procedures, laws and good practice tools.

The system of integrity is effective only if the States implement appropriate measures with regard to actual risk of misconduct and corruption that arises from the different interactions between the public sector, the private sector and civil society.

Therefore, to develop the measures, we recommend a multidisciplinary approach to be applied in the area of fraud risk and corruption analyses.

The Government Office supports the ethical recommendations, which play an important role in good governance and form a reliable tool for both the improvement of basic administrative activities in the public administration and the quality of decision-making as well as increasing the confidence in the Government.

The development and maintenance of official ethical infrastructure includes not only a culture of integrity within the State and municipal institutions and the society as a whole, but also effective control mechanisms for compliance with the standards at the Government level.

The Slovak Republic implements, observes and controls the Recommendations proposed by the OECD. The Recommendations are reflected, for example, in the following normative acts:

- Conflict of interest – Act No. 357/2004 Coll. on the protection of public interest in the exercise of the public functions as amended by the Constitutional Act No. 545/2005 Coll. – Act on conflict of interest,

- Corruption crimes in the following acts:

Act No. 300/2005 Coll. Penal Code as amended by later legislation (receiving bribe, bribery, including bribery of foreign public officials in international business transactions, indirect electoral corruption, corruption, corruption in sports),

Act No. 301/2005 Coll. Penal procedures Code, as amended by later legislation

Act No. 291/2009 Coll. on the Specialized Criminal Court and on the amendments to certain laws,

- System of integrity in the following acts:

Act No. 400/2009 Coll. on State service and on the amendments to certain laws (currently a new bill on State service is under preparation),

Act No. 553/2003 Coll. on remuneration of some staff in the performance of work in public interest, and on the amendments to certain laws, as amended by later legislation,

Act No. 311/2001 Coll. Labour Act, as amended by later legislation,

Act No. 343/2015 Coll. on Public Procurement, and on the amendments to certain laws,

Act No. 528/2008 Coll. on assistance provided from the funds of the European Community, as amended by later legislation,

Act No. 292/2014 Coll. on the contribution provided from the European structural funds and the investment funds, and on amendments to certain laws,

Act No. 307/2014 Coll. on certain measures associated with the reporting of anti-social activities, and on the amendment of certain laws,

Act No. 91/2015 Coll. on criminal liability of legal persons, and on amendments to certain laws, (Act effective as of 1 January 2016),

Resolution of the Government of the Slovak Republic No. 517 of 10 August 2011 on the proposal for the strategic plan for the fight against corruption in the Slovak Republic,

Resolution of the Government of the Slovak Republic No. 137 of 20 March 2013 accompanying the proposal for ensuring the implementation of the measures arising from the Recommendations adopted by the Working Group on bribery in international business transactions of the OECD for the Slovak Republic, within the framework of the Stage 3 reviews,

Resolution of the Government of the Slovak Republic No. 661 of 17 December 2014 accompanying the proposal for adding the tasks of the Strategic Plan for the fight against corruption in the Slovak Republic (the proposal approved by resolution of the Government of the Slovak Republic No 517/2011, on the recommendations of the OECD Working Group on bribery in international business transactions, in the context of Stage 3 reviews,

Resolution of the Government of the Slovak Republic No. 403 of 8 July 2015 on the proposal for an action plan for the strengthening the rule of law in the Slovak Republic, etc..

**In view of the above and building on the experience and their application in the public administration of the Slovak Republic, the Government Office proposes to complement the recommendations as follows:**

1. In Part II of the Recommendation, point 3:

- to develop and adopt a strategic document that would: define the area of most frequent occurrences of corruption in public administration; include anti-corruption activities of Governments, national institutions; the activities of NGOs; analyse the criminal legislation related to corruption in public administration; and identify the areas that need to be developed in the policies of individual government departments and institutions in order to identify specific tasks and deadlines for their implementation;
- to periodically review the performance of the tasks referred to in the strategy paper.

2. In Part II Recommendation, point 4:

- to emphasise the proof of property in the targeted inspected declarations of assets in the case of public positions, which are exposed to an increased risk of corruption.

3. In Part III of the Recommendation, point 6:

- to promote integrity in the public administration with the general public through the establishment of Anti-Corruption lines at the State institutions, NGOs, as well as within the business environment, which would serve for reporting suspected unethical or anti-social conduct of civil servants.

#### 4. In the Part IV of the Recommendation, paragraph 10

- to emphasise the need for an fraud-proofing and corruption-proofing of the legislation that is under preparation – the so called. anti-corruption clause in submitting proposals for legislation.

CPCS operates in the area of raising awareness about the fight against corruption and corruption prevention for a long time. Its own initiatives include providing educational activities in the field of the fight against corruption and the protection of the financial interests of the European Union in the Slovak Republic

Within the implementation of its preventive tasks in the field of the fight against corruption, it has for several years been organising seminars on the topic of "**Enhancing legal awareness in the field of the prevention of corruption and the fight against corruption**". These seminars are also aimed at protecting the financial interests of the EU in the Slovak Republic. The seminars are designed for the staff of ministries and other central administration bodies, various specialized offices (e.g., land offices, public health, social security, etc.), the staff of higher territorial units, regional development agencies, leisure centres, legal assistance centres, etc.

#### An overview of the number of seminars and the participants

| Year                  | Number of seminars (total) | FaC and CP | PoFI of the EU in the SR | Number of participants (total) | FaC and CP      | PoFI of the EU in the SR |
|-----------------------|----------------------------|------------|--------------------------|--------------------------------|-----------------|--------------------------|
| 2012                  | 21                         | 5          | 16                       | 943                            | 298             | 645                      |
| 2013                  | 15                         | 4          | 11                       | 829                            | 190             | 639                      |
| 2014                  | 20                         | 3 / 7      | 10                       | 949                            | 159 / 168       | 622                      |
| 2015                  | 57                         | 5 / 5 / 22 | 25                       | 2244                           | 257 / 230 / 587 | 1170                     |
| 2016 (until 15 March) | 30                         | 2 / 23     | 5                        | 741                            | 74 / 275        | 392                      |

#### Abbreviations:

FaC and CP – fight against corruption and corruption prevention,

PoFI of the EU in the SR – protection of the EU's financial interests in the Slovak Republic

#### Commentary:

##### Year 2014:

CPCS organised **3 seminars** in 2014. The topic was "**Raising legal awareness in the field of the prevention of corruption and the fight against corruption**". They were attended by **159 participants**. This seminar was also organised for **7 offices of self-governing regions** (however, the office in Banská Bystrica showed no interest). These seminars were attended by **168 employees** of those offices.

At the same time, all those offices (including the said office in Banská Bystrica) received information materials - brochures on "Corruption around us - useful information for citizens". In addition, **10 seminars** aimed at the area of **the protection of financial interests of the European Union**, were organised. A total of 622 staff of the public administration were trained at the seminars.

From 2014, the Government Office, on its own initiative and in the context of the implementation of anti-corruption measures, launched projects aimed at the **education of applicants and members of evaluation panels within the framework of the subsidy Government Office's programs**. The topic was "**Enhancing legal awareness in the area of public procurement and the prevention of corruption**". The education was organised in co-operation with the SCPC, the Office of the

Plenipotentiary of the Government for Ethnic Minorities, the Office of Plenipotentiary of the Government for Youth and Sports, the Economy Department of the Economic and Technical Administration Section, and the Department of Public Procurement.

#### **Year 2015:**

In 2015, SCPC organised **5 seminars** on the topic of "**Raising legal awareness in the field of the prevention of corruption and the fight against corruption**". They were attended by **257 employees**. In cooperation with the Regional Development Agencies, it organised **5 seminars** on that topic. These seminars were attended by **230 participants**. In the area of the **protection of the financial interests of the European Union**, within the framework of the **25 training** activities, **1170 civil servants** were trained.

In the context of the implementation of the anti-corruption measures, the Government Office organised seminar **22 seminars** on the topic of "**Raising legal awareness in the area of public procurement and the prevention of corruption**". The seminars were attended by a total of **587 participants** – recipients of subsidies from the State budget within the scope of the Government Office within the meaning of Act No. 524/2010 Coll. on the provision of subsidies, within the scope of the Government Office, as amended. The participants included also the beneficiaries receiving the funds from the reserves of the Prime Minister; the members of the evaluation panel, and staff of the offices of the both Government plenipotentiaries.

The participants in the seminars acquire complex information on the issues related to the fight against corruption, the prevention of corruption, the historic development of the legal framework as regards corruption in the Slovak Republic and in international documents, on specific institutes used in the fight against corruption, as well as on the possibilities of the procedure where these participants are exposed to any corrupt conduct. They also acquire information related to the protection of the financial interests of the EU in the Slovak Republic.

The participants in the seminars obtain a **brochure** on "**Corruption around us – useful information for citizens**" and the participants in the training programs of the Government Office's grant programmes obtained "**The lesson for the applicants for grant/non-refundable financial contribution**". These brochures are also published on the Government Office's web-site.

#### **Year 2016:**

Until 15 March 2016, the SCPC organised **2 seminars** on the topic of "**Enhancing legal awareness in the area of the prevention of corruption and the fight against corruption**". They were attended by **74 employees** of the State administration. In the area of the **protection of financial interests of the European Union** in the Slovak Republic, a total of **392** civil servants were trained within the framework of the **5 training activities**.

Within the Government Office's grant programmes, **23 seminars** on the topic of the topic of "**Enhancing the legal awareness in the field of public procurement and the prevention of corruption**", were organised and they were attended by a total of **275** persons.

The Government Office, as an authority for the prevention of corruption under art. 6 of the UN Convention against corruption of 31 October 2003, fulfils a prevention task in the fight against corruption, including through the following activities:

1. The establishment of the **Anti-Corruption line of the Government Office** (since 18 May 2011), phone **0800 111 001**, through which the citizens can free of charge report suspected criminal offence of corruption, even anonymously.

2. The citizens can also report suspicion of a corruption criminal offence through regular mail or electronically to e-mail address [bpk@vlada.gov.sk](mailto:bpk@vlada.gov.sk).
3. Distribution of the **brochure "Corruption around us"** that contains practical information related to the fight against corruption.
4. Through the **Government Office website** on the web pages **"Together against corruption"** and **"Central Contact Point for OLAF"**.
5. The promotion of the international cartoon exhibition of humour on the topic of corruption under the name "Brain Sneezing – from kalokagathia to hypochondriasis and back ", and "Brain Sneezing – anti-corruption".
6. The implementation of the **project: "Education of children and youth in the area of the protection of the EU's financial interests and the fight against corruption "**, drawn up by the SCPC of the Government Office, its departments - the **Control and Prevention of Corruption Unit**, and the **Central Contact Point for OLAF**, included the topics of the prevention of corruption and the fight against corruption and fraud in the context of the protection of the financial interests of the EU in the framework of the National standard of financial literacy, version 1.1, effective as of 11 September 2014.
7. Participation in the activities of the OECD Working Group on Bribery of Public Officials in International Business Transactions in Paris, and within the framework of the International Anti-Corruption Academy (GROUP) in Vienna, and other activities.

## **Spain: Anti-Fraud Office of Catalonia**

*See next page*

## **DRAFT RECOMMENDATION OF THE COUNCIL ON PUBLIC INTEGRITY, OECD'S PUBLIC GOVERNANCE COMMITTEE.**

The comments to this draft recommendation have been submitted by the Anti-Fraud Office of Catalonia, an institution attached to the Parliament of Catalonia entrusted with the control and prevention of corruption in the Catalan public sector, created by the Law 14/2008, of November 5th ([www.antifrau.cat](http://www.antifrau.cat))

### **1.Preliminary considerations**

According to the introduction of the document, this recommendation has as a goal to update the "1998 Recommendation for the OECD on "Improving Ethical Conduct in the Public Service" that included the principles for Managing Ethics in the public sector.

From the Anti-Fraud Office of Catalonia, we compliment the work of the Working Party of the Senior Public Officials (SPIO) and the drafting of recommendations for enhancing ethics and integrity among the public service and the public sector.

### **2.Considerations with regards to the glossary**

The document starts with a glossary of the different definitions used throughout the text. The proposals from the Anti-Fraud Office of Catalonia are highlighted in red colour.

#### **2.1.- Definition of conflict of interests**

**"conflict of interest involves a conflict between the public duty and private interest of a public official, in which the public official has or could potentially have a private-capacity interests in which could improperly influence or appear to influence the performance of their official duties and responsibilities".**



From the Anti-Fraud Office of Catalonia, we would recommend that for the purposes of coherence with the vision of OECD the definition of conflict of interests should include the real, potential and apparent conflict of interests.

Therefore, we would recommend a new definition including the three kinds of conflict of interests which appear marked in red in the definition above.

## **2.2.- Definition of integrity**

According to the definition given in the glossary, **integrity “refers to the consistent alignment of and adherence to stated values, principles and norms and that guides the actions and performance of the public official”**.

We would suggest that the definition of integrity is rephrased in a manner that it is clear that the alignment and adherence to stated values is not merely formal but that this adherence is translated into facts by the public official. Integrity refers to the completeness, coherence that guides public officials between the principles and their effective and real performance.

## **2.3.- Definition of misconduct**

**“Misconduct refers to behaviour breaching standards and rules that can be formally sanctioned, either through disciplinary, administrative, criminal or civil law”**.

From our institution’s point of view, this definition entails that only the behaviour that can be sanctioned in a formal manner is to be considered misconduct. However, this definition excludes the standards reflected in the codes of ethics that are not considered “hard law”. From a strategical risk-preventive approach these conducts that are not necessarily “illegal” or in breach of the law (and that do not involve a sanction) should also be taken into account and defined or differentiated in the glossary.

Throughout the draft recommendations, several expressions close to the concept of misconduct are used (v.gr. irregularities, wrongful acts, wrongdoings, corruption and fraud) and we will recommend to define and identify if misconduct is equivalent to these other expressions for the purposes of clarification and legal certainty for the addressee of the document.

## **2.4.- Lack of definition of “whistleblower”**

Throughout the text, references to the figure of whistleblower and whistleblowing mechanisms are made. We deem important to identify and

to develop a definition of what is understood by whistleblower in this section of the document.

### **3. Considerations to the body of the draft recommendations**

#### **II Recommendations (first pillar: "Ensuring a coordinated and comprehensive integrity system")**

##### **II.4 "Set standards that promote ethical conduct for public officials".**

- a) "Setting integrity standards **through regulations and self-regulations such as codes of conducts**, that not only focus on minimum standards, but that also encourage high standards of conduct, good governance, adherence to public service values and an open culture that facilitates learning. "

From the Anti-Fraud Office of Catalonia, we consider important that the establishment of the standards could be conducted through codes of conduct and "soft law" which is not mentioned in this part of the draft recommendations. We would recommend introducing "codes of conduct" in this part of the document.

- c) "Setting clear and proportionate standards and procedures **for high-risk positions for all public officials and appointed or elected positions** to prevent corruption and misconduct, including the management of **(latent) real, apparent or potential** conflict of interests.

We recommend that in this definition that all public officials are included and not limit its application to solely "high-risk positions", as the recommendation currently states. The management of conflict of interests involves the public servants as a whole and the ethical standards should govern the whole public service and not only a limited number of high-ranking officials. Furthermore, it seems that "proportionate" would already take into account somehow the position of the public officials and its public function.

According to the OECD's Toolkit of "Managing Conflict of interests in the Public Sector", the functional responsibilities of public officials should be the primary focus of the organisation's conflict-of-interest policy.

Furthermore, we propose the deletion of two concepts: one is the concept of appointed or elected positions, which according to the definition of public official given in the glossary of the recommendations would already be contemplated in the concept given of "public official".

And secondly, we propose also the deletion of the concept of "latent conflict of interests" since it does not appear in the glossary and could be replaced by real, potential and apparent conflict of interests.

Therefore, we would recommend the re-wording of this recommendation in the sense reflected above.

### **III. Recommendations: (second pillar: Building a culture of integrity)**

**"6.b) Providing alternative **secured** channels for reporting irregularities and misconduct, including the possibility of reporting to a body with the mandate and capacity to conduct an independent investigation **or to a member of the parliament or the press**".**

We refer here to what was stated in the considerations of the glossary with regards to the introduction of the definition of "whistleblower" as well as the indistinct use –that could lead to confusion- of the terms "misconduct" and irregularities.

Furthermore, we propose the introduction of "secured channels for reporting". The idea of confidentiality and the provision of a secured channel are essential to the effective protection of the whistleblower. Whistleblowers should be entitled to have the confidentiality of their identity maintained, subject to fair trial guarantees.

The recommendation of the Council of Europe and its explanatory memorandum Recommendation CM/Rec(2014)7 adopted by the Committee of Ministers of the Council of Europe on 30 April 2014 and explanatory memorandum<sup>1</sup> establishes that the channels for reporting and disclosures should comprise reports within an organization, to relevant public regulatory bodies and disclosures to the public, for example to a journalist or a member of parliament. This last reference could be made in the recommendation and is highlighted at the end of the recommendation above.

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<sup>1</sup> [http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec\(2014\)7E.pdf](http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2014)7E.pdf)

**6.c) "Providing clear rules and procedures for reporting irregularities, concerns about misconduct and wrongful acts that cover a wide scope of wrongdoings and ensure in legislation and practice effective protection against all types of reprisals as a result of reporting in good faith, ~~for all who carry out activities relevant to an organization's mission to any person who acquaints him/herself with a wrongdoing within their organisation~~".**

We would recommend the inclusion of "good faith reporting" in this recommendation. The jurisprudence of the ECHR stated in the affair *Guja v. Moldova*<sup>2</sup> that "an act motivated by a personal grievance or a personal antagonism or the expectation of personal advantage, including pecuniary gain, would not justify a particularly strong level of protection".

The legal capacity to hold a secure channel of reporting should be opened to any person who acquaints him or herself with a wrongdoing in the organization and should not be only granted to those "who carry out activities relevant to an organisation's mission".

Retaliation should be clearly defined and the protection mechanisms should cover all direct, indirect, and future consequences of the reprisal(s).<sup>3</sup>

**7.b) Supporting managers in their role as ethical leaders by establishing clear mandates, providing organization support (internal control, human resources instruments, legal advice, etc.), training and guidance to increase awareness and skills for exercising appropriate judgement for integrity, in particular in case of conflict of interest, whistleblowing, **access to public information and transparency** or disciplinary issues.**

We refer here to what has already been mentioned with regards to the recommendation of the introduction of the definition of the whistleblower.

Additionally, our institution deems important to include in the training and guidance to develop skills of ethical leaders, the issues of access to public information and transparency.

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<sup>2</sup> Affair *Guja v. Moldova*, no. 14277/04, ECHR 2008.

<sup>3</sup> <http://www.oecd.org/cleangovbiz/toolkit/50042935.pdf>

**IV. Recommendation on ensuring accountability and effective control and enforcement of public integrity (third pillar of the recommendation)**

10. Apply an internal control and risk management framework to effectively safeguard integrity in public organisations [...]

In line with the recommendation established in the point 2.b), we consider appropriate here to highlight the importance that the body or units of the organization entrusted with the internal control, should be conferred a sufficient autonomy with regards to the hierarchical structure, so that the public officials exercising their duties in these units have a certain shield or an "armour" regarding orders or indications in the performance of their control duties. This can be associated to introduction of the figure of the "ethical officers" in some jurisdictions or a responsible person in charge of ethical issues within the organization.



**Daniel de Alfonso Laso**

**Director**

Oficina Antifrau de Catalunya  
Anti-Fraud Office of Catalonia

Barcelona, 22<sup>nd</sup> of March 2016

## Spain: Instituto Nacional de Administración Pública (INAP)

*Spain's INAP provided the following comments:*

Regarding the draft Recommendation of the Council on Public Integrity elaborated by the OECD's Public Governance Committee, the INAP of Spain has no comments to do. The INAP considers that it is important to include training as a mechanism to support and foster the culture of public ethics among managers and civil servants as stated in Recommendation III. "builds a culture of integrity", points 7 b) y 9b) .

Carmen González Serrano

Subdirectora General Adjunta  
Departamento de Relaciones Internacionales  
Instituto Nacional de Administración Pública (INAP)

## Sweden: Delegation to the OECD Regulatory Policy Committee

*Sweden's delegation to the OECD Regulatory Policy Committee provided the following comments:*

Sweden welcomes the draft recommendation and considers it well drafted and important.

Stefan Ernlund

Swedish delegate, OECD Regulatory Policy Committee

Head of Unit, Better Regulation, The Swedish Agency for Economic and Regional Growth

## Sweden: Ministry of Finance

*Sweden's Ministry of Finance provided the following comments:*

Regarding the Revised draft Recommendation on Improving Ethical Conduct in the Public Service  
GOV/PGC/INT(2015)3/REV3

Sweden has no specific comments, in our view it is well drafted and comprehensive.

Lena Westin

Senior Advisor  
Ministry of Finance  
Division for Public Administration

## Sweden: Representation in the OECD Working Party on State Ownership and Privatisation Practices

*The following comments were submitted by Sweden through consultations with the OECD Working Party on State Ownership and Privatisation Practices:*

- Under the definition of public sector, SOEs are mentioned. Arguably SOEs should be defined as well. The definition in the OECD Guidelines on Corporate Governance of State-Owned Enterprises might work as it specifies that the state must control the enterprise in order to be regarded as an SOE. The rationale being, of course, that smaller shareholdings of the state (e.g. through pension funds) shouldn't lead to the investee companies being considered as SOEs.

## Switzerland: Federal Department of Economic Affairs, Education and Research

*The Federal Department of Economic Affairs, Education and Research, State Secretariat for Economic Affairs (SECO), provided two sets of comments:*

*Delegate from the Working Group on Bribery:*

Concerning the attached document, we have the following comments:

- As for the different concepts defined, we believe that it would be wiser to refer to the definitions already established in international instruments such as the OECD Convention on Combating against Bribery foreign public officials in international business transactions and the UN Convention against Corruption.
- What is the relation to the OECD Trust and Business Project?

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*Delegate from the Corporate Governance Committee:*

We would like to thank you for the consultation on the Draft Recommendation on Public Integrity. Please find below Switzerland's comments and questions. I am also writing on behalf of Switzerland's Competition Committee delegate.

- Given the numerous vertical recommendations of the OECD with a link to integrity and prevention of corruption, the Recommendation on Public Integrity could in our view emphasize more on its horizontal character. We furthermore see a risk of duplication with regard to the ongoing Trust and Business (TNB) Project, which addresses integrity on a horizontal level as well.
- Using the term "Recommendation" suggests that the document has a non-binding effect on the Adherents. Assessments of implementation however may lead to a *de facto* binding character. Is there any form of assessment (i.e. peer-review) foreseen for the Recommendation?

## Comments from other organisations and individuals

### L'Association des Acheteurs Publics

Bonjour Monsieur. nous vous apportons en fichier joint l'avis des experts de l'AAP sur le projet de recommandation que vous nous avez fait parvenir. Nous sommes désolés pour le retard mais le WE pascal, la sortie du décret sur les marchés publics et l'obligation de traduire le document ne nous a pas permis d'être plus rapides.

Très cordialement. Jean-Lou Lemaindre / Président AAP.

#### Avis Association des Acheteurs Territoriaux sur projet de recommandation

Le projet de recommandation de l'OCDE sur l'amélioration de l'intégrité dans les services publics est très complet et détaillé. Il permet notamment de bien identifier les situations et de les homogénéiser pour tous les pays qui auront adhérer en utilisant et reconnaissant un vocabulaire commun. Ainsi, le sens de chaque situation et/ou de mot aura la même signification et celle-ci pourra être aisément déterminée.

L'association des acheteurs publics (A.A.P.) note, et se félicite, qu'une partie de ces recommandations sont déjà inscrites dans les textes qui forment le socle administratif des trois fonctions publiques en France, les fonctions publiques de l'État, hospitalière et territoriale. En effet, en particulier les devoirs de probité, de moralité et de discrétion sont inscrits dans les décrets portant les statuts de chacune d'entre-elles.

Aussi, l'AAP est-elle favorable à ces recommandations mais invite toutefois l'OCDE à veiller à ne pas alourdir les textes existants ou ajouter des contraintes supplémentaires qui n'auraient pour effet que d'avoir l'effet inverse recherché à savoir notamment un enchevêtrement de textes pour des "bonnes conduites et pratiques" simples à rappeler et/ou à mettre en oeuvre tout en n'oubliant pas que l'homme reste faillible par définition et qu'une responsabilité ne peut pas être qu'un seul résultat tautologique.

Toutefois notre avis sur cette recommandation nous permet de rappeler quelques points que nous jugeons importants. Concernant ce problème de l'éthique administrative pour le secteur public et commercial pour le secteur privé il conviendrait :

- d'instaurer une charte éthique précisant que les relations contractuelles entre le privé et le public sont soumises au principe de transparence imposant que les divers intervenants précisent leurs liens organiques ou fonctionnels avec des organismes privés ou publics avec indications éventuelles des rémunérations perçues
- Que les mises en cause éventuelles de l'intégrité des fonctionnaires conduisent en cas de conflits sérieux à leur donner la possibilité de lever le secret professionnel en cas de contentieux mettant en jeu leur probité professionnelle en facilitant le recours à l'article 40 du code procédure pénale sans conséquence sur la carrière administrative car, il arrive que la hiérarchie administrative se montre très réticente à invoquer cet article dont l'application est de ce fait fort restreinte
- De mettre en place sur le plan départemental d'une commission consultative de déontologie comportant des représentants de la Direction de la Concurrence dont la saisine serait facultative pour traiter des affaires complexes (connaissance des filiales et des participations des intervenants dans des sociétés...

## Tarek BAHRI

*Tarek Bahri, Tunisia, provided the following comments as a private person, not in his professional role:*

### Projet de recommandations de l'OCDE pour le renforcement de l'intégrité dans le secteur public

Le projet de recommandations présente une feuille de route afin de consolider le système d'intégrité publique, sans pour autant imposer un modèle clé en main, ce qui laisse une marge pour la contextualisation selon les spécificités de chaque pays.

Ce document établit un équilibre entre les différentes approches en cohérence avec la gestion de l'intégrité.

Par ailleurs, nous saluons le fait qu'une bonne partie des remarques soulevées à l'issue de notre participation aux travaux du SPIO en Septembre dernier, tout en insistant sur les points suivants :

- La nécessité de concevoir un mécanisme de suivi et d'évaluation des efforts consentis pour la mise en œuvre de ces recommandations ;
- Nous recommandons d'engager une réflexion sur un projet de recommandations pour le renforcement de l'intégrité dans le secteur privé.

## **BIAC (Business and Industry Advisory Committee to the OECD)**

*BIAC provided the following comment after consultations with its members:*

The BIAC consensus view on the draft Recommendation is that, at a high level, it is fine as is.

Maud GARNIER BOURRELLY, BIAC

## European Commission: Smart Regulation and Work Programme

*Ulrik Mogensen provided the below comments on behalf of Ms Golberg*

The Draft Recommendation of the OECD Council on Public Integrity is a welcome means to further foster the culture of ethics in public administrations. The proposed recommendations, which aim to promote a risk-based approach and avoid one-size-fits-all-solutions, have potential to contribute to the prevention of corruption and wrongdoing and may serve as a point of reference for many national public administrations. We share the position of the OECD that over-elaborated and burdensome formal regulations may be counter-effective because they may lead to unnecessary costs, institutionalise distrust and reduce ethical reasoning. The current document does not mention post office/post mandate activities. Some mention of this, underlining the necessity to assess the risks and based on the principle of proportionality could enrich the document. A practical guide on how the principles mentioned in the Recommendation could be implemented would also be helpful.

## European Ombudsman

*See next page*



## European Ombudsman

Head of Inquiries Unit 1

Ms Terry Lamboo  
OECD

Terry.Lamboo@oecd.org

Strasbourg, 21/03/2016

### **Subject: Draft Recommendation of the Council of Public Integrity**

Dear Ms Lamboo,

I am writing in reply to your email of 4 March 2016, by which you invited the Office of the European Ombudsman to comment on the above.

The Draft Recommendation is a comprehensive and ambitious text. It applies to all stages of the policy cycle and addresses a wide range of issues. The high quality of the text allows me to express myself in brevity.

The Draft Recommendation is a principle-based text. The Introduction states that practical guidance on how the principles may be implemented within a given context could be added at a later stage by providing a toolbox of good practices. In my view it is highly commendable that practical guidance be provided to public officials. The experience of this Office is that practical guidance to public officials is, at times, wanting; had such guidance been available, the Ombudsman may not have found it necessary to close the inquiry in question with a finding of maladministration. However, the Introduction expresses fear of over-regulation. I think that consideration should be given to the possibility of overcoming such fears by use of non-binding instruments such as guidelines, practice directions or tool boxes. The importance of adequate training of officials must also be stressed.

Transparency is mentioned a number of times in the text. In my view, transparency and rules on freedom of information are key to ensuring integrity as such rules enable and enhance public scrutiny. To achieve their purpose, the rules must have a wide scope and function well in practice. If they do, they can amount to a very powerful tool for ensuring compliance with laws and high administrative and ethical standards. Therefore I take the view that transparency and well functioning freedom of information rules should be given a more prominent place in the text.



Yours sincerely,

A handwritten signature in black ink, which appears to read 'Marta H. Ziembinska'.

Marta Hirsch-Ziembinska  
Head of Inquiries Unit 1

## German Association of Political Consultants

*Dear Members of the Council on Public Integrity,*

*the German Association of Political Consultants (de'ge'pol) welcomes your initiative to propose a modernized set of recommendations to set up as well as improve upon existing public integrity frameworks.*

*As the first association of professional German-speaking political consultants, the de'ge'pol has been actively promoting standards for ethical conduct for its members for years. Our members are active in the fields of Public Affairs, campaign consulting and policy consulting in various European countries.*

*We believe that granting all stakeholders in the political process equitable voice is the best way to foster pluralism and a democratic society. For this system to work there must be an agreed-upon set of rules and standards regarding integrity and transparency. The proposal at hand goes to great lengths in order to ensure this in a very encompassing way. From an organizational perspective, these recommendations thoroughly complement and build upon our existing standards, as exemplified by our code of ethics, our insistence on the need to establish a mandatory register for all lobbying professionals, be they working for companies, law firms or civil society organization, as well as our most recent proposal to establish a commissioner for interest representation at the German Bundestag to watch over the integrity of the political process.*

*In order to maximize the proposal's contribution to furthering public integrity, we highly recommend an annex focusing on practical guidance aided by a set of good practice propositions, as you also suggested in your introductory remarks. As cogent and forcible as it is to develop a comprehensive basis of principles in a whole-of-society approach, the principles risk being only marginally understood if they are not supported by highlighting their practical implications. In light of the attempt to incorporate both the public and the private sector as well as civil society at all stages of the policy cycle into the recommendations, these principles may otherwise remain intangible and, as such, difficult to adhere to.*

*Having said this, the German Association of Political Consultants welcomes the Council's recommendations and would greatly approve if they became a model for and a central part of public integrity systems worldwide.*

## Hungarian Integrity Community

To Ms. Pia MARCONI

Chair of OECD Public Governance Committee

OECD

Paris

Dear Ms. Marconi,

On behalf of the Hungarian Integrity Community, a self-organized group of integrity officials we would like to welcome the draft Recommendation of the Council on Public Integrity (hereinafter referred to as Draft). To use the opportunity of the proposed public consultation, hereby we would like to share our comments and suggestions regarding the Draft in order to increase the relevance and impact of the final output of your work.

### A) General remarks

We agree with your Council's holistic approach to build a coherent and comprehensive integrity system based on strategies and integrity risk assessments. This integrity system should be extended to the different public sectors, especially to local governments, education, health and state-owned enterprises. These elements are particularly important to have a nation-wide, sound integrity system and to create and maintain public trust towards government. International recommendations and complying new national regulations could give a new impetus to these efforts, in line with higher transparency and open government standards highlighted in the point IV/13 of the Draft.

### B) Specific remarks

1. For us it seems necessary to highlight not only the relevance of integrity but the consequences of the lack or low level of integrity. These causes among others not only enhanced level of corruption risks but affect directly the organizations' performance and the general well-being of the employees creating a „toxic workplace”. Therefore we suggest to insert the following sentence:

***„RECOGNISING that the low level of integrity implicates high level of stress at work and thereby makes the public sector organizations more exposed to become a toxic workplace;”***

2. The Draft already highlights the importance of learning in integrity building. However, it should be occurred not only in individual but in organizational level as well, recognizing the importance of organizational learning in this process. Therefore we suggest to insert the following sentence:

***“RECOGNISING the central role of organizational learning and the transition to learning organization in increasing of integrity of public sector organizations;”***

3. We welcome that the Draft refers not only appointed but elected officials as well.
4. The notion of “*integrity system*” focuses mostly on rules neglecting the soft elements (culture, values) of integrity. We suggest the complementation of the notion.
5. The notion of “*public sector*” needs further elaboration. It is very positive that it includes the judiciary, public corporations and state owned enterprises and it seems for us necessary to name and include the law enforcement agencies as well. In our point of view, public sector should include all entities providing in-kind services or receiving funding or government support.
6. In point 1/c) we think that Adherents should not only demonstrate exemplary personal behavior in the public sector but show above-the-average professional vocation and commitment. Therefore we suggest complementing this sentence as follows: “*Demonstrating professional commitment and exemplary personal behavior*”.
7. We think that raising awareness can't be limited to citizens, it is necessary within the public sector as well. Therefore we suggest canceling the expression “*among citizens*”.

8. In building the culture of integrity, the Draft should rely more on self-organizing epistemic communities and networks and should expressly support the empowerment of citizens. Therefore we suggest to insert the following sentence in point 5:

*“e) Encouraging the contribution of the self-organizing epistemic communities and networks in the field of the dissemination and development of culture and methods of integrity, enjoying the benefits of knowledge sharing and continuous mutual learning.”*

9. We strongly agree that the selection, appointment or promotion of managers in the public administration should be based on their integrity as well. Additionally, the assessment of their leadership performance should be based on a 360 degree evaluation involving all stakeholders, especially their subordinates.
10. We welcome the highlighting of the importance of on-the-job integrity trainings and awareness-raising. In supporting leaders of the organization, integrity trainings should be periodic which assures the systematic refreshment of acquired knowledge. Therefore we suggest the insertion of the word *“periodic”* as follows: *“periodic training and support”* in point 7/c) and similarly in point 9/b).
11. As the notion of *“integrity system”* points out, integrity officials are important parts of organizational integrity systems. However, the Draft doesn't specific nor the notion or the role of such officials, neither the minimum standards of their work (independence, reporting, procedural rules). Therefore we suggest to complement the point 7 of the Draft with the following sentence:

*“c) Applying dedicated and qualified integrity officials in public sector organizations for supporting managers in building, developing, promoting and enforcing integrity.”*

12. Transparent selection, appointment or promotion is not only in management but in staff positions very important and essential elements of organizational integrity. Therefore we suggest complementing the point 8/a) as follows: *„a merit based professional public sector, a transparent selection, appointment and promotion system, prevent favoritism and nepotism”*.
13. Using modern organizational development tools are necessary to reach organizational changes. Therefore we suggest to complement the point 10 with the following sentence:

*“d) Promoting modern organizational development approaches as effective tools and essential elements of evolve really effective control environment.”*

14. Semi-external professional bodies like the Hungarian Government Officials Corps could have relevant role in enhancing public integrity. Therefore we suggest including the *“external professional bodies”* into the point 11/b) as follows: *“exchange of information between relevant internal bodies, external professional bodies and external public authorities”*.
15. Transparency and open government are important elements of national, sub-national and organizational integrity systems. We would like to suggest not limiting these elements only to the accountability but using them as an essential element of integrity.
16. Publicly available information on the implementation and progress of Adherents would make the Recommendations to a powerful tool in enforcing integrity system. A fact-based and unified sample-supported self-evaluation would make the implementation follow-up of the Recommendation more transparent. Therefore we suggest to insert the following sentence after section VII:

*“VIII. INVITES Adherents to make an annual self-assessment on the implementation of this Recommendation, and make it public on the Internet.”*

We hope that your suggestions and comments would contribute to the relevance and impact of the Recommendations.

Sincerely yours,

Hungarian Integrity Community

## **International Anti-Corruption Academy (IACA)**

*See next page*

## DRAFT RECOMMENDATION OF THE COUNCIL ON PUBLIC INTEGRITY

### ONLINE PUBLIC CONSULTATION DEADLINE FOR COMMENT – 22 MARCH 2016

The draft Recommendation of the Council on Public Integrity has been elaborated by the OECD's Public Governance Committee, through its Working Party of Senior Public Integrity Officials (SPIO) and is being circulated publicly for consultation. It may still be subject to modifications, in particular to reflect, as appropriate, the relevant comments received through the public consultation. We welcome your comments, suggestions and constructive input to increase the relevance and impact of the final output of this work.

Your comments will be made available to the public unless otherwise requested. Comments should be sent by **22 March 2016** to [govintegrity@oecd.org](mailto:govintegrity@oecd.org).

#### INTRODUCTION

No country is immune from the adverse impact of corruption and wrongdoing on prosperity and wellbeing. Integrity is the backbone of political, economic and social structures and the recognition that breaches of public integrity continue to plague us has resulted in an increased interest in Member and non-Members countries in upgrading their integrity frameworks.

As a result, the OECD Council invited the Public Governance Committee to update the first international instrument in the area of managing ethics and enhancing integrity: the 1998 OECD Recommendation on Improving Ethical Conduct in the Public Service (1998 Recommendation). The revisions to the 1998 Recommendation are extensive, as it incorporates new insights. For this reason, it is proposed to abrogate the 1998 Recommendation and replace it with the draft Recommendation of the Council on Public Integrity. The 1998 Recommendation is not legally binding but there is an expectation that Members and non-Members having adhered to the Recommendation will do their utmost to implement it.

The OECD stimulates learning through benchmarking and voluntary peer reviews to monitor progress in implementing the Recommendations in specific country contexts. Once adopted, the Recommendation would also be open for adherence by OECD non-Members.

The draft Recommendation specifically promotes a comprehensive and coherent progressive integrity framework that is applicable to all stages of the policy cycle. It is founded on the notion that an integrity system can only be effective if countries balance a value-based and compliance-based approach, and if the system is relevant given the actual risks of misconduct and corruption. Moreover, a culture of integrity needs to be supported by clear standards and laws; yet over-elaborate formal regulations and procedures may be counter-effective as they may raise unnecessary administrative costs, reduce privacy, institutionalise distrust, and may reduce ethical reasoning to a culture of just following rules and procedures. This notion is also reflected within the draft Recommendation: it is a principle-based text. Practical guidance on how these principles may be implemented within a given context could be added at a later stage by providing a toolbox of good practices.

In addition, the scope of the Draft Recommendation explicitly includes a whole-of-government approach addressing public sector employees, as well as appointed or elected public officials. As such, it takes into account the insight that public trust in governments is based on the integrity of public decision making and service delivery in the whole public sector, including state owned enterprises or Public-Private-Partnerships. The draft Recommendation is further based upon the notion of integrity as a shared responsibility of individual public bodies for their own organisation, and of central bodies (which may exist at the national level, but may also be available at the subnational level) for the elements of the integrity system which include laws, regulations, policies, organisations and officials specifically contributing to public integrity. Given the variety of multilevel governance arrangements in countries, integrity systems can be tailored to meet the needs of different government structures. Also, given the variety of specific sectors, public officials or high-risk officials and tasks, the principle of a coherent and comprehensive integrity system does not imply uniformity across the public sector as it allows for co-existing integrity sub-systems (at the central and subnational level) where relevant and effective.

The draft Recommendation also takes into account that integrity risks arise out of the various interactions between the public sector, the private sector, civil society and citizens at all stages of the political and policy process. This interconnectedness therefore is best addressed through a whole-of-society approach to enhancing integrity and reducing corruption. This is ultimately dependent upon efforts of public officials to refrain from misconduct, but a risk-based approach to integrity would also take into account the role of business and citizens in unethical interactions with public officials. Moreover, efforts to reduce corruption by public officials can only be effective within a broader culture of integrity where fraud and abuse of public resources by business and citizens alike is seen as unacceptable. Establishing a culture of integrity within society would require a concerted action by public and private sectors and civil society alike.

Finally, in order to address the challenge of the actual implementation of measures promoting integrity, general management principles have been incorporated to ensure effective coordination of the system. Most importantly, the draft Recommendation aims to avoid a check-box approach based on one-size-fits-all-solutions, with the understanding that an effective integrity system must be founded on strategic goals and priorities that are informed by a risk-based approach.

## STRUCTURE OF THE DRAFT RECOMMENDATION

Central to the draft Recommendation is the shared aspiration and commitment by Member States and adherents to create a comprehensive integrity system, which builds a culture of integrity and provides accountability, and which contributes to effective governance, trust within society and inclusive growth. The public integrity system is thus organised around three pillars:

1. **Ensuring a coordinated and comprehensive integrity system** by taking political and administrative responsibilities for a strategic integrity system for all public officials, based on ethical standards.
2. **Creating cultures of integrity** through a whole-of-society approach to support ethical awareness and responsibilities for all public officials (elected officials, managers and public servants).
3. **Establishing effective accountability** through internal control and regulatory oversight to ensure compliance of the public sector, private sector and citizens with standards of public integrity, and through transparency and active participation by civil society in the public decision-making process.

## DRAFT RECOMMENDATION OF THE COUNCIL ON PUBLIC INTEGRITY

**HAVING REGARD** to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

**HAVING REGARD** to the Recommendation of the Council for Improving the Quality of Government Regulation [C(95)21/FINAL], the Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Sector [C(2003)107], the Recommendation of the Council on Principles for Private Sector Participation in Infrastructure [C(2007)23/FINAL], the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions [C(2009)159/REV1/FINAL], the Recommendation of the Council on Principles for Transparency and Integrity in Lobbying [C(2010)16], the Guidelines for Multinational Enterprises [C(76)99/FINAL as amended by C/MIN(2011)11/FINAL], the Recommendation of the Council on Regulatory Policy and Governance [C(2012)37], the Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships [C(2012)86], the Recommendation of the Council on Effective Public Investment Across Levels of Government [C(2014)32], the Recommendation of the Council on Public Procurement [C(2015)2], the Recommendation of the Council on the Policy Framework for Investment [C(2015)56/REV1] and the Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises [C(2015)85];

**HAVING REGARD** to the important work done on anti-corruption and good governance by the United Nations, embodied in particular in the United Nations Convention against Corruption and the United Nations Sustainable Development Goals, and by several [other international as well as](#) regional organisations;

**RECOGNISING** that public integrity is the backbone of political, economic and social structures and thus essential to economic and social well-being and prosperity for individuals and societies as a whole;

**RECOGNISING** that public integrity is vital to public governance, safeguarding the public interest and reinforcing such fundamental values as commitment to a pluralistic democracy based upon the rule of law and respect of human rights;

**CONSIDERING** that corruption and other integrity breaches, of which no country is immune, have become increasingly complex since the adoption of the 1998 Recommendation of the Council on Improving Ethical Conduct in the Public Service including Principles for Managing Ethics in the Public Service [C(98)70], which this Recommendation replaces;

**RECOGNISING** that integrity risks exist in the various interactions between the public sector, the private sector, civil society and citizens at all stages of the political and policy process, therefore this interconnectedness requires an integrative approach to enhancing integrity and reducing corruption;

**RECOGNISING** that integrity is a cornerstone of the overall system of good governance, and that updated guidance on integrity should accordingly promote coherence with other key elements of public governance;

**RECOGNISING** that national practices on promoting integrity vary widely across countries in light of the specific nature of integrity risks and their distinct legal, institutional and cultural contexts, and while countries will determine and manage their national integrity system in light of these country-specific circumstances, they can benefit from the present Recommendation;

| **CONSIDERING** that enhancing public integrity is a shared mission and responsibility for all levels of government, though different mandates and levels of autonomy apply in line with national legal and institutional frameworks; therefore, this Recommendation is relevant to all levels of government for fostering public trust;

**Comment [MK1]:** See: OECD, *Fighting Corruption – What Role for Civil Society?* 2003

On the proposal of the Public Governance Committee:

**I. AGREES that, for the purpose of the present Recommendation, the following definitions are used:**

- **Conflict of interest** involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.
- **Corruption** refers to the abuse of a position or office for private interests;
- **Integrity** refers to the consistent alignment of and adherence to stated values, principles and norms;
- **Integrity system** includes the laws, regulations, policies, organisations and officials specifically contributing to public integrity and could be tailored to specific type of sectors and public officials thereby creating co-existing **integrity sub-systems**;
- **Misconduct** refers to behaviour breaching standards and rules that can be formally sanctioned, either through disciplinary, administrative, criminal or civil law;
- **Public official** refers to any person who performs a public function or provides a public service, i.e. someone who holds a legislative, executive, administrative, or judicial position of any kind, whether appointed or elected;
- **Public sector** includes the legislative, executive, administrative, or judicial bodies at the central and subnational level, including public corporations, state owned enterprises and Public-Private Partnerships. It could also include entities that deliver in-kind services (e.g. health, education, and public transport) although these can be contracted out or privately funded in some countries. It could also include non-governmental organisations performing governmental functions, generally in receipt of funding or other support from government.

**II. RECOMMENDS that Members and non-Members having adhered to this Recommendation (hereafter the “Adherents”) ensure a coherent and comprehensive integrity system.**

**To this end, Adherents should:**

**1. Demonstrate commitment at the highest political and management level to enhance integrity and reduce corruption, in particular through:**

a) Establishing a coherent and comprehensive integrity system that takes into consideration a multilevel governance and whole-of-society perspective to integrity, that defines, supports, controls and enforces integrity and that is integrated into the wider management and governance framework.

b) Ensuring that all public **organisations** have effective legislative and institutional frameworks, adequate resources and support to take responsibility for adequately applying the integrity system.

**Comment [MK2]:** “organisations” or “entities”? => inconsistent language to, e.g., II.2.b) [there it reads “units or bodies”], II.2.c) [it reads “bodies” only], III.8.b) [“bodies”], IV.10.a) [“entity”] etc.

c) Demonstrating exemplary personal behaviour, maintaining a high standard of propriety in the discharge of official duties.

**2. Promote institutional responsibilities across the public sector to strengthen the effectiveness of the integrity system, in particular through:**

a) Establishing clear and effective responsibilities for leading and implementing all elements of the integrity system.

b) Ensuring that **government units or bodies** (including autonomous or independent ones) responsible for the development, implementation, enforcement, and/or monitoring of elements of the integrity system have adequate mandate, capacity, expertise and resources to effectively fulfil their responsibilities.

**Comment [MK3]:** See comment 2

c) Fostering effective mechanisms for horizontal and vertical collaboration between **government bodies**, and where possible with and between subnational levels of government through formal or informal means to share lessons from good practices, to avoid overlap and gaps.

**Comment [MK4]:** See comment 2, 3

**3. Develop a strategic approach, outlining objectives and priorities that address risks and success factors, in particular through:**

a) Setting strategic objectives and priorities for the integrity system based upon a clear risk-based approach to irregularities, misconduct and wrongful acts, and that takes into account relevant critical success factors.

b) Providing transparent and up-to-date measurement processes, including credible and relevant data, benchmarks and indicators that measure the level of implementation, performance and overall effectiveness of the integrity system.

**4. Set standards that promote ethical conduct for public officials, in particular through:**

a) Setting integrity standards that not only focus on minimum standards, but that also encourage high standards of conduct, good governance, adherence to public service values and an open culture that facilitates **and incentivizes** learning.

b) Setting integrity standards in the legal system and organisational policies to provide a clear basis for -- disciplinary, administrative, and/or criminal -- investigation and sanctions.

c) Setting clear and proportionate standards and procedures for high-risk positions and appointed or elected positions to prevent corruption and misconduct, including for the management of (latent) conflict of interests.

d) Communicate public sector values and standards internally in public organisations, and to the private sector, civil society and the public with the expectation that these partners also respect those values and standards.

### ***III. RECOMMENDS that Adherents build a culture of integrity.***

#### **To this end, Adherents should:**

5. Promote a whole-of-society culture of integrity, partnering with citizens and the private sector, in particular through:

**Comment [MK5]:** Inconsistent language to, e.g., II.4.d) ["...the private sector, civil society and the public..."]

a) Including in the integrity system the role and responsibilities of citizens and the private sector for respecting public integrity values, in particular by providing incentives to uphold those values as a shared responsibility.

**Comment [MK6]:** See comment 5

b) Raising awareness in society of the benefits of integrity and ethical behaviour to reduce tolerance of corruption and misconduct, and carry out, where appropriate, campaigns to promote civic education, public values and ethics, among citizens.

**Comment [MK7]:** Inconsistent language to, e.g., III.6.b)

c) Engaging all relevant stakeholders in the development and regular update and implementation of the integrity system to ensure relevance and effective performance.

d) Engaging with the private sector to uphold integrity in business operations and in the impact of business actions.

6. Support open organisational cultures responsive to integrity concerns, in particular through:

a) Encouraging an open organisational culture where ethical dilemmas, integrity concerns, and errors can be discussed freely and where leadership is responsive to providing timely advice and resolving these issues.

b) Providing alternative channels for reporting irregularities and misconduct, including the possibility of reporting to a body with the mandate and capacity to conduct an independent investigation.

**Comment [MK8]:** See comment 7

c) Providing clear rules and procedures for reporting irregularities, concerns about misconduct and wrongful acts that cover a wide scope of wrongdoings, and ensure in legislation and practice effective protection against all types of reprisals as a result of reporting, for all who carry out activities relevant to an organisation's mission.

**Comment [MK9]:** See comments 7, 8

**Comment [MK10]:** "...wrongful acts that cover a wide scope of wrongdoings" => redundant language?

7. Invest in integrity leadership to demonstrate an organisation's commitment to integrity, in particular through:

**Comment [MK11]:** What kind of organisation? See comments 2, 3, 4

a) Including integrity leadership in the profile for managers at all levels of the organisation, and as a requirement for selection, appointment or promotion in a management position. In addition, assessing the performance of managers with respect to the integrity system at all levels of the organisation.

b) Supporting managers in their role as ethical leaders by establishing clear mandates, providing organisational support (internal control, human resources instruments, legal advice etc.), training and guidance to increase awareness and skills for exercising appropriate judgement for integrity, in particular in case of conflict of interest, whistleblowing, or disciplinary issues.

**8.** Create a merit based professional public sector dedicated to public service values and good governance, in particular through:

a) Effective, transparent and consistent human resource management policies that promote a public ethos, a merit based professional public sector, prevent favouritism and nepotism and address risks for abuse of position and misconduct.

b) Ensuring that central units or bodies (including autonomous or independent ones) responsible for the development, implementation, enforcement, and/or monitoring of elements of the merit based system within their jurisdiction have the mandate, expertise and resources to effectively fulfil their responsibilities.

Comment [MK12]: See comment 2

c) Foster management frameworks that promote managerial responsibilities to identify and mitigate integrity risks.

**9.** Provide sufficient guidance and timely advice for public officials to support a culture of integrity, in particular through:

a) Providing public officials throughout their career with clear and up-to-date information about the organisation's policies, rules and administrative procedures relevant to maintaining high standards of integrity.

b) Offering induction and on-the-job integrity training to public officials throughout their career in order to raise awareness and develop essential skills for analysis of ethical dilemmas; and to make codes of conduct and other integrity standards practically applicable and meaningful in their own contexts.

c) Providing informal guidance and consultation mechanisms to help public officials apply integrity standards in their daily work, and to respond properly to conflict of interest situations. In addition impartial advice and guidance (provided internally and/or externally to the organisation) should be made easy accessible to public officials.

Comment [MK13]: Necessarily?

**IV. RECOMMENDS that Adherents ensure accountability, incentives for and effective control and enforcement of public integrity.**

**To this end, Adherents should:**

**10.** Apply an internal control and risk management framework to effectively safeguard integrity in public organisations, in particular through:

a) Ensuring an effective control environment with clear and fair objectives that demonstrate managers' commitment to integrity and public service values, and that provides a reasonable level of assurance of an entity's efficiency, performance and compliance with laws, regulations, and standards. In particular, the

internal control system should help to improve the performance – coherence, effectiveness and efficiency – of the integrity system.

b) Ensuring a strategic approach to risk management that includes assessing integrity risks and addressing control weaknesses on a risk basis. This includes building in warning signals – such as red-flags – within critical processes, and an effective monitoring and quality assurance mechanism of the risk management system, including fraud and corruption risks.

c) Ensuring control mechanisms are coherent with effective and clear procedures for responding to credible suspicions of violations of laws and regulations, and facilitate reporting to the competent authorities without fear of reprisals.

11. Ensure that enforcement mechanisms respond effectively to all cases of irregularities, misconduct ~~or~~ and corruption, in particular through:

a) Applying fairness and objectivity in the disciplinary or administrative process and through defining responsibilities and ensuring institutional capacity, at the organisational and central level where relevant to respond effectively and timely to reported cases.

b) Fostering effective mechanisms for collaboration and exchange of information between relevant internal bodies and external public authorities where concurrent disciplinary and criminal cases would increase the timeliness and proportionality of enforcement mechanisms.

c) Providing transparency within the organisation and to the public, about the outcomes of cases and the effectiveness of the enforcement mechanisms, in particular through developing relevant statistical data on cases, while respecting confidentiality and other relevant legal provisions.

12. Ensure effective external oversight and control that promote public accountability and integrity, in particular through:

a) Ensuring that autonomous or independent regulatory and investigative entities defend the public interest through the impartial enforcement of laws and regulations applying to both public and private organisations, as well as citizens.

b) Ensuring that external oversight entities are autonomous or independent, with adequate authority, mandate, capacity, expertise and resources to fulfil their responsibilities, including the right to impose sanctions, as established by their law.

c) Facilitating organisational learning and building public trust by providing adequate response (including redress where relevant) to the sanctions, rulings and formal advice by oversight bodies and regulatory entities.

13. Safeguard integrity and the public interest in the broader decision-making process, in particular through:

a) Promoting transparency and an open government, including actively providing access to information and open data, and active responses to request for information.

b) Ensuring inclusion by granting all stakeholders - civil society organisations, businesses, the media and the general public - equitable voice in the development and implementation of public policies. Including promoting integrity and avoidance of policy capture through management of conflict-of-interests, and transparency of lobbying activities and of financing of political parties and election campaigns.

**Comment [MK14]:** Inconsistent language? See comments 7, 8, 9

**Comment [MK15]:** Why limiting it to the “organisational and central level”?

**Comment [MK16]:** Inconsistent language; see comment 2 et altera

**Comment [MK17]:** Inconsistent language to IV.12.b) and IV.12.c)

**Comment [MK18]:** Not clear, misleading

**Comment [MK19]:** See comment 17

**Comment [MK20]:** Redundant?

**Comment [MK21]:** Necessarily?

**Comment [MK22]:** See comments 17, 19

**Comment [MK23]:** What’s meant by that?

**Comment [MK24]:** Necessarily?

**Comment [MK25]:** Unclear sentence

c) Enabling a civil society that includes 'watchdog' organisations, citizens groups and independent media, in order to ensure effective accountability.

**Comment [MK26]:** Redundant to the preceding "civil society" in this sentence?

***V. INVITES the Secretary-General to disseminate this Recommendation.***

***VI. INVITES Adherents to disseminate this Recommendation within the public sector.***

***VII. INVITES non-Adherents to take account of and adhere to this Recommendation.***

***VIII. INSTRUCTS the Public Governance Committee to monitor the implementation of this Recommendation and to report thereon to the Council no later than five years following its adoption and regularly thereafter.***

## Michael JOHNSTON

Charles A. Dana Professor of Political Science Emeritus, Colgate University

*Michael Johnston submitted the following comments:*

The recommendations draft sets forth an admirable and comprehensive set of goals, and certainly I agree with most of what I read there. I have just a few comments on the document itself and then some other thoughts about the follow-up processes that will be needed.

Avoiding the one-size-fits-all approach is critical, as in many respects building a culture of integrity will require a broad-based dialogue (and in many cases, reconciliation) between state and society, and among many diverse groups and interests within society and the economy. That process strikes me as the core challenge – one whose dynamics will differ from one society to the next – and so I would discourage the tendency to think in terms of a “toolbox of good practices”. The key to integrity is that larger and more complicated process noted just above, and the draft rightly observes that a checklist mentality is to be avoided.

In that connection, some discussion should focus upon concerns about legal corruption, or what Lessig calls “institutional corruption”. Those are activities (the most familiar being the financing of election campaigns, but there are many others) that are not only legal but in fact work through, and enjoy the protection of, laws and legitimate institutions – and yet many citizens see them as corrupt or corrupting. Much of the oft-observed democratic malaise in OECD and other countries revolves around such activities, and around a sense on the part of citizens that leaders and powerful figures “don’t care about people like me”. Mark Warren has made a powerful argument, in my view, that the essence of corruption in a democracy is “duplicious exclusion”, and dealing with the widespread public perception of such exclusion is every bit as important as dealing with bribery, extortion, and other proscribed forms of corruption. No list of administrative reforms is likely to address that sense of exclusion very effectively; in some instances a truth-and-reconciliation process, or a national roundtable, might be very helpful, even though those are steps that most OECD governments would likely resist. Again, what is needed is that broad-based process of openness, responsiveness to citizens’ immediate needs, and reconciliation. In many ways that malaise is political, and I recognize that OECD’s actions in that realm are strictly limited. Still, in a later section I offer an idea about pursuing those goals.

I noted that in the draft the working definition of *integrity* – “the consistent alignment of and adherence to stated principles, values, and norms” is narrower than the one used in other OECD discussions – “Justice, equity to promote the public interest; Transparency, openness; Accountability; and Efficiency”. Has there been a deliberate choice to forego that broader definition, with its implications for the classic sense of integrity as *wholeness*, in favour of a more legalistic conception? Given the scope of the corruption problems we seek to address, I do not see a legalistic approach as sufficient.

Finally, while the draft sets forth a fine list of goals, getting there is a much more difficult challenge, as is demonstrating to citizens and others that movement toward such goals is in fact being made. Will there be mutual monitoring processes to follow up on the draft’s proclaimed goals? At two points, benchmarking is mentioned; the effectiveness of that process, and trends it reveals, would be an excellent focus for subsequent monitoring and evaluation processes. In fact measurement and assessment, in its broader sense, can be essential to that process of openness and reconciliation if measurements show citizens that their needs are being taken seriously and addressed, and that government is operating in more open and *demonstrably* fair ways.

Herewith, the idea I mentioned: a comprehensive system of indicators of government performance, benchmarked across comparable agencies and jurisdictions, could be the working core of both an assessment process about building integrity and of a reconciliation between state and society based on principles of justice and fairness. Some years ago, in 2008, I prepared a long document for OECD setting forth the outlines of such a data-and-benchmarks process. While the ideas in that document are far from finished or perfect, and while there are reasons why implementation of the idea would encounter some resistance, I continue to think that the basic idea has some merit, and I would gladly circulate copies of that discussion with anyone who might be interested in it.

That said, all of my comments should be seen in the context of my overwhelmingly positive view of the goals laid down in the draft recommendations. I am grateful to have had the opportunity to review it.

**Michael Johnston**

Charles A. Dana Professor of Political Science Emeritus  
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## **Rutgers Center for Government Compliance and Ethics**

Please find attached our filing on the Draft Recommendation of the Council on Public Integrity. Please feel free to contact us with any questions or comments relating to this filing.

Regards,

Joseph Murphy

Attorney and author

Ms. Terry Lamboo

March 21, 2016

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Re: Draft Recommendation of the Council on Public Integrity - Online Public Consultation

Thank you for the opportunity to provide comments on the Draft Recommendation of the Council on Public Integrity ("Recommendation"). We are compliance and ethics professionals who have had experience working in private industry and in supporting public integrity initiatives. We fully support the Council on Public Integrity ("Council") in its ongoing program to combat corruption and misconduct in the public sector and throughout society.

In our comments on the Recommendation we address the following points:

1. The Council should use the concept of a compliance and ethics ("C&E") program, as widely applied globally, as a starting point and model
2. The Council should consider using the OECD Working Group on Bribery's Good Practice Guidance modified to address public integrity and public sector entities
3. The Recommendation should include a model or models (examples) to illustrate how the suggestions in the Recommendation would work on a best practice basis
4. The Council should Include public international organizations, such as the OECD, in the scope of the Recommendation
5. The Recommendation should call on the public sector to promote C&E in the private sector to protect public integrity
6. The Council should advise states not to take actions that undercut C&E programs anywhere, whether in the private sector or the public sector
7. The Council should form an ongoing working group to promote and implement this Recommendation
8. The Rutgers Center for Government Compliance and Ethics offers an important resource for development of public integrity programs

We agree with the approach of the Recommendation to be both value-based and compliance-based, covering principles and practices. We also support the emphasis on managing ethics and enhancing integrity. Focusing on "managing" is essential if this effort is to have a real impact, and move beyond mere words to taking effective action. We have experienced this same shift in the private sector, moving from high-

sounding but ineffective words, to a focus on practical, management steps to get results.

**1. The Council should use the concept of a compliance and ethics program, as widely applied globally, as a starting point and model**

As the Recommendation makes clear, the goal of this initiative is to create a culture of compliance and ethics in organizations, or as it says, “cultures of integrity.” In organizations this is done through leadership and effective management steps. That is what a compliance and ethics program is: the commitment by management to do the right thing, and effective management steps to make this happen. While the specific methods of implementing these management steps will vary based on the type of organization and other factors, the basic steps themselves are common for all organizations, whether public or private, non-profit or business, religious or secular. We recommend that the Recommendation include and embrace this focus. While the names used in the private sector vary to some degree, the reference to compliance and ethics (“C&E”) programs will make clear that this is common ground.

We believe it will vastly facilitate reaching the Council’s objectives to recognize this reality, and not appear to be reinventing things that already exist. Treating integrity in public sector entities as entirely separate from integrity in the private sector will be wasteful and create confusion and duplication of efforts.

We recommend that, as is the case in other organizations and sectors, the programs should cover all areas of law and ethics that apply to public sector entities. As set out in the Recommendation, the focus is broad – “corruption and misconduct.” However, we note that conflicts of interest are defined separately. For ease of reference and to keep this practical, we recommend making it clear in the definitions on page 5 that “misconduct” includes conflicts of interest.

Why is it important to take a consistent and practical approach to C&E efforts in the public and private sectors? It is clear in the Recommendation that the breadth of “public sector entities” covers many types of entities, including state-owned enterprises (“SOE”). These are frequently very similar to private sector entities, sometimes to the point of being indistinguishable. Many such SOEs already have C&E programs; in some instances, such as healthcare in the United States, these programs may be legally required. Thus a large number of public sector entities are already familiar with the operation of C&E programs and the terms and sources used in this area; they apply them every day.

As another example, there are a number of universities that are operated by government agencies. In the US it is common for such universities to have C&E programs already. They, too, apply C&E concepts every day.

But this use of C&E programs is not limited to public entities that have direct peers in the private sector. Even government agencies as more traditionally defined have compliance and ethics programs. As spelled out in a white paper published by the Rutgers Center on Government Compliance and Ethics (Compliance and Ethics Programs for Government Organizations: Lessons from the Private Sector [http://rcgce.camlaw.rutgers.edu/sites/rcgce.camlaw.rutgers.edu/files/rcgce\\_white\\_paper.pdf](http://rcgce.camlaw.rutgers.edu/sites/rcgce.camlaw.rutgers.edu/files/rcgce_white_paper.pdf)), examples in the United States include the Federal Bureau of Investigation (“FBI”) and the National Security Agency (“NSA”). Counties and cities have also implemented such programs.

The Recommendation, at page 6, item 2.b), wisely calls for those doing this work to have “expertise and resources”. Where are they to get this? There is a great deal of expertise and resources available in the C&E field, and this already includes participation by those who do C&E work in government. It is better not to leave people adrift, but to add clarity by using consistent terminology.

There is much experience, learning, and assistance already available in the C&E field. A number of enforcement agencies have also offered models and guides for regulated entities on how to develop their C&E programs. In the private sector there is broad experience applied in an enormous variety of circumstances by organizations of all types. As a result there is much learning in the C&E field about what do to and what to avoid to create effective programs.

Endorsing the established field of C&E serves as a key guide and framework, but with sufficient freedom to add the various points of emphasis included in the Recommendation. It is relatively easy to tie the various points in the draft into the elements of an accepted C&E framework such as the one set out in the Good Practice Guidance (OECD, Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, Appendix II, <http://www.oecd.org/daf/anti-bribery/44884389.pdf>) (“Good Practice Guidance”).

The alternative of separate silos and unnecessary duplication will hurt all involved and waste resources. Instead, there is great value in having people in the private and public sectors speaking the same language when they are talking about the same concepts.

Toward this objective, we suggest the following specific changes:

- a. Add on page 4, “Having regard to the work done in the private sector to implement effective compliance and ethics programs, based on guidance and incentives provided by the public sector”
- b. In III 5. d), insert at the end: “, through the promotion of compliance and ethics programs.”
- c. We believe the draft underestimates the risk and impact of retaliation, and recommend stronger coverage of that topic. Retaliation is endemic in organizations and quickly undercuts compliance and ethics efforts. To better emphasize this important point we

recommend having the prevention of retaliation be identified as a core element of any integrity program.

- d. The definition of “misconduct” seems to reflect a bias toward rules-based compliance. There is also a concern that, in some circumstances, the concept of sovereign immunity might mean that governmental wrongdoing may not be sanctionable with the practical consequence that the underlying individual misconduct might also escape formal punishment. It is better just to have misconduct defined as behavior that breaches law, standards or rules, without the qualification that it be formally sanctionable.
- e. Also, the approach seems to be narrowly on individuals, without recognizing the concept of organizational culpability. But in the private sector organizations themselves tend to be subject to sanction. An organization can, unfortunately, have a culture that encourages misconduct. While this does not relieve individuals of responsibility, it does recognize the need to change organizations. Thus the scope of the Recommendation should be expanded to include sanctions against public sector entities. For example, such an entity that had engaged in pervasive misconduct would at least be subject to having an enhanced C&E program required and the implementation checked by an appointed monitor.

## **2. The Council should consider using the OECD Working Group on Bribery’s Good Practice Guidance modified to address public integrity and public sector entities**

All parties will gain if the effort to promote public integrity uses the language and concepts that are widely understood and applied. In this respect, the OECD Working Group on Bribery has already done excellent work in providing a guidance standard on compliance programs. The OECD’s Good Practice Guidance spells out the basic elements that make a compliance program effective. While the Guidance was specifically written for the fight against corruption in the private sector, it can easily be converted for use to promote public integrity.

The Good Practice Guidance has the enormous advantage of being applied to corruption, an area that is global in scope and at the top of the list for companies seeking to promote cultures of ethics and compliance. As is obvious, bribery is a crime that involves at least two entities: a private sector entity and a public one. The Good Practice Guidance thus sets a strong model that is familiar to governments and companies around the world.

We have provided a draft of the Good Practice Guidance modified to address public sector compliance and ethics programs, in Appendix I.

**3. The Recommendation should include a model or models (examples) to illustrate how the suggestions in the Recommendation would work on a best practice basis**

The Recommendation covers many good and important points, but as written, parts are somewhat conceptual and general. It is important that the Recommendation be practical and something that those in the public sector can start applying. One of the best ways to facilitate this is to offer models of how the Recommendation might be applied.

One of the advantages of a model is that it is just an example. Thus it is not directive, but can be nevertheless very instructive. An excellent example of this can be seen in the Canadian Competition Bureau's guidance on compliance programs (Competition Bureau Canada, Bulletin - Corporate Compliance Programs (June 3, 2015), available at [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-bulletin-corp-compliance-e.pdf/\\$FILE/cb-bulletin-corp-compliance-e.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-bulletin-corp-compliance-e.pdf/$FILE/cb-bulletin-corp-compliance-e.pdf)), which provides positive and negative examples as guidance.

It would be ideal if such examples could be included in the Recommendation, but if the Council creates a mechanism for following up on its Recommendation this task could be delegated to such a working group.

**4. The Council should include public international organizations, such as the OECD, in the scope of the Recommendation**

To build a society of integrity it is important that all players participate. One of the lessons of the United States Foreign Corrupt Practices Act was the importance of including public international organizations within the scope of restrictions on foreign bribery. We propose that the Recommendation be expanded to include public international organizations such as the OECD and the United Nations. They should all step up to the fight against corruption and public entity misconduct.

This step could be accomplished simply by adding such organizations into the definition of "public sector" on page 5.

With this change the OECD itself could develop a full-throated C&E program for itself and its staff that could serve as a reference model for other public sector entities. There is nothing that inspires confidence more than having those who offer advice follow the same advice they are offering others.

**5. The Recommendation should call on the public sector to promote C&E in the private sector to protect public integrity.**

The Recommendation, page 4, recognizes the integrity risks from interaction between the public and private sectors and calls for an integrative approach. This

makes enormous sense, and also fits in with the established global movement toward having companies and other private sector entities adopt effective C&E programs.

Given the importance of this goal, it makes enormous sense for the public sector to promote C&E programs in the private sector. These programs are how organizations put their commitment into action. To fight things like corruption it is essential to have both sides fighting this battle.

Moreover, it is important to recognize that C&E not only affects the organization where it takes place, but is also an important vehicle for getting the broader public policy message out to the public. Every employee who is reached with a compliance message has a personal network of family, friends, colleagues, etc. The more these people are exposed to effective communications on the policy message the more it helps to change the broader culture. Thus, for example, employee training on gender discrimination helps spread the message that this is an important value in society.

How can the public sector promote C&E programs in the private sector? There has been much work done in this field and many examples to follow. Through a mix of incentives and models, the private sector is increasingly being recruited into the battle against corruption and other offenses that undermine the integrity of societies and entire countries.

Just to give some examples, public sector entities could have the existence of an effective C&E program as a factor in selecting contractors. At minimum, government procurement agencies could at least ask providers if they have C&E programs. (In work the authors have done for various government agencies we have never even been asked this question by an agency.) Such entities could follow the lead of the OECD Working Group on Bribery's recommendation that governments:

"... consider, where international business transactions are concerned, and as appropriate, internal controls, ethics, and compliance programmes or measures in their decisions to grant public advantages, including public subsidies, licences, public procurement contracts, contracts funded by official development assistance, and officially supported export credits." Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, X.C.vi., available at <http://www.oecd.org/daf/anti-bribery/44176910.pdf>.

Those recommendations also contain other useful guidance for governments in promoting private sector C&E programs. See Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, X.C. available at <http://www.oecd.org/daf/anti-bribery/44176910.pdf>.

One of the most, if not the strongest, incentives is to have the existence of an effective C&E program as a factor in determining culpability or the degree of culpability when an organization does break the law. In the United States, for example, sentences for organizations committing federal crimes may be reduced if an organization has such a program. At the initial stage, enforcement and regulatory agencies that are focused on prevention (as opposed to simple revenue generation through fines) will take the existence of such programs into account in determining whether and to what extent to take enforcement actions against organizations.

While some public sector entities only issue empty statements saying they support C&E programs but take no actions to back up the rhetoric, others that want to drive corporate activity and know that actions matter more than mere words, offer real, tangible benefits as an incentive.

Finally, public sector entities can set a model for the private sector by implementing effective C&E programs that apply to their own staff and operations. This serves both to prevent corruption and misconduct in the public sector, and to provide a model for the private sector.

#### **6. The Council should advise states not to take actions that undercut C&E programs anywhere, whether in the private sector or the public sector**

If public sector entities are to commit to the fight against corruption and misconduct and to champion integrity efforts in organizations, then at minimum they should not be taking steps that attack the very foundations of these efforts. Yet sadly there is a virulent history of exactly this type of action by agencies, enforcement authorities and courts. Such hostility can severely undercut the effectiveness of efforts to raise the level of integrity throughout the public and private sectors.

We will not attempt to catalog this completely here, but focus on some outstanding examples. In the EU, privacy laws have been used to undercut speak-up systems that protect workers and prevent retaliation against those who raise integrity concerns. This application of privacy laws occurred only when companies tried to get serious about C&E programs in Europe and implement reporting systems, i.e., helplines. Before this there were no existing restrictions on the ability of workers to raise issues related to integrity. But immediately upon the efforts by multinationals to apply the compliance program elements of the United States Sarbanes-Oxley Act and implement reporting systems, companies were threatened with privacy-related enforcement actions. In some countries they were subject to potential punitive enforcement merely for enabling workers to report criminal conduct anonymously. Even though the same employees had exactly the same ability to report exactly the same misconduct before these C&E programs were introduced, when they were designated as compliance and ethics programs with helplines they were attacked.

Privacy laws also pose threats that undercut organizational self-policing as applied to such steps as investigations, audits, and other essential compliance and ethics functions.

In another area, labor laws have similarly been used to undercut compliance efforts. In the United States the National Labor Relations Board has attacked standard language in company codes of ethics and conduct, making almost whimsical arguments about their impact on collective bargaining, even in the absence of any evidence of a negative impact. This is not to say that such codes and other compliance efforts should be above regulation, but that the hostile approach by agencies such as the NLRB reflects an almost complete disregard for the societal value and importance of organizational C&E programs. Agencies such as the NLRB and European privacy enforcers appear to assign organizational self-policing almost no value as compared to the agency's enforcement agenda.

In the public sector in the United States, open records laws/Freedom of Information Act provisions have also been used to undercut helpline operations. In one case, for example, a state university that had implemented a speak-up line had to disclose all of its sensitive reporting records in response to mere expressions of curiosity. Immediately thereafter the reporting system was shut down.

Of course, as anyone who has ever worked in the fight against corruption can attest, enabling employees to report corrupt acts safely and to reach quickly those positioned to take effective action against corrupt acts is essential if corruption is to be defeated.

In all of these examples it is patently obvious that the public sector is giving little or no consideration to the important public policy role played by organizations that undertake C&E programs. But as the Recommendation makes clear, to create integrated cultures of integrity all sectors must participate. Organizations use management techniques – i.e., C&E programs – to achieve this. To the extent the public sector undermines these efforts it hurts this effort on all levels.

This is, of course, not to say that privacy, labor rights or open records are not important values. But in fact in each of these circumstances very little weight was given to the C&E efforts. A government cannot honestly claim it believes in an integrated approach to integrity and then turn around and attack the very efforts it claims it supports.

The Recommendation should send the message that all aspects of an effective C&E program in both the private and public sectors should be valued and protected; they should be regulated and limited only to the minimum extent necessary to protect core public interests. Integrity in society should not be sacrificed to the special interests of any one regulatory body.

## **7. The Council should form an ongoing working group to promote and implement this Recommendation**

The Council is undertaking an extremely important initiative that offers enormous potential value. For example, in the painful fight against corruption, it is essential that both the private sector and the public sector strongly support this effort. The Council's initiative could mark a monumental step in this direction.

This makes it a priority to prevent the tragedy of wasted effort and enthusiasm. There are too many thoughtful and valuable initiatives of this nature that die a slow, silent death after they are released. We therefore believe it is essential that there be a mechanism to bring the Recommendation to life.

We believe it is an enormous task to implement this Recommendation, since governments will have many offices, agencies, etc., and many if not most will remain completely ignorant of this initiative. In the United States, for example, it is highly unlikely that even a minority of federal agencies will have heard of this Recommendation, let alone given it serious thought. It is as likely that absolutely no state governmental office and no local government will have even a clue that it exists. As for following it, even those agencies that hear of it will likely believe they have more important things to do and will totally ignore the Recommendation.

Thus, because we believe this likely result to be unacceptable, we recommend these specific steps to follow up on the Council's Recommendation:

- a. Form a working group of participating countries charged with promoting this Recommendation.
- b. Conduct reviews of each country's efforts and results to implement the Recommendations. Publish these results.
- c. Form a public/private partnership to promote these C&E programs in the public sector. Include organizations that promote C&E as a profession on a global basis, like the Society of Corporate Compliance & Ethics ([www.corporatecompliance.org](http://www.corporatecompliance.org)). Include business groups that have shown support for C&E, like the International Chamber of Commerce. The Rutgers Center for Government Compliance and Ethics would be another appropriate and supportive partner.
- d. Include a specific requirement that member countries at minimum inform all of their national governmental entities of the Recommendation – merely informing would be the least that should be expected of the member countries if they believe what they are publishing.

## **8. The Rutgers Center for Government Compliance and Ethics offers an important resource for development of public integrity programs**

To our knowledge, the Rutgers Center for Government Compliance and Ethics (<http://rcgce.camlaw.rutgers.edu/>) is the first and only resource dedicated to the development of C&E programs in the public sector. The Center offers an important white paper, (Compliance and Ethics Programs for Government Organizations: Lessons from the Private Sector, available at [http://rcgce.camlaw.rutgers.edu/sites/rcgce.camlaw.rutgers.edu/files/rcgce\\_white\\_paper.pdf](http://rcgce.camlaw.rutgers.edu/sites/rcgce.camlaw.rutgers.edu/files/rcgce_white_paper.pdf)), which has served as a starting point for government agencies implementing programs. The Center provides a resource and clearinghouse for ideas in this area. We believe the Center would be an excellent ally of the Council in its mission.

All those interested in this important topic are welcome to visit the site, use the white paper, and also share their experiences for the benefit of others working in this area to promote public integrity.

We fully support the initiative of the Council and the direction of the Recommendation. We believe it can be strongly empowered through the suggestions we offer here. We stand ready to assist the Council in this effort.

Respectfully submitted,

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## APPENDIX I

### **Good practice guidance on ethics and compliance programs to promote public integrity**

*This Good Practice Guidance acknowledges the relevant findings and recommendations of the Council on Public Integrity in its ongoing programme to combat corruption and misconduct in the public sector; contributions from the private sector and civil society; and previous work on promoting public integrity by the OECD as well as international private sector and civil society bodies. It also acknowledges the groundbreaking work of the Working Group on Bribery in International Business Transactions in developing a guidance for the analogous fight against foreign bribery.*

#### **Introduction**

This Good Practice Guidance (hereinafter “Guidance”) is addressed to public sector entities for establishing and ensuring the effectiveness of internal controls, ethics, and compliance programmes or measures for preventing and detecting corruption and misconduct, and to the private sector, which plays an essential role in assisting the public sector in these efforts. It recognises that to be effective, such programmes or measures should be interconnected with a public sector entity’s overall compliance framework. It is intended to serve as non-legally binding guidance to public sector entities in establishing effective internal controls, ethics, and compliance programmes or measures for preventing and detecting corruption and misconduct.

This Guidance is flexible, and intended to be adapted by public sector entities according to their individual circumstances, including their size, type, legal structure, purpose and sector of operation, as well as the jurisdictional and other basic legal principles under which they operate.

#### **A) Good Practice Guidance for Public Sector Entities**

Effective internal controls, ethics, and compliance programmes or measures for preventing and detecting corruption and misconduct should be developed on the basis of a risk assessment addressing the individual circumstances of a public sector entity, in particular the corruption and misconduct risks facing the entity. Such circumstances and risks should be regularly monitored, re-assessed, and adapted as necessary to ensure the continued effectiveness of the entity’s internal controls, ethics, and compliance programme or measures.

Public sector entities should consider, *inter alia*, the following good practices for ensuring effective internal controls, ethics, and compliance programmes or measures for the purpose of preventing and detecting corruption and misconduct:

1. strong, explicit and visible support and commitment from public officials, leaders and senior management to the public sector entity's internal controls, ethics and compliance programmes or measures for preventing and detecting cartels;
2. a clearly articulated and visible policy prohibiting corruption and misconduct;
3. compliance with this prohibition and the related internal controls, ethics, and compliance programmes or measures is the duty of individuals at all levels of the public sector entity;
4. oversight of ethics and compliance programmes or measures regarding corruption and misconduct, including the authority to report matters directly to independent monitoring bodies, is the duty of one or more senior entity officers, with an adequate level of autonomy from management, resources, and authority;
5. ethics and compliance programmes or measures designed to prevent and detect corruption and misconduct, applicable to all public officials, leaders, directors, officers, and employees, and applicable to all entities over which a public sector entity has effective control, on, *inter alia*, the following areas:
  - i) corruption;
  - ii) conflicts of interest; and
  - iii) other misconduct.
6. ethics and compliance programmes or measures designed to prevent and detect corruption and misconduct applicable, where appropriate and subject to contractual arrangements, to third parties such as agents and other intermediaries, consultants, representatives, contractors and suppliers, consortia, and joint venture partners (hereinafter “transactional partners”), including, *inter alia*, the following essential elements:
  - i) properly documented risk-based due diligence pertaining to the hiring, as well as the appropriate and regular oversight of transactional partners;
  - ii) informing transactional partners of the public sector entity’s commitment to abiding by laws on the prohibitions against corruption and misconduct, and of the entity’s ethics and compliance programme or measures for preventing and detecting such corruption and misconduct; and
  - iii) seeking a reciprocal commitment from transactional partners.
7. a system of internal controls, compliance audits, monitoring, and other steps reasonably designed to detect and reduce the opportunities for corruption and misconduct;

8. measures designed to ensure periodic communication, and documented training for all levels of the public sector entity, on the entity's ethics and compliance programme or measures regarding corruption and misconduct;

9. appropriate measures and incentives to encourage and provide positive support for the observance of ethics and compliance programmes or measures against corruption and misconduct, at all levels of the public sector entity;

10. appropriate disciplinary procedures to address, among other things, violations, at all levels of the public sector entity, of laws against corruption and misconduct, and the entity's ethics and compliance programme or measures regarding corruption and misconduct;

11. effective measures for:

i) providing guidance and advice to public officials, leaders, directors, officers, employees, and, where appropriate, transactional partners, on complying with the public sector entity's ethics and compliance programme or measures, including when they need urgent advice on difficult situations;

ii) internal and where possible confidential reporting by, and protection of, public officials, leaders, directors, officers, employees, and, where appropriate, transactional partners, not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors, as well as for public officials, leaders, directors, officers, employees, and, where appropriate, transactional partners, willing to report breaches of the law or professional standards or ethics occurring within the public sector entity, in good faith and on reasonable grounds; and

iii) undertaking appropriate action in response to such reports;

12. periodic reviews of the ethics and compliance programmes or measures, designed to evaluate and improve their effectiveness in preventing and detecting corruption and misconduct, taking into account relevant developments in the field, and evolving international and public sector standards.

### ***B) Actions by Business Organisations and Professional Associations***

Business organisations and professional associations may play an essential role in assisting public sector entities in the development of effective internal control, ethics, and compliance programmes or measures for the purpose of preventing and detecting corruption and misconduct. Such support may include, *inter alia*:

1. dissemination of information on issues related to corruption and misconduct, including regarding relevant developments in international and regional forums;

2. making training, prevention, due diligence, and other compliance tools available;
3. general advice on diligence in carrying out compliance and ethics programmes; and
4. general advice and support on resisting opportunities for corruption and misconduct.

## National University for Public Service, Hungary

On behalf of the National University for Public Service I send you attached our comments regarding the revised draft for the **Update of the 1998 Recommendation on Improving Ethical Conduct in the Public Service** document.

Kind regards,

**Dr Katalin Pallai**

National University for Public Service, Hungary

[www.pallai.hu](http://www.pallai.hu)

### Comments to the document:

#### **draft Recommendation of the Council on Public Integrity**

#### **National University for Public Service**

#### **Budapest, Hungary**

On behalf of the National University for Public Service in Hungary we send our comments concerning the draft Recommendation of the Council on Public Integrity for the GOV/PGC/INT (2015)3/REV3 (hereinafter referred to as Draft).

### **C) General remarks**

We agree with the aim of the Draft to promote a comprehensive and coherent integrity framework that, realizing the increasing complexity of challenges and interconnectedness of potential responses, is based on a whole-of-society approach. We find appropriate to focus on principles and to define the three pillars of the integrity system because they can be the common foundation for national integrity systems, and at the same time, they allow to elaborate integrity systems best adapted to the country-specific circumstances.

### **D) Comment regarding the introductory statements**

In the introductory statements public integrity is recognized as vital to the well-being and prosperity for individuals and societies, and to democratic public governance. We recommend to add one more point regarding organizational integrity: integrity is also essential for the health and performance of public organizations and the personal health and commitment of staff. Weak organizational integrity creates toxic organizations and increases the risk of corruption.

### **E) Comments regarding the recommendations**

Regarding II. 1. : we suggest to include one more point: d. Ensuring that public sector organizations foster effective internal collaboration mechanisms among organizational units in order to implement complex risk assessment and to be able to elaborate adequate responses to complex problems.

Regarding: II: 3. : Regarding the strategic approach we suggest to include the principles as well: "Develop a strategic approach, outlining principles, objectives and priorities that address risks and success factors ..."

Regarding III. 9. : we suggest to include one more point: d.: Where necessary, establishing collective dialogic processes in the society and within organizations that can analyse, deconstruct and reconstruct practices that are deemed to breach public integrity.

Budapest, 22.03.2016

## Ishat REZA

Lawyer & Public Governance Specialist, Canada

*Ishat Reza provided the following comments:*

### 1) Strengths of the revised draft Recommendation

- More detailed than its predecessor, the Recommendation provides governments with more guidance.
- The pillars are a good way to structure the information.
- The definitions are helpful.
- It includes important topics such as whistleblowing, training, audit and internal control, and sanctions.

### 2) Suggested changes

- The wording in the pillars is not consistent with the headings later on in the Recommendation. For example, the first pillar talks about "coordinated and comprehensive", whereas the title later talks about "*coherent* and comprehensive". I would suggest making the language consistent for all of the pillars and the titles later on.
- For the third pillar, unclear whether "regulatory" oversight is the right word. Regulatory bodies are usually external facing, not internal to government. However, oversight agencies can be for government organizations. Perhaps stating "... accountability through *effective* internal and external oversight and control" would appropriately convey what you mean.
- For this third pillar, the title later on doesn't talk about accountability *through* effective control as stated in the pillar. However the notion of achieving accountability is best explained by using "through" and not "and".
- Under IV 10. I would add in the concept of *independence* of internal audit.

### 3) Ideas for consideration

- Given the detail, you may wish to have a streamlined version of the Recommendation once it's finalized.
- You may wish to highlight some ethics principles as well, as they are featured in the original Recommendation.
- As a follow-up piece, you may wish to share concrete ways in which the Recommendation could be implemented based on the experience of the OECD.

## Loreta TAUGINIENÉ

Associate Professor

To whom it may concern:

Congrats for new insights to the Draft Recommendation of the Council on Public Integrity! This draft has a strong focus on diverse aspects that should be considered by any public official as well as it combines main ideas of Bologna process documents in terms of institutional responsibility and accountability. I consider all this as a good coherence of policies.

To start with my comments, I'd like to address your attention to the following uncertainties that are unclearly defined or missing:

- By saying "the whole public sector" can opt out public higher education institutions (HEIs) because in some European countries (for example, Spain) work at HEIs is a public service while in others (for example, Lithuania) it is not. To be more precise, I suggest including all public entities.
- In some passages of the Draft there is a strong emphasis on corruption and misconduct as two separate independent concepts. I suggest to be more clear about their use because misconduct is a broad concept which includes corruption, nepotism, favouritism and so on. In such cases it is better to say "any misconduct".
- About the pillar Establishing effective accountability: it is just one of the instruments for building the culture of responsibility which encompasses public engagement (consists of public communication, public activism, public consultation, public deliberation, and public participation), social responsibility and other socially desirable behaviours. I suggest using a more extensive understanding.
- I suggest extending the list of definitions by introducing such concepts as ethics infrastructure, integrity leadership (isn't it identical to moral leadership?).
- Finally, emphasis on regular ethical training and ethics audit is missing.

I hope my suggestions will be helpful to improve the Draft. In case you do not get my suggestions, please, feel free to keep in touch with me.

Sincerely,

Assoc. Prof. Dr. Loreta Tauginienė

Mykolas Romeris University  
Faculty of Politics and Management  
Institute of Management

## **TUAC (Trade Union Advisory Committee to the OECD) & Public Services International (PSI)**

*See next page*



TRADE UNION ADVISORY COMMITTEE  
TO THE ORGANISATION FOR ECONOMIC  
COOPERATION AND DEVELOPMENT  
COMMISSION SYNDICALE CONSULTATIVE  
AUPRÈS DE L'ORGANISATION DE COOPÉRATION  
ET DE DÉVELOPPEMENT ÉCONOMIQUES



Public Services International  
Internationale des Services Publics  
Internacional de Servicios Públicos  
Internationale der Öffentlichen Dienste  
Internationell Facklig Organisation för Offentliga Tjänster  
国際公務労連

## Public consultation on the OECD draft Recommendation on Public Integrity **Comments by PSI and TUAC**

24 March 2016

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1. The Trade Union Advisory Committee to the OECD (TUAC) and the Public Services International (PSI) welcome the opportunity to comment on a proposal of review of the 1998 OECD Recommendation on Improving Ethical Conduct in the Public Service, which is up for public consultation<sup>1</sup>.

2. The TUAC and the PSI support the OECD work on public integrity. In our joint statement to the OECD Public Governance Ministerial Meeting in October 2015, Helsinki, Finland, we called upon the OECD to devise “a people-centred approach to public governance of inclusive growth”, including by “ensuring transparent and accountable policy processes within government, with parliamentary bodies and commit to the highest public integrity standards, including better whistle-blower protections within public administrations”<sup>2</sup>. Public integrity is essential to support public trust in government. Better whistle-blower protections within public administrations will assist in increasing public trust and stamping out corruption. PSI has been working on its anti-corruption campaign for many years now and has developed strong policy objectives in this regard

3. We welcome the OECD Draft Recommendation on Public Integrity. We believe that the current text could be improved on some key aspects, as shown in our comments below followed, in annex, by our proposals of amendment to the text.

### **Whole-of-society culture of integrity**

4. The introduction (last paragraph p3) recognises that a robust public integrity framework requires an approach that encompasses both the public and private sector. Invariably corruption involves a nexus between the public and private sectors and a system that creates artificial legislative barrier between the two in terms of governance and jurisdiction will not function as needed. This importance of an integrative approach is echoed in the preamble of the recommendation (bottom of page 5) and is fleshed out under recommendation III.5

5. As shown in our suggested marked-up proposal, current text of III.5 could be improved in stressing the importance of independent civil society organisations that can speak on behalf of citizens and of democratic environment in workplace, be it in the private sector or

<sup>1</sup> <http://www.oecd.org/governance/ethics/public-consultation-draft-recommendation-on-public-integrity.htm>

<sup>2</sup> <http://www.oecd.org/governance/ministerial/stakeholders.htm>

the public sector. Our proposals of change would consist in new reference to social dialogue and to the role of trade unions and employer organisations, and in including an amended version of section on the role of civil society, currently placed under IV.13, which would recognise the role of workers and their trade unions as watchdogs and in promoting transparency.

### **Scope of the recommendation**

6. We agree with the proposal for a broad scope of the recommendation- to include public central and local administration, other public services, but also privately delivered services under Public-Private Partnership (PPP) arrangements as well as state-owned enterprises (SOE), which under the OECD standard definition, including private companies where the state has a minority ownership. This broad scope follows the above logic of an integrative approach to public integrity.

7. We do however have an issue with the current wording of the text where the “public sector” is to be defined *per se* as including privately managed and for profit arrangements which are to be found in many PPP arrangements, not to speak of commercial SOEs. While the scope of the Recommendation should be large, there should be no confusion made between public sector functions and privately managed businesses. Our proposal of amendment to section I seeks to ensure such distinction.

### **Whistle-blower protection**

8. We welcome section Section III.6 (b) and (c) on whistle-blower protection. Public integrity and accountability is best achieved through an effective and comprehensive whistle-blower disclosure and protection regime, which serves to encourage the disclosure of wrongdoing by (i) protecting the whistle-blowers from reprisal and (ii) rewarding them for contributing to integrity through the disclosure.

9. In this regard, the recent OECD report “Committing to Effective Whistle-blower Protection”<sup>3</sup>, of 16 March 2016, recognizes that whistle-blower protection “is essential for safeguarding the public interest, for promoting a culture of accountability and integrity in both public and private institutions, and for encouraging the reporting of misconduct, fraud and corruption wherever it occurs”.

10. Thus, it would make sense to elaborate further on the key elements that should be included in a robust whistle-blower protection system, ensuring that workers who disclose wrongdoing are both protected from reprisal and rewarded for doing what is fair and just. As shown in our marked-up proposal, the text could include wording providing for:

- Pay protection, so whistle-blowers know they will be financially supported;
- Legal defence funding for whistle-blowers,
- Work reassignment options, so those who disclose are able to contribute in another area of the workplace that is not being investigated for corruption;
- Financial rewards based on the *qui tam* principle, and
- A reverse legal onus for reprisal complaints.

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<sup>3</sup> <http://www.oecd.org/gov/committing-to-effective-whistleblower-protection-9789264252639-en.htm>

### **A workplace environment that is conducive to employee protection**

11. Even with a robust whistle-blower protection regime in place, this individual action (i.e. reporting misconduct, denounce corruption) is not exempted from pressures, reprisal or even threats to the whistle-blower's personal safety. In such cases, the best guarantee for his/her protection and advice is trade union representation, which in turn will balance this relationship of unequal forces. Our amendment to section III.6 (a) addresses this issue.

## Annex: Marked-up proposal of the text

### Draft Recommendation of the Council on Public Integrity

(...)

On the proposal of the Public Governance Committee:

***I. AGREES that, for the purpose of the present Recommendation, the following definitions are used:***

- **Conflict of interest** involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.
- **Corruption** refers to the abuse of a position or office for private interests;
- **Integrity** refers to the consistent alignment of and adherence to stated values, principles and norms;
- **Integrity system** includes the laws, regulations, policies, organisations and officials specifically contributing to public integrity and could be tailored to specific type of sectors and public officials thereby creating co-existing **integrity sub-systems**;
- **Misconduct** refers to behaviour breaching standards and rules that can be formally sanctioned, either through disciplinary, administrative, criminal or civil law;
- **Public official** refers to any person who performs a public function or provides a public service, i.e. someone who holds a legislative, executive, administrative, or judicial position of any kind, whether appointed or elected;
- **Public sector** includes the legislative, executive, administrative, or judicial bodies at the central and subnational level, including public corporations. Considering the broad scope of the recommendation and the need for an integrative approach to public integrity, the term “public sector” is also applied to cover ,scommercial state owned enterprises and Public-Private Partnerships. ~~It could also include as well as~~ entities that deliver in-kind services (e.g. health, education, and public transport) although these can be contracted out or privately funded in some countries. It could also include non-governmental organisations performing governmental functions, generally in receipt of funding or other support from government.

***II. RECOMMENDS that Members and non-Members having adhered to this Recommendation (hereafter the “Adherents”) ensure a coherent and comprehensive integrity system.***

**To this end, Adherents should:**

1. Demonstrate commitment at the highest political and management level to enhance integrity and reduce corruption, in particular through:
  - a) Establishing a coherent and comprehensive integrity system that takes into consideration a multilevel governance and whole-of-society perspective to integrity, that defines, supports, controls and enforces integrity and that is integrated into the wider management and governance framework.

- b) Ensuring that all public organisations have effective legislative and institutional frameworks, adequate resources and support to take responsibility for adequately applying the integrity system.
- c) Demonstrating exemplary personal behaviour, maintaining a high standard of propriety in the discharge of official duties.

2. Promote institutional responsibilities across the public sector to strengthen the effectiveness of the integrity system, in particular through:

- a) Establishing clear and effective responsibilities for leading and implementing all elements of the integrity system.
- b) Ensuring that government units or bodies (including autonomous or independent ones) responsible for the development, implementation, enforcement, and/or monitoring of elements of the integrity system have adequate mandate, capacity, expertise and resources to effectively fulfil their responsibilities.
- c) Fostering effective mechanisms for horizontal and vertical collaboration between government bodies, and where possible with and between subnational levels of government through formal or informal means to share lessons from good practices, to avoid overlap and gaps.

3. Develop a strategic approach, outlining objectives and priorities that address risks and success factors, in particular through:

- d) Setting strategic objectives and priorities for the integrity system based upon a clear risk-based approach to irregularities, misconduct and wrongful acts, and that takes into account relevant critical success factors.
- e) Providing transparent and up-to-date measurement processes, including credible and relevant data, benchmarks and indicators that measure the level of implementation, performance and overall effectiveness of the integrity system.

4. Set standards that promote ethical conduct for public officials, in particular through:

- f) Setting integrity standards that not only focus on minimum standards, but that also encourage high standards of conduct, good governance, adherence to public service values and an open culture that facilitates learning.
- g) Setting integrity standards in the legal system and organisational policies to provide a clear basis for -- disciplinary, administrative, and/or criminal -- investigation and sanctions.
- h) Setting clear and proportionate standards and procedures for high-risk positions and appointed or elected positions to prevent corruption and misconduct, including for the management of (latent) conflict of interests.
- i) Communicate public sector values and standards internally in public organisations, and to the private sector, civil society and the public with the expectation that these partners also respect those values and standards.

### **III. RECOMMENDS that Adherents build a culture of integrity.**

**To this end, Adherents should:**

5. Promote a whole-of-society culture of integrity, partnering with citizens and the private sector, in particular through:

- j) Including in the integrity system the role and responsibilities of citizens and the private sector for respecting public integrity values, in particular by providing incentives to uphold those values as a shared responsibility.

- k) Raising awareness in society of the benefits of integrity and ethical behaviour to reduce tolerance of corruption and misconduct, and carry out, where appropriate, campaigns to promote civic education, public values and ethics, among citizens.
- l) Engaging all relevant stakeholders in the development and regular update and implementation of the integrity system to ensure relevance and effective performance.
- m) Engaging with the private sector, including employer organisations and trade unions, to uphold integrity in business operations and in the impact of business actions.

[formerly IV.13]. Safeguard integrity and the public interest in the broader decision-making process, in particular through:

- n) Promoting transparency and an open government, including actively providing access to information and open data, and active responses to request for information.
- o) Ensuring inclusion by granting all stakeholders - civil society organisations, trade unions, businesses, the media and the general public - equitable voice in the development and implementation of public policies. Including promoting integrity and avoidance of policy capture through management of conflict-of-interests, and transparency of lobbying activities and of financing of political parties and election campaigns.
- p) Enabling a civil society that includes 'watchdog' organisations, citizens groups and independent media, in order to ensure effective accountability.

6. Support open organisational cultures responsive to integrity concerns, in particular through:

- q) Encouraging an open organisational culture and democratic workplace environment where ethical dilemmas, integrity concerns, and errors can be discussed freely and where leadership is responsive to providing timely advice and resolving these issues. A democratic work place environment is best achieved by ensuring observance of workers' right to freedom of association as defined by the International labour Organisation.
- r) Providing alternative channels for reporting irregularities and misconduct, including the possibility of reporting to a body with the mandate and capacity to conduct an independent investigation.
- s) Providing clear rules and procedures for reporting irregularities, concerns about misconduct and wrongful acts that cover a wide scope of wrongdoings, and ensure in legislation and practice effective protection against all types of reprisals as a result of reporting, for all who carry out activities relevant to an organisation's mission. Effective protection can be achieved by ensuring whistle-blowers have access to (i) pay protection (so know they will be financially supported), (ii) legal defence funding, (iii) work reassignment options (to enable them to contribute in another area of the workplace that is not subject to investigation), (iv) financial rewards based on the qui tam principle, and (v) a reverse legal onus for reprisal complaints.

t) u)

7. Invest in integrity leadership to demonstrate an organisation's commitment to integrity, in particular through:

- u) Including integrity leadership in the profile for managers at all levels of the organisation, and as a requirement for selection, appointment or promotion in a management position. In addition, assessing the performance of managers with respect to the integrity system at all levels of the organisation.
- v) Supporting managers in their role as ethical leaders by establishing clear mandates, providing organisational support (internal control, human resources instruments, legal advice etc.), training and guidance to increase awareness and skills for exercising

appropriate judgement for integrity, in particular in case of conflict of interest, whistleblowing, or disciplinary issues.

8. Create a merit based professional public sector dedicated to public service values and good governance, in particular through:

~~s)w)~~ Effective, transparent and consistent human resource management policies that promote a public ethos, a merit based professional public sector, prevent favouritism and nepotism and address risks for abuse of position and misconduct.

~~t)x)~~ Ensuring that central units or bodies (including autonomous or independent ones) responsible for the development, implementation, enforcement, and/or monitoring of elements of the merit based system within their jurisdiction have the mandate, expertise and resources to effectively fulfil their responsibilities.

~~u)y)~~ Foster management frameworks that promote managerial responsibilities to identify and mitigate integrity risks.

9. Provide sufficient guidance and timely advice for public officials to support a culture of integrity, in particular through:

~~v)z)~~ Providing public officials throughout their career with clear and up-to-date information about the organisation's policies, rules and administrative procedures relevant to maintaining high standards of integrity.

~~w)aa)~~ Offering induction and on-the-job integrity training to public officials throughout their career in order to raise awareness and develop essential skills for analysis of ethical dilemmas; and to make codes of conduct and other integrity standards practically applicable and meaningful in their own contexts.

~~x)bb)~~ Providing informal guidance and consultation mechanisms to help public officials apply integrity standards in their daily work, and to respond properly to conflict of interest situations. In addition impartial advice and guidance (provided internal and/or external to the organisation) should be made easy accessible to public officials.

#### ***IV. RECOMMENDS that Adherents ensure accountability, and effective control and enforcement of public integrity.***

##### **To this end, Adherents should:**

10. Apply an internal control and risk management framework to effectively safeguard integrity in public organisations, in particular through:

~~y)cc)~~ Ensuring an effective control environment with clear objectives that demonstrate managers' commitment to integrity and public service values, and that provides a reasonable level of assurance of an entity's efficiency, performance and compliance with laws, regulations, and standards. In particular, the internal control system should help to improve the performance – coherence, effectiveness and efficiency – of the integrity system.

~~z)dd)~~ Ensuring a strategic approach to risk management that includes assessing integrity risks and addressing control weaknesses on a risk basis. This includes building in warning signals – such as red-flags – within critical processes, and an effective monitoring and quality assurance mechanism of the risk management system, including fraud and corruption risks.

~~aa)ee)~~ Ensuring control mechanisms are coherent with effective and clear procedures for responding to credible suspicions of violations of laws and regulations, and facilitate reporting to the competent authorities without fear of reprisals.

11. Ensure that enforcement mechanisms respond effectively to all cases of irregularities, misconduct or corruption, in particular through:

~~bb)~~ff) Applying fairness and objectivity in the disciplinary or administrative process and through defining responsibilities and ensuring institutional capacity, at the organisational and central level where relevant to respond effectively and timely to reported cases.

~~ee)~~gg) Fostering effective mechanisms for collaboration and exchange of information between relevant internal bodies and external public authorities where concurrent disciplinary and criminal cases would increase the timeliness and proportionality of enforcement mechanisms.

~~dd)~~hh) Providing transparency within the organisation and to the public, about the outcomes of cases and the effectiveness of the enforcement mechanisms, in particular through developing relevant statistical data on cases, while respecting confidentiality and other relevant legal provisions.

12. Ensure effective external oversight and control that promote public accountability and integrity, in particular through:

~~ee)~~ii) Ensuring that autonomous or independent regulatory and investigative entities defend the public interest through the impartial enforcement of laws and regulations applying to both public and private organisations, as well as citizens.

~~ff)~~jj) Ensuring that external oversight entities are autonomous or independent, with adequate authority, mandate, capacity, expertise and resources to fulfil their responsibilities, including the right to impose sanctions, as established in law.

~~gg)~~kk) Facilitating organisational learning and building public trust by providing adequate response (including redress where relevant) to the sanctions, rulings and formal advice by oversight bodies and regulatory entities.

~~13. Safeguard integrity and the public interest in the broader decision-making process, in particular through:~~

~~hh)a) Promoting transparency and an open government, including actively providing access to information and open data, and active responses to request for information.~~

~~ii)a) Ensuring inclusion by granting all stakeholders – civil society organisations, businesses, the media and the general public – equitable voice in the development and implementation of public policies. Including promoting integrity and avoidance of policy capture through management of conflict of interests, and transparency of lobbying activities and of financing of political parties and election campaigns.~~

~~jj)a) Enabling a civil society that includes 'watchdog' organisations, citizens groups and independent media, in order to ensure effective accountability.~~

***V. INVITES the Secretary-General to disseminate this Recommendation.***

***VI. INVITES Adherents to disseminate this Recommendation within the public sector.***

***VII. INVITES non-Adherents to take account of and adhere to this Recommendation.***

***VIII. INSTRUCTS the Public Governance Committee to monitor the implementation of this Recommendation and to report thereon to the Council no later than five years following its adoption and regularly thereafter.***

**Transparency International**

*See next page*

# Feedback to the OECD's Draft Recommendations of the Council on Public Integrity

## About Transparency International

Transparency International (TI) is a non-governmental organization that is dedicated to fighting corruption in all its form across the globe. This is done through the generation and dissemination of knowledge, which is used to advocate for improved institutions, policies and practices as well as empower citizens to hold governments to account.

## Key issues in public sector integrity

The absence of corruption and presence of integrity are two necessary conditions for the well-functioning of governments, to ensure their citizen's human and political rights are guaranteed, markets perform efficiently and the governance system is legitimate and responsive.

In the past five years, anti-corruption and integrity have risen again in the national and international public agenda as corruption scandals or lack of integrity have come to light and their negative effects on markets and citizens have been felt by all.

In the latest Global Corruption Barometer 2013 for 28 OECD countries<sup>1</sup> show that:

- just over **half (53%) of respondents believe that the level of corruption in the country has increased in the past two years**; and
- on a scale of 1 being not a problem at all and 5 being a very serious problem the respondents in these **countries scored an average of 3.8 when asked to what extent do you think corruption is a problem in the public sector in your country.**

Clearly, corruption is still considered by people to be an issue which is increasingly worrisome for the citizenry, which in turn erodes trust in the public sector.

The latest evidence from the National Integrity System assessments shows that in Europe, on average, suffers from key weaknesses, particularly in the intersection between politics and government (conflict of interest, integrity of politicians, policy capture); poorly implemented access to information laws; procurement risks are not sufficiently mitigated and weak protection of whistle-blowers.<sup>2</sup>

The findings that the risks in the intersection between politics and government is not properly addressed and an increase of incidences involving politicians point to the need to broaden the scope of integrity and anti-corruption strategies and policies beyond the central government. One of the challenges here stems from ensuring that the decision makers are willing to make and implement changes that directly affect their behaviour.

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<sup>1</sup> OECD countries covered by the 2013 Global Corruption Barometer are: Australia, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Israel, Italy, Japan, Korea, Luxembourg, Mexico, New Zealand, Norway, Portugal, Slovak Republic, Slovenia, Spain, Switzerland, Turkey, United Kingdom, and the United States.

<sup>2</sup> Transparency International (2012), Money, Politics, Power: Corruption Risks in Europe. Study based on National Integrity System Assessment carried out in 25 European countries; 21 of which belong to the OECD.

## Overall reflections

Overall Transparency International commends the OECD on the proposed Draft Recommendations of the Council on Public Integrity. The recommendations are an improvement on and builds off the 1998 Recommendations.

We recognize the amendments made to the Recommendations since the meeting of the Working Party of Senior Public Integrity Officials held in 30 September - 1 October 2015.

We find positive the recognition of and focus on a multilevel governance and whole-of-society perspective to integrity including the acknowledgement of the United Nations Sustainable Development goals.

We commend the acknowledgement of the role transparency and active participation of civil society in establishing an accountability system as one of the three pillars of the Draft Recommendations; including the recommendation of promoting civic education, engaging relevant stakeholders in developing and implementing the integrity system; and promoting the private sector to uphold integrity in business operations (Rec. III.5.).

We find positive the recommendations on the protection and promotion of whistle-blowers (Rec. III.6.).

We commend the acknowledgement and recommendation on promotion of transparency including access to information and open data. As well as the recommendations on safeguarding the integrity of decision-making process focusing on avoiding policy capture through management of conflict of interest and transparency of lobbying activities among other issues (Rec. IV.13.).

## Suggestion for Improvement

We suggest that the Recommendations include the use and public disclosure of asset declarations as a mechanism to enhance integrity in the public sector and trust among citizens.

The Draft Recommendations in its current version does not include the use and public disclosure of asset declarations, despite the fact that they are recognized internationally – including by the United Nations and the OECD – to be a mechanism which can prevent conflict of interest, assist in identifying cases of illicit enrichment and increase trust among citizens.

The United Nations Convention Against Corruption (UNCAC) requires state parties to consider establishing policies that require public officials to “make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials” (Article 8).

In addition, the OECD Asset Declarations for Public Officials: A Tool to Prevent Corruption (2011), provides policy principles and recommendations which may guide the implementation of such a mechanism at the country level.

Due to its relevance to OECD countries in their challenges to increase integrity and trust, and the fact that – to our knowledge and after a revision of OECD instruments – there is no mention of asset declaration mechanism in other OECD Recommendations, we suggest to include it as part of the Council’s Recommendation on Public Integrity.

For more information on these comments do not hesitate to contact Craig Fagan (cfagan@transparency.org).

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## Transparency International Netherlands (TI-NL)

Dear members of the Working Party of Senior Public Integrity Officials,

Hereby I present you the comments on the draft Recommendation of the Council on Public Integrity (OECD), made by Chris Moll on behalf of Transparency International Netherlands (TI-NL).

Page 5: under 1, definitions.

**Misconduct.** This definition makes a reference to the formally sanctioning of misconduct (behaviour breaching standards and rules) by disciplinary, administrative, criminal or civil law. A missing source is 'international law'. As the UNCAC clearly states 'international law' as a possible reference to be taken into account (page 4, third paragraph, under 'having regard'), it would be recommended to include 'international law' in this listing as well.

**Public sector.** This definition also includes the deliverance of in-kind services that can be contracted out, or privately funded in some countries, as well as NGOs that perform governmental functions and enjoy governmental funding or other governmental support.

A note of caution here: in some jurisdictions (as is the case in The Netherlands), the line between public sector and private sector entities is blurred. The fact that contracted entities or NGOs receives governmental funding, does not necessarily imply that they are considered to be part of the public sector. In most instances their conduct does not fall within the scope of Ministerial responsibility. Consequently, the government has no attributed or mandated powers to enforce compliance with (for instance) public integrity policy *per se*. In case these entities do not comply, the government has no options for direct intervention. It is advised to indicate clearly in this Recommendation what the status of the respective entities is (public, private).

Page 6/7, under 4b: 'Setting the standards in the legal system and organizational policies to provide a clear basis for – disciplinary, administrative, and/or criminal – investigation and sanction' Basically, this quote reads in summary as 'criminalization': a phrase that is clear in all aspects, and would be recommended to use here.

Page 7, under 6b, c: The clear rules and procedures for reporting irregularities and misconduct are a reference to effective, credible whistleblower legal protection. It is recommended to advise the Member countries to regulate protective provisions for whistleblowers equally in the public and the private sector. Moreover, it is suggested to make a reference to the recently issued report 'Committing to Effective Whistleblower Protection', that was most recently endorsed during the Ministerial Meeting on the OECD Anti-Bribery Convention. This reference would be adequately positioned on page 4, second paragraph.

Kind regards,

Chris Moll

Board Member Transparency International Nederland

## United Cities and Local Governments (UCLG)

*See next page*



Commission  
Finances Locales  
et Développement de CGLU

Nathalie LE DENMAT  
Secrétaire exécutive

Barcelone, le 23 mars 2016

Rolph Alter,

Directeur de la Gouvernance Publique et du  
Développement Territorial

**Subject :** recommandation de l'OCDE en faveur de l'intégrité publique : soutien de CGLU /  
Commission des Finances Locales pour le Développement

Cher Monsieur Alter,

C'est avec un grand intérêt que nous avons pris connaissance du projet de recommandation de l'OCDE en faveur de l'intégrité publique. Dans le cadre des échanges que CGLU et l'OCDE entretiennent sur les sujets majeurs de l'action publique, je tenais à vous faire part de l'appui de la Commission des Finances Locales de Cités et Gouvernements Locaux Unis aux principes qui sont développés dans ce projet.

Notre commission, et plus généralement CGLU, partage totalement les valeurs d'intérêt général, de transparence, de lutte contre la corruption, et de redevabilité vis à vis des citoyens qui doivent guider l'action de tout gouvernement, national, régional et local.

Cette recommandation très complète de notre point de vue s'adresse à tous les niveaux de gouvernement, et la cohérence du système relatif à l'intégrité publique représente donc, comme vous le soulignez, un élément clé de sa mise en œuvre. A cet égard, il nous semble que le paragraphe 2 pourrait insister davantage sur l'importance de renforcer et de structurer le dialogue entre les différents niveaux de gouvernement, sur des bases clarifiées en terme de responsabilités exercées par chaque entité.

Saluant de nouveau l'excellent travail que vous avez réalisé, je vous prie d'agréer, Monsieur Alter, l'expression de ma considération distinguée,

Nathalie LE DENMAT

*Giovanni Lombardo, Professor of Responsible Business Conduct & Social Supply Chain Management at the University of Genova, submitted the following comments for the university:*

We suggest:

- 1- to include the reaching of a lower level of riskiness of processes and activities into "Management by Objectives" plans, or in the variable part of wages of public directors and employees.
- 2- to write about the wide concept of "maladministration" ("mala gestio").
- 3- to analyze always the internal field but also the "external context" (different in every region) with data from police, Courts, statistical data about crimes, etc.
- 4- to insert the need to appoint an independent organ of evaluation, with transversal skills and components in risk assessment framework, management, MBO and responsible business conduct, from the economic management but also a legal point of view.
- 5- to use new methods 2.0 into training & learning process (modify or integrate pag. 8) with an engagement of participants or internal stakeholder of P.A. From lot of academic studies is possible to learn that a system works well also without fines & sanctions when it was built from the ground, with the "voice" of internal stakeholder.
- 6- to use international standard into risk assessment process (ISO 31000, methods of ISO 31010, new ISO 37001, and so on; modify or integrate pag. 8, bullet point n. 10).
- 7- to read the new standard ISO 37001 (2016), about anti-corruption and anti bribery, made to implement public integrity also in Public Administration and public companies.
8. To maintain a link among public anticorruption authorities, to share best practices and risk assessment methodology and/or references into anticorruption framework.

In our Department we made a free tool regarding the risk assessment into P.A., specific about the field of anticorruption and "maladministration". It was applied into 65.000 items of public administration processes, and it is based on ANAC standard, ISO 37001, ISO 31010 and the OECD rules from which derives the law about "administrative responsibility of bodies and corporations" (In Italy decree 231/01; in France; in Germany: OWIG; Portugal; Espana; USA; ecc. See: OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions).

## Water Governance Initiative

Many thanks for the opportunity to consult members of the Water Governance Initiative on the Draft Recommendation on Public Integrity.

Please find below written comments received from The Global Partnership on Water Mediterranean, the Water Integrity Network and the Spanish Association of Water Utilities.

Best,  
Aziza AKHMOUCH  
OECD/GOV/RDP

### **Anthi Brouma, Global Water Partnership – Mediterranean**

- Though aiming to be a guidance document, references to specific sectors would add value to the document (and allow for cross-sectoral integration of approaches) also in view of the SDG implementation where integrity is essentially a cross-cutting theme.
- Notwithstanding references to water are needed, especially as the issue of water integrity has been highlighted frequently for the past almost decade and forms a point of consideration for most IWRM and Governance-related lines of work. In the MENA region for example, a dedicated, Sida-funded project (led by SIWI and with GWP-Med among the core regional partners) tackles capacity issues on water integrity among a range of target groups (from local managers, to NGOs, women, high level managers, etc), while a similar project was completed 2 years ago by SIWI in sub-Saharan Africa. All and all, there is important knowledge and experience from the water sector that can add value to the draft recommendations.
- Based on our experience with the above project and the related OECD WGI working group, we feel that a clear distinction is needed between integrity and corruption, especially as integrity is by default wider and more-encompassing than corruption. Thus, we would encourage a) the use of integrity instead of corruption in the introductory part and b) the specification of integrity as including the fight against corruption in the related draft recommendations. Further on this, and to our experience, governments tend to be hesitant (if not negative) to corruption references when asked to endorse documents (we have strongly experienced this in the 5 pilot countries of the water integrity Sida project).
- Inclusion of references to the word 'professionalism' would add value (for example on page 6 point 4a; page 8 point 9a).
- Hopefully, linkages will be made in follow-up steps to ongoing and planned work on integrity to provide more 'meat' and tangible elements to the recommendations.

### **Teun Bastemeijer, Water Integrity Network**

The revision of this recommendation is very timely and might inspire the forthcoming OECD recommendation on water (and perhaps other governance and integrity related work).

- Concerning the introduction, the effectiveness of an integrity system also depends on the transparency of the process planning towards building or improving such system. Such planning might concern different levels of governance as well as improvement of management and organisation models of specific entities, and should participation needs to start at the planning stage.
- As stated in the introduction a whole of society approach is the best way to address the issues of promoting integrity and reducing corruption, and the recommendation should preferably include clearer hints on how this could be put in process.
- In article II.1-sub c), it could be good to include suggestion to combine bottom-up and participatory approaches which would have a bearing on the effectiveness of the mechanisms. This is not just about interaction between government bodies.
- Concerning article II.3-sub a), it could be good to strengthen the strategic approach by providing public information from the start on how the process is being planned and organised to establish a favourable environment for participation of civil society and other stakeholders as meant in article IV.13-sub a),b) and c).

- Section III is very important in relation to a whole-of-society-approach. An article III.5-sub e) could concern the design of, and consultations around, a step wise process of identification of integrity hot-spots in certain sectors for example.
- Concerning article IV.10-sub b), the approach to promoting integrity with government or para-state bodies is a good one. It could start by identification of priority risks in a process to improving the organisation's business model. Not everything can be done at once. External facilitation or peer coaching between government entities might be a good element to stimulate learning and help establish a culture of integrity.

**Gari Villa-Landa Sokolova - Spanish Association of Water Supply and Sanitation**

- When on page 6, when defining the Public sector its states the "Public sector includes the legislative, executive, administrative, or judicial bodies at the central and subnational levels..." I assume that the subnational level includes both regional and local levels.
- Local entities have different competencies related to urban services, one of them being water, so it's important not to forget including this level amongst subnational levels.
- It would be so positive that as much as possible countries could support and adhere to this Recommendation. As you know we have "little" problem regarding corruption and lack of integrity in our public sector and among politician's (not all of course), and time has come to adopt this kind of measures and systems.

# CONCISE SUMMARY OF THE COMMENTS RECEIVED DURING THE PUBLIC CONSULTATION ON THE DRAFT RECOMMENDATION OF THE OECD COUNCIL ON PUBLIC INTEGRITY

17 June 2016



**Summary**

This note provides a general overview of the comments received on the draft Recommendation of the OECD Council on Public Integrity. A full compilation of the comments is provided separately.

An invitation for comments was sent to the policy communities and published on the OECD Website. The open consultation took place from 22 February until 31 March 2016. Over fifty responses were received representing the relevant Committees, Working Parties and Networks, accession countries and key partners, international organisations and academic institutions.

## **Results of the public consultation**

The open consultation [GOV/PGC/INT(2015)3/REV3] involved relevant OECD policy communities, stakeholders, international organisations and external experts, including public consultation through the OECD website. The open consultation took place from 22 February - 23 March 2016, with extension until 31 March 2016. Over fifty responses were received from delegates representing the relevant Committees, Working Parties and Networks, accession countries and key partners, international organisations and academic institutions.

The style of the comments also varied and included short approvals, concrete textual suggestions, principled issues and detailed alternative views. Many comments also provided relevant input for developing a toolbox and practical guidance, as well as for future exchanges of experiences at the Working Party of Senior Public Integrity Officials. A document with the full comments is provided and will be published at the OECD website. This summary provides a concise overview as an introduction to the many issues brought forward.

The revised draft Recommendation (GOV/PGC/INT(2015)3/REV4) takes into account the comments and specific suggestions received in the consultations and the revisions are made visible as 'track changes'. The current revision will be discussed at the upcoming meeting of the Working Party of Senior Public Integrity Officials on 18 April 2016. A consolidated revised draft Recommendation, integrating comments from the discussions, will be submitted to the Working Party of Senior Public Integrity Officials and Public Governance Committee for approval by written procedure and for transmission to Council.

## **Issues brought forward**

Overall, the comments expressed approval or even compliments for the structure and scope of the draft Recommendation, making references to the three pillars and to the multilevel governance and the whole-of-society perspective to integrity. In addition, the need for an integrity system that balances a values-based and a compliance-based approach was recognised. Several suggestions for strengthening the draft Recommendation were also provided.

The main issues included:

- A general need for practical guidance and further explanation of the draft Recommendation, such as the whole-of-society approach of the draft Recommendation;
- The need for more precise definitions and consistent use of terminology relating to integrity (including the terms misconduct, corruption, conflict of interest, wrongdoings, and irregularities). In general a concern was expressed that the definitions tended to a 'compliance-based' integrity system and neglected violations of ethical values.
- The need for more precise and consistent use of terminology relating to the object of the Recommendation (such as organisations, units, bodies or entities). According to some comments, the draft Recommendation tended to a focus on a centralised integrity system, neglecting the responsibilities of individual organisations and of the subnational levels of government.

The issue of monitoring brought forward divergent views. While some comments indicated less preference for a strict review procedure for monitoring the implementation of the draft Recommendation, others expressed support for stricter and more elaborate reviews and benchmarking.

Invitations were made to strengthen or expand some specific recommendations:

- recognising transparency at the heart of any integrity system, not just as part of pillar 3;
- include the role of dedicated 'integrity officials' and the minimum standards of their work;
- expand the elements of an integrity 'strategy' such as the content of a strategic policy plan;
- revise the definition of conflict of interest to explicitly include asset declarations and post-public employment;
- strengthen the protection of whistleblowers;
- clarifying the elements of a merit based civil service;
- add a more explicit reference to training on ethics for all public officials;
- include the need for autonomy of internal control
- broaden the concept of accountability (to include public engagement and social responsibility);
- broaden integrity leadership to ethical leadership.

The OECD was also invited to consider various issues:

- questions on the level of the recommendation: does it address countries / subnational / organisational / individuals;
- the notion that integrity not only concerns fighting corruption;
- include references to integrity as essential for the health and performance of public organisations and the personal health and commitment of staff;
- include references to specific sectors (e.g. water sector);
- pay special attention to contracting and procurement management activities;
- the need for transparency of the process planning towards building or improving integrity systems
- inclusion of independent civil society organisations, including trade unions and employer organisations, and self-organizing knowledge networks.
- the use of the concept of a compliance and ethics ("C&E") program as a starting point and model and create a common language between the public and private sector
- Include public international organizations in the scope of the Recommendation

Some broader good governance issues were also brought forward for inclusion:

- Rules for elections and impeachment
- Rule of law issues such as an independent judiciary, independent public prosecutors.