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COUNTRY CHAPTERS OF THE ETHICS REPORT

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This revised document consists of twenty-eight country chapters of the Ethics Report.

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AUSTRALIA

I. The general context for managing ethics in the public service in Australia¹

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

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

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

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

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

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

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

and financial management and other control structures are in place. Another important focus has been an emphasis on achieving greater accountability through improved performance of agencies and individual public servants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Core values for the public service

a) Stating core values for the public service

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

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

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

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

These core values are stated in:

- Public Service Regulations (Regulation 5).
- Values in the Australian Public Service, a discussion paper published by the PSMPC in 1999. This paper describes the meaning of each Value and provides a suggested checklist for agencies to assist them in applying the APS Values to organisational goals and personal behaviour.
- Promotional bookmarks and other publications produced by the PSMPC.
- The PSMPC Web site: <http://www.psmpc.gov.au> .
- The updated document, Guidelines on Official Conduct of Commonwealth Public Servants, to be published in 1999.
- Publications produced by the PSMPC and agencies for their own staff.

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

The following initiatives have been adopted by most APS agencies:

- Core values are automatically provided to new employees in the public service.
- Generally this is done through individual APS agencies' induction programmes and performance management arrangements.
- They are provided when a public servant moves to position in a different public service organisation. For example, as above, through induction programmes and individual performance agreements.
- The statement of core values is usually part of the employment contract/document. For example, through agencies' Certified Agreements or individual public servants' Australian Workplace Agreements established under the Workplace Relations Act 1996.
- Core values are communicated by instruments of new technology, such as the Internet: the PSMPC Web site contains the text of the APS Values. Many agencies have Internet and Intranet sites which provide access to the APS Values and some provide hotlinks to the PSMPC's Web site.

Some agencies have:

- Produced promotional material and distributed it to staff.

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

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

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

III. Standards of behaviour for the public service

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

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

- An APS employee must behave honestly and with integrity in the course of APS employment.
- An APS employee must act with care and diligence in the course of APS employment.
- An APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment.
- An APS employee, when acting in the course of APS employment, must comply with all applicable Australian laws.
- An APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction.
- An APS employee must maintain appropriate confidentiality about dealings that the employee has with any Minister or any Minister's member of staff.
- An APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment.
- An APS employee must use Commonwealth resources in a proper manner.
- An APS employee must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment.
- An APS employee must not make improper use of inside information, or the employee's duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person.
- An APS employee must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS.
- An APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.

- An APS employee must not, except in the course of his or her duties as an APS employee or with the Agency Head's express authority, give or disclose, directly or indirectly, any information about public business or anything of which the employee has official knowledge.

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

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

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

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

There are also **specific guidelines/requirements** within particular agencies of the public service. The Department of Foreign Affairs and Trade, for example, has developed a specialised code of conduct relating to overseas service to supplement the more general advice contained in the Guidelines on Official Conduct of Commonwealth Public Servants. Professional staff in some agencies are also required to comply with conduct standards applicable to their profession, for example, the National Museum of Australia and the Australian National Audit Office.

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

- Expected standards of **ministerial** conduct are contained in "A Guide on Key Elements of Ministerial Responsibility", issued by the Prime Minister. Issues covered include the use of public office for private purposes, ownership of shares and other interests, statements of interest, and gifts and benefits as well as contact with lobbyists, relations with departments, staff appointments and appointments to government bodies and overseas travel.
- Guidance for **ministerial staff** will be contained in Ministerial Staff Entitlements, a publication currently being developed by the Department of Finance and Administration.

- Expected behaviour of **public servants** working with ministers and members of parliament is outlined in the Guidelines on Official Conduct of Commonwealth Public Servants produced by the PSMPC. Issues covered include professional relationships, non-politicisation, election campaigns and re-integration of public servants who return to the APS after service on a Minister's staff.
- Following the announcement of a general election and the dissolution of the House of Representatives, the government operates in "caretaker" mode until the election result is clear, or, in the case of a change of government, until the new government is sworn in. The business of public administration continues but, by convention, a caretaker government refrains from certain activities and defers some matters until after the election so as not to bind an incoming government and limit its freedom of action. The Department of the Prime Minister and Cabinet provides **advice** to public servants on the appropriate handling of business during the caretaker period.

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

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

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

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

In addition, the Crimes Act 1914 specifically prohibits Commonwealth officers from engaging in the following activities:

- Destroying or damaging Commonwealth property.
- False pretences (with intent to defraud).
- Seizing goods in Commonwealth custody.
- Disclosure of official information by Commonwealth officers, while in government employment or afterwards.
- Falsification of books or records by officers.
- Corruption and bribery of Commonwealth officers.
- Corruption and bribery of members of the Parliament.
- False returns or certificates by officers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b) Informing and training public servants on ethics issues

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

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

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

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

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

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

These include:

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

d) Disclosure policy

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

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

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

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

e) Procedures to report misconduct/suspected corruption

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

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

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

- Complaint procedures outlined in service charters.
- Help desk and help telephone line in agencies.
- Ombudsman.
- Australian Federal Police.

- Auditor-General.
- Inspector-General of Intelligence and Security (where the issue relates to the conduct of a member of one of the intelligence or security organisations).

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

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

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

Internal control is required:

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

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

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

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

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

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

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

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

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

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

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

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

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

These include:

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

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

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

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

VI. Co-ordination and self-assessment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BELGIUM

I. The general context for managing ethics in the public service in Belgium²

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

The main ethics-related issues in Belgium in recent years have been the problems of corruption that have come to light, chiefly in the context of major public procurement contracts. These problems were revealed essentially in what were known as the “Agusta”, “Carapace”, “Inusop” and “Obus” scandals, which were widely reported even outside Belgium.

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

When the previous Belgian federal government was formed in 1995, it decided to reinforce the fight against corruption. This decision led to the “anti-corruption” Act of 10 February 1999. Under this legislation, the following are **now** a criminal offence: attempt to commit passive bribery, trading in influence, bribery of candidates for public office, bribery of international and foreign public officials and private corruption. Previously, only the active and passive bribery of public officials and attempt to commit active corruption of public officials were criminal offences. In addition, the Royal Decree of 17 February 1998 created a Central Anti-Corruption Office within the General Commissariat of the Judicial Police with the following missions:

- “to investigate and provide support for the investigation of complex and serious criminal offences that are detrimental to the moral and material interests of the public service, and more particularly when they involve the preparation, invitation to tender and execution of procurement contracts, the preparation, awarding and use of public subsidies and the granting of an authorisation, permit, certification or accreditation”;
- “the active management and use of appropriate specialized operational documentation on behalf of all police services”.

Furthermore, it should be pointed out that the new public procurement legislation (Act of 24 December 1993 and its implementing Orders) provides for stringent and impartial procedures aimed at preventing corrupt practices more effectively. It must also be mentioned that Section 10 of this Act prohibits any public official or person providing a public service from being involved in any way in the awarding or the supervision of the execution of a public procurement contract if they have a direct or indirect interest in one of the tendering firms.

It should also be mentioned that under the Royal Decree of 6 July 1997, the Public Procurement and Subsidies Service (*Service des Marchés publics et des Subventions* -- SMS) was created within the Federal

2. This information concerns the federal government administration only.

Ministry for the Civil Service. The SMS advises government departments that request its assistance on how to interpret and enforce the new public procurement legislation correctly and thus avoid irregularities when awarding or executing contracts.

The following measures are also relevant:

- The Act of 29 July 1991 on the formal notification of the reasons for administrative acts, which requires all administrative authorities to give the legal and factual grounds for any decisions that concern individuals.
- The Act of 11 April 1994 on the provision of information by the administration, which in Section 2, 4°, requires administrative authorities to indicate in decisions or administrative acts concerning individuals the means of redress available, the bodies to be contacted and the appropriate procedures. If this information is not provided, the time limit for seeking redress is no longer applicable.
- The Ordinary and Special Acts of 2 May 1995 requiring the members of the various governments, holders of political office, governors of provinces, senior public servants, members of the board of directors of independent public enterprises and members of the board of directors of the National Bank of Belgium and selected other public officials, to provide a list of public offices held and functions and professions exercised and to make a declaration of their personal assets. These Acts have not yet been implemented.
- A Code of Conduct recently adopted by the Ministry for Defence (which comprises 8 points and is the result of the effort undertaken to raise ethical standards following revelations regarding the misconduct of Belgian forces in Somalia and Croatia during UN peacekeeping missions);
- The recommendation -- which has gone unheeded -- of the Parliamentary Investigation Committee on military procurement created in 1993, that specific ethical rules and training be established for public officials who deal with the representatives of private firms in relation to the awarding or execution of public procurement contracts.

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

In May 1999, the Federal Ministry for the Civil Service instructed the Public Procurement and Subsidies Service, mentioned above, to address anti-corruption issues and more specifically to create a working group to examine what corruption prevention measures should be taken.

In addition, the federal government agreement that has just been reached provides for the following measures: "The parties that will constitute the next majority undertake to sign a pact for the depoliticisation of the administration. To this end, all recruitment for a public or para-public function will systematically be subject to a competitive examination and test. Recognized experts will be called upon to assess the quality of recruitment. The same rules will apply to the recruitment and selection of public servants under contract. The depoliticisation pact confirms the right of all public officials to express their views as under the current regulations. All public officials shall fully assume their responsibilities with competence and impartiality, in compliance with the rules of ethics. The government shall organize a contact point in each department where information on internal irregularities and misconduct can be submitted in complete confidentiality. At the time of their appointment, public officials shall receive an exact description of their duties and obligations and shall undertake to comply with them in writing. The government shall ensure the rapid and appropriate implementation of the new legislation aimed at eliminating the possibility of holding more than one public office.

Similarly, a stringent system aimed at preventing conflicts of interest shall be implemented in both the public and private sectors. The parties of the majority shall agree to create an ethics committee in Parliament that will be responsible for developing rules in this field. In this regard, it is necessary to

implement without delay the Ordinary and Special Acts of 2 May 1995 requiring public officials to provide a list of the public offices they hold and the functions and professions they exercise and to make a declaration of their personal assets”.

II. Core values for the public service

a) Stating core values for the public service

Section 10, § 1, of the Royal Decree of 2 October 1937 laying down the regulations governing public servants defines the core values for the public service:

“Public servants shall carry out their duties with loyalty and integrity under the authority of their superiors. In doing so, they shall:

- 1° comply with the laws and regulations in force as well as the instructions of the competent authorities;
- 2° give their opinions and prepare their reports with care and accuracy;
- 3° implement decisions promptly and professionally.”

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

The draft pact for the depoliticisation of the administration includes the following provision: “At the time of their appointment, public officials shall receive an exact description of their duties and obligations and shall undertake to comply with them in writing”.

III. Standards of behaviour for the public service

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

Statements on standards of behaviour are contained in Sections 7, 10, 11, § 1 and § 2, and 49 of the Royal Decree of 2 October 1937 on the regulations governing public servants and from Sections 3, 7 and 8, § 1 and § 2 of the Royal Decree of 26 September 1994 establishing the general principles of the administrative and financial regulations governing public servants applicable to the staff of Community and regional governments and of the departments of the Joint Community Commission and the French Community Commission and the public law legal persons under their supervision. These standards cover the following aspects in particular:

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

In addition to these standards that apply to all public servants, there are further requirements for the civilian staff of the Ministry of Defence and members of the military.

b) Unacceptable conduct for public officials according to the law

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

- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Embezzlement.
- Misappropriation.
- Taking advantage of their position as public servants to obtain undue benefits.
- Destruction or removal of records or documents.
- Trading in influence.
- Falsification of public documents or records.

Prohibitions and restrictions in the following fields are imposed on public officials by other legislation:

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

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

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

The following measures are used:

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

b) Informing and training public servants on ethics issues

No reply.

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

These measures include:

- Requiring reasons for administrative decisions
- Providing redress against administrative decisions
- Setting standards for timeliness of responding to requests
- Anti-corruption provisions in bids for public contract
- Specific controls on public procurement procedures

d) Disclosure policy

Disclosure policy is defined by the Act of 2 May 1995 and the Special Act of 2 May 1995, for which implementation orders have not yet been issued. The following persons are required to disclose personal information:

- Elected officials, including members of the Chamber of Representatives and the Senate;
- Senior public servants, including the senior staff of federal ministries;
- Governors of provinces, members of the boards of administration and management committees of intermunicipal companies (*intercommunales*), members of the boards of administration of state-owned economic enterprises, administrators appointed in state-owned public limited liability companies, state-owned bank holding companies and public credit institutions;
- Administrators of companies in which the central government, the communities or regions are majority shareholders;
- Members of the governing board of the National Bank of Belgium, members of the Management Committee of the National Social Security Office and members of the Management Committee of the National Sickness-Invalidity Insurance Institute.

The Acts of 2 May 1995 lay down that “each year, before 1 April, the persons concerned shall submit a written declaration in which they mention all the public offices, managerial functions or professions of any kind that they held or exercised during the previous year, both in the public sector and on behalf of any natural or legal person, body or association established in Belgium or abroad.” These Acts also specify that within a month after they join or are appointed to the public service and within a month after they resign any position or after any term of office or function expires, the persons concerned shall submit a declaration of their personal assets. The following information must be given:

- a declaration of assets and liabilities made when joining and leaving the public service;
- an annual declaration of employment during the previous year.

e) Procedures to report misconduct/suspected corruption

There are no procedures that enable or require public employees to report misconduct or suspected corruption on the part of other public servants. However, it should be mentioned that Article 29 of the Code of Criminal Investigation lays down that “any established authority, civil servant or public official who in the course of their duties learns of a criminal offence or misdemeanour, shall report it immediately to the Royal Prosecutor of the court in the jurisdiction in which the offence was committed or in which the accused might be located, and shall provide this court with any relevant information, documents or evidence”.

There is no protection/safeguard available to public servants who expose wrongdoing. However, the draft depolitisation pact includes the following provision: “the government shall organise a contact point in each department where information on internal irregularities and misconduct can be sent in complete confidentiality”.

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

No reply.

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

The disciplinary sanctions for a breach of public service standards are contained in Section 77, § 1, of the Royal Decree of 2 October 1937 laying down the **regulations governing public servants**. These disciplinary sanctions are as follows:

- admonishment
- reprimand

- withholding of salary
- disciplinary transfer
- demotion
- dismissal

Employees against whom disciplinary action has been taken may appeal the decision to the relevant appeal body. They may also lodge a request with the Council of State for annulment of the disciplinary sanction.

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

The body responsible for **investigating** wrongdoing and corruption throughout the public service is the Central Anti-Corruption Office, which is part of the “Operational and Investigative Support” Division of the General Commissariat of the Judicial Police attached to the public prosecutor’s office. A maximum of 95 investigators may be assigned to this office. They work under the authority of the public prosecutor’s office and under the authority of the examining magistrates when conducting investigations on their behalf, which ensures their independence. Other police services may also investigate wrongdoing and corruption in the public service, and also conduct their investigations under the authority of the public prosecutor’s office and the examining magistrates.

The public prosecutor’s office is responsible for **prosecuting misconduct and corruption in the public service**. It is independent, but the minister responsible for justice has positive injunctive authority. It should be mentioned that the police services are responsible for investigating criminal offences and collecting evidence.

The public prosecutor’s office is empowered **to bring suspected cases of corruption directly to court**, while investigative bodies are not. The fact that a person is suspected of corruption is not sufficient to take legal action against him, for there must at least be some incriminating evidence.

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

These institutions include:

- Parliament/Parliamentary Committees
- Independent/external auditors reporting to elected bodies such as Parliament
- ombudsman
- courts for judicial review.

There are procedures available to bring wrongdoing to the attention of bodies exercising independent scrutiny on public service activities. They are the penal procedures laid down by the Code of Criminal Investigation. External audits (audits by an independent organisation reporting to Parliament) monitor legality and management, and are carried out on an on-going basis. The reports are routinely published.

VI. Co-ordination and self-assessment

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

Except for the Civil Service Ministry's decision to make the Public Procurement and Subsidies Service responsible for addressing anti-corruption issues, the government has not taken measures in the field of ethics, and thus there has been no action to ensure the consistency of ethics and anti-corruption measures.

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

No reply.

THE ETHICAL FRAMEWORK FOR THE FLEMISH ADMINISTRATION

I. The general context for managing ethics in the public service³ in the Flemish region

a) *The principal ethics-related issues and measures to improve ethical conduct in the public service of the Flemish region during the past 10 years, and especially within the past 18 months*

The present organisational structure of the Ministry of Flanders exists since 1990. The Ministry has taken ethics-related initiatives both at the administrative and political level in the last decade.

Measures at administrative level:

- Act (29 July 1991) concerning the explicit substantiation of government acts.
- Parliament of Flanders Act (23 October 1991) on the public nature of government documents within the government of Flanders services and institutions, that also establishes the functions of information officer and ombudsman.
- Drawing up a simplified and transparent Personnel Statute (Government of Flanders Decree of 24 November 1993), based on the following basic principles:
 - Requiring responsibility of personnel;
 - Deregulation or simplification of texts and procedures;
 - Maximal implementation of staff management techniques;
 - Balance between the interests of the organization and those of the individual staff member.

Moreover, the Personnel Statute includes stipulations concerning the cumulation of activities in public and private affairs and rights and obligations. A disciplinary regulation is also provided.

- Issuing the “Charter of the Ministry of Flanders” (1993) which phrases the task, vision and values of the Ministry.
- “Sexual Harassment at Work” project (1 February 1996): opening a sexual harassment line and co-operation with an external consultancy service.
- “Reporting point” project (1 December 1997) concerning complaints about the recently implemented evaluation system for the personnel of the Ministry of Flanders. The reporting point is an external organisation, chosen especially to make the reporting easier.
- Issuing a “Deontological Code for the staff members of the government of Flanders services” by means of a ministerial circular letter on 1 September 1998.
- Parliament of Flanders Act (18 May 1999) on the public nature of government which replaces the former Parliament of Flanders Act of 23 October 1991.

3. This chapter provides information on the ethical framework developed in the Flemish region in Belgium in which the Ministry of Flanders employs about 11.000 public servants at the sub-national level.

Measures at political level:

- Deontological Code of the Flemish representatives of the people concerning the services to be rendered to the people (22 October 1997).
- Parliament of Flanders Act on the institution of the Flemish ombudsman service (7 July 1999).

b) Plans in preparation to address ethical issues in the Flemish public service

The establishment of an Internal Audit Service is under preparation within the administration. A government agreement of the Government of Flanders on 13 July 1999 is accelerating this preparatory work in the year 2000. This government agreement stipulates that the Internal Audit Service must carry out administrative inquiries and that it may investigate and assess all operational processes and activities, in order to contribute in this way to structural improvements and to the correct and efficient operation of the administration. In case there are serious indications of irregularities, this Service will carry out administrative inquiries.

II. Core values for the public service

a) Stating core values for the public service

The core public service values are stated both in legal documents, such as the Government of Flanders Decree on Personnel Statute and the Deontological Code in a ministerial circular letter, and other forms such as a brochure on the Charter of the Ministry of Flanders:

- The Charter of the Ministry of Flanders:
 - Being customer-friendly;
 - Loyal co-operating with the Government of Flanders;
 - Taking initiatives and holding responsibilities;
 - Showing capacity and commitment;
 - Maintaining objectivity.
- The Government of Flanders Decree on Personnel Statute:
 - Freedom of expression;
 - Right to information and advanced training programmes;
 - Holding an office in a loyal and honest way;
 - Openness and no discrimination;
 - Not being allowed to receive gifts or rewards;
 - Deontological inconsistencies.
- Deontological Code:
 - Loyalty;
 - Correctness;
 - Customer-friendliness;
 - Objectivity;
 - Right to speak and obligation to speak.

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

The following forms are used:

- Core values are automatically provided when someone joins the public service.
- The statement of core values is part of the employment contract/document.
- Core values, after revision, are distributed to all public servants.
- Instruments of new technology (such as Internet and Intranet) communicate core values.

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

As indicated above, the three documents containing statements of core public service values have been developed since 1993. The latest one is the “Deontological code for the staff members of the government of Flanders services” which further detailed the list of values in a ministerial circular letter on 1 September 1998.

Public servants were involved to different extents in the preparation of the above mentioned documents. The Minister responsible for the Civil Service held meetings with high-ranking officials of the administration on the design of the Decree on the Personnel Statute, while the College of Secretaries-General (in the case of the Charter) and the administration, together with external consultants -- university professors -- (for the Deontological Code) were also involved in the formulation process.

III. Standards of behaviour for the public service

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

The Personnel Statute, the Charter and the Deontological Code consist of an ethical code for the staff members, which declares the standards of behaviour expected of public servants. They cover the following issues:

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

In addition, the Deontological Code includes the rules of conduct to be followed under certain circumstances such as the obligation to speak in cases of abuse or negligence. Moreover, deontological codes provide specific guidelines for public servants and political leaders working at the **political/administrative interface**. The deontological code for the staff members of the government of Flanders services stipulates that, when intervening, the representatives of the people must not deviate from the normal administrative procedures and that each intervention must be recorded in the administrative file. If an intervention is made by a representative of the people in breach of this code, this must be reported to the chairman of the Parliament of Flanders within ten days.

The deontological code **for the representatives of the Parliament of Flanders** concerning the services to be rendered to the people covers all principles and rules of conduct. The Flemish representatives, their personal and group co-workers, and third persons, acting on their behalf take it as a guideline, when delivering services to the people.

b) Unacceptable conduct for public officials according to the law

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

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

In addition to the criminal proceedings, an **independent administrative disciplinary proceeding** may be also carried out.

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

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

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies and publicising vacant positions.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.
- Taking ethical considerations into account in the recruitment process. In order to be admitted to a ministerial office, the following general conditions of admission -- amongst others -- prevail: having a conduct in conformity with the requirements of the position applied for and enjoying the civil and political rights.
- Considering ethical behaviour in the annual performance appraisal and in the personal note which deals with the results obtained and/or with the function. It might also deal with events or practices outside the service, which might influence or make the office holder vulnerable.

b) Informing and training public servants on ethics issues

In principle, all new staff members receive a briefing in the form of a reception day within their first month in the service. In this briefing they are informed of the documents containing values and standards, including the Personnel Statute, the Charter and the Deontological Code. The line manager gives further explanations on them on the occasion of concrete questions or events. Usually they are also announced by means of written documents (service orders, brochures, newsletter, staff magazine, etc.). Further briefings can be held for specific groups of staff members on the implementation of the Deontological Code.

In general, the line manager is responsible for providing guidance, advice, counselling or consultation to public servants in order to resolve their work-related ethical problems and dilemmas. The officials who took part in the development of the Deontological Code can give more specific explanation.

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

These include:

- Identifying and reporting of conflict of interest situations, especially in areas of receiving gifts and benefits such as fees, payments, entertainment.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness of responding to requests.
- Specific controls on public procurement procedures.
- Risk assessment of the areas susceptible to misconduct.

d) Disclosure policy

Disclosure of personal information (declaration of personal assets, financial interests) is required from elected officials, senior public servants, managers of trading companies of which the regional authorities are majority shareholders, and the Heads and the Deputy Heads of the Minister's Office.

Furthermore, a Special Act (2 May 1995) on the obligatory submission of a list of mandates, offices and professions, as well as a wealth declaration was passed and later enacted in the Belgian Official Gazette 'Belgisch Staatsblad' but this Act has not yet come into force.

e) Procedures to report misconduct/suspected corruption

For public servants there are procedures in place to report misconduct and suspected corruption committed by public servants. These procedures are defined by internal rules within each organisation across the public service. There is no protection/safeguard available for public servants who expose wrongdoing. For the public, special procedures are available, such as complaint procedures and the ombudsman, to expose wrongdoing committed by public servants.

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

The following kind of internal control reviews are required by law to be carried out on continuous bases:

Control of the compliance with the deontological rules

The Deontological Code for the staff members of the government of Flanders services is applicable to each level and to each part of the Ministry. One of the responsibilities of high-ranking officials is to **monitor compliance** with the Deontological Code within their administrative entities. The Deontological Code and the official's individual task description form the guidelines for the official's daily conduct. Compliance or non-compliance with the code is also part of the performance appraisal. It is up to the evaluator to judge whether the deontological requirements have been met.

The management bodies may propose adaptations and refinements of the code, due to changing conditions or new challenges. If necessary, the management bodies may decide to draw up an additional code for specific situations.

Financial control

As far as spending is concerned, an extensive financial advice and control system has been developed. Spending is – in certain cases and dependent on the nature and size – subject to the advice of the Finance

Inspectorate, the consent of the Minister responsible for the budget and/or the approval of the Government of Flanders. Specific terms and appeal possibilities are provided. Before spending is possible, expenditure must be determined (an amount is reserved) and authorised/sanctioned (the order to pay). In order to determine expenditure, the “inspector of the determinations” must give his visa. Expenditure may only be sanctioned as soon as the administration involved has concluded that the requirements for the payment have been met. This conclusion is put into concrete form by the approval of the authorising officer. The “inspector of the determinations” and the Court of Audit (*Rekenhof*) must also give their visa on the order file in advance.

Internal Audit

In addition to the “classical” financial control, described above, the recent government agreement of 13 July 1999 by the Government of Flanders provides the establishment of an Internal Audit Service, aimed at implementing financial audits, compliance audits, operational audits and administrative inquiries. The task of this Internal Audit Service will also consist of evaluating the adaptability and efficiency of the existing internal control system and to formulate recommendations for improvements. The internal control system refers to the combination of measures to be incorporated in the organisation’s different (operational) processes in order to ensure to a reasonable extent:

- The realisation of goals and the implementation and follow-up of decisions.
- The accuracy, reliability, delivery in time, completeness and usefulness of the financial and management information.
- The compliance with the legislation, regulation, procedures, etc.
- The efficiency of the operations and the efficient application of means.
- The security of the assets and the prevention of fraud.

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

A conviction may entail a disciplinary penalty if facts related to holding the office are involved. The disciplinary regulation is part of the Personnel Statute. Each breach of the obligations and of the rules laying down which (occupational) activities can be combined - after office hours - with the post occupied is punished according to the gravity of the facts. The disciplinary regulation includes the following disciplinary penalties:

- Blame;
- Salary deduction;
- Disciplinary suspension;
- Loss of grade and removal from office.

The proposal for disciplinary penalty is formulated in writing, substantiated and communicated to the person involved who receives a copy. The authority that must pronounce the disciplinary penalty, hears the relevant official and he/she may be assisted or represented by a counsellor. The authority pronouncing a disciplinary penalty must substantiate its decision. The official may lodge a substantiated appeal against this decision with the appeal council, which gives substantiated advice to the authority inflicting the disciplinary penalty. Finally, the person involved may lodge an appeal to the highest administrative legal court, the ‘*Raad van State*’ (Council of State).

V. Scrutinising misconduct in the public service

These following institutions are in place to perform independent scrutiny over the administration:

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

Each of the institutions mentioned above has its own specific procedures for information on offences or breaches of public service standards. Moreover, the Deontological Code stipulates that anyone who discovers faults, abuse or offences is obliged to expose this as soon as possible. The official concerned must stand up against his/her hierarchical superior when necessary, for example if the superior is involved in offences or does not respond to the report made by the staff member. In these cases, the Crown prosecutor must be informed.

Furthermore, each staff member of the Flemish Community can turn to an external consultancy service in the case of sexual harassment at work. This external consultancy also plays a mediation role if requested, and publish reports on problems of sexual harassment at work.

Het Rekenhof (*the Court of Audit*)

As far as finances are concerned, the Court of Audit subjects the activities of the government of Flanders to three inspections:

- Financial control: the Court of Audit checks the correctness, reliability and completeness of all financial accounts, by verifying the government accounting reports made to the legislature.
- Legitimacy check: the Court of Audit checks whether the receipts and expenditures are in compliance with the budget laws and whether they are the result of a correct implementation of legal rules. The Court of Audit carries out this legitimacy check by granting a visa prior to the payment of the expenditures. In case of non-compliance with legal stipulations, the Court of Audit may refuse its visa, which prevents the payment.
- Accurate capital spending control: the Court of Audit tests the capital spending *a posteriori* to the standards of economy, efficiency and suitability.

The Court of Audit submits reports on the implemented financial, legitimacy and suitability audits to the Parliament. Each year, the Court of Audit publishes its "*boek van opmerkingen*" (Report of Comments) which consists of the recommendations of the Court of Audit to be followed up and implemented within the organisation concerned. This "*boek van opmerkingen*" can be consulted publicly and is available on the Internet (<http://www.ccrek.be>).

The Ombudsman

The Flemish Ombudsman investigates the complaints about the acts and operation of the Ministry of Flanders administrative authorities and acts as an intermediary. The Ombudsman formulates proposals and recommendations on the basis of his findings, in order to improve the services by the administrative authorities. Treating complaints about general policy or about the Parliament of Flanders Acts, Decrees and regulations is not part of his task. The ombudsman submits a report to the Parliament of Flanders on his activities at least once a year. This report is published.

The 'Raad van State' (Council of State)

Each natural and legal person can lodge an appeal with the Council of State against irregular administrative acts which may have damaged him/her, provided there is no other authorised court of law. Suspending the implementation and/or annulling administrative acts (individual legal acts and regulations), contrary to the prevailing legal rules, is an important responsibility of the Council of State. The Council of State decides on claims submitted through judgement, and these judgements are open to the public.

Reporting point for complaints

A reporting point for complaints on the personnel appraisal system was established for staff members of the Ministry of Flanders. The complaints are registered with an external organisation and are reported to the Head of staff, if desired. This insight into the implementation of the evaluation system can lead to the formulation of proposals for future policy concerning the evaluation of co-workers within the Ministry.

VI. Co-ordination and self-assessment

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

So far, there is no dedicated institution in place assigned to co-ordination and management of ethics and/or anti-corruption policy. An ethics or corruption prevention plan/strategy has not been developed until now.

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

There are no such procedures available at the moment, since the initiatives have only been taken recently. For now, only the Personnel Statute is subject to an evaluation, in which – amongst others – the chapter about rights and obligations is being revised.

CANADA

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

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

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

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

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

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

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

In 1995 a group of deputy ministers was asked to look into the question of changing values and ethics in the public service. This work resulted in the preparation of a major report, *A Strong Foundation*,

which was used to initiate a process of analysis, introspection and dialogue with respect to the state of values and ethics throughout the public service. Since the release of the report, deputy minister champions have been named to lead the follow-up efforts to the report and to help provide overall direction on values and ethics related activity.

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

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

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

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

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

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

II. Core values for the public service

a) Stating core values for the public service

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

“Every employee shall conform to the following principles:

- Employees shall perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.

- Employees have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.
- Employees shall not have private interests, other than those permitted pursuant to this Code, that would be affected particularly or significantly by government actions in which they participate.
- On appointment to office, and thereafter, employees shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising, but if such a conflict does arise between the private interests of an employee and the official duties and responsibilities of that employee, the conflict shall be resolved in favour of the public interest.
- Employees shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the employee.
- Employees shall not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to any person.
- Employees shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public.
- Employees shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.
- Employees shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.”

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

Democratic Values

- Loyally helping ministers, under the rule of law and the Constitution, to serve the public good.
- This requires respect for fundamental values, such as accountability to ministers and through them, to the Parliament and the citizens of Canada; support for the government of the day; and respect for the Constitution of Canada, for the rule of law, and for the due process.

Rule of law
Loyalty
Due process
Accountability

Neutrality/Non-partisanship
Public interest/Common good
Responsible government/support democracy
Respect for the authority of elected office-holders

“Traditional” & “New” Professional Values

- Serving Canada and Canadians with professional competence, efficiency, impartiality, non-partisanship, creativity, and innovation.
- Public servants must constantly renew their commitment to serve Canadians by enhancing the quality of service, by adapting to changing needs and by improving productivity.

Traditional

Merit
 Excellence
 Effectiveness
 Economy
 Objectivity and impartiality in advice
 Speaking truth to power
 Fidelity to the public trust
 Neutrality/non-partisanship

New

Quality
 Innovation
 Initiative
 Creativity
 Resourcefulness
 Horizontality
 Teamwork
 Service to clients/citizens

Ethical Values

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

Integrity
 Honesty
 Probity
 Prudence
 Impartiality

Equity
 Discretion
 Public trust
 Disinterestedness

Peoples Values

- The public service should display the same values of fairness, equity, courtesy, caring and concern to its employees as it does to other citizens of Canada.
- Because citizens in a democracy are equal bearers of rights and duties, it is a principle of the public service that citizens should be treated equitably, without favouring anyone.
- Balancing the interests and preserving the rights of citizens in a fair and equitable manner is fundamental to public service.

Respect
 Concern/caring
 Civility/courtesy

Tolerance
 Openness
 Fairness

Moderation
 Decency
 Humanity

Courage
 Reasonableness
 Collegiality/participation

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

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

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

The following forms are used:

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

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

III. Standards of behaviour for the public service

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

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

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

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

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

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

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

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

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

b) Unacceptable conduct for public officials according to the law

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

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

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

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

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

The following measures are used:

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

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

b) Informing and training public servants on ethics issues

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

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

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

Measures include:

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

d) Disclosure policy

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

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

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

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

e) Procedures to report misconduct/suspected corruption

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

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

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

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

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

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

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

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

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

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

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

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

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

The institutions in place to investigate misconduct include:

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

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

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

These include:

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

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

“The Auditor General is the auditor of the accounts of Canada, including those relating to the Consolidated Revenue Fund and as such shall make such examinations and inquiries as he considers necessary to enable him to report as required by this Act. The Auditor General shall

report annually to the House of Commons and may make (...) not more than three additional reports in any year to the House of Commons on the work of his office; and on whether, in carrying on the work of his office, he received all the information and explanations he required. Each report of the Auditor General shall call attention to anything that he considers to be of significance and of a nature that should be brought to the attention of the House of Commons, including any cases in which he has observed that

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

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

The reports of the Auditor General are published routinely.

VI. Co-ordination and self-assessment

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

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

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

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

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

THE CZECH REPUBLIC

I. The general context for managing ethics in the public service⁴ in the Czech Republic

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

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

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

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

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

The most important approach currently in preparation is the Act on Civil Service, which is in an inter-ministerial reviewing process prior to its submission to the government on 31 December 1999. The Bill itself will be submitted to the government by 30 September 2000. The Ministry of the Interior is drafting the "Bill on the Police and the Labour Relations (employment) of the Policemen" which will regulate the public service relations for the policemen. The Ministry is also preparing a new career

4. For the purpose of the questionnaire, the term "public servants" is understood as administrative employees of:

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

structure and a Programme of Prevention of Criminal Practices by Police Officers. The Act on Professional Soldiers is currently in Parliament.

A non-governmental organisation, named Business and Public Service Ethics is preparing a proposal of the Code of Conduct of Public Servants in co-operation with several ministries, including the Ministry of Agriculture, the Ministry of Education, Youth and Physical Training, and the Ministry of the Interior. The proposal should be submitted to the Government till 31 August 2000. In the Concept of Public Servants' Training adopted by the Government in June 1999, there is a special section dedicated to training of public servants on ethic issues.

II. Core values for the public service

a) Stating core values for the public service

The core values are stated in the General Labour Code, especially in § 73 art. Paragraphs 2-5 which are focused on public servants, and in other related special acts. The values are also part of obligatory labour rules stated in every agency of the public service. According to these statements, public servants are obliged to:

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

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

The following forms are used:

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

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

Relevant regulations of § 73 were added to the General Labour Code on 23 April 1992. Officials of the Federal Ministry of Labour and Social Affairs prepared this amendment of the Labour Code. As with every act or amendment, it had to go through a reviewing process in every ministry and some other central agencies.

III. Standards of behaviour for the public service

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

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

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

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

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

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

b) Unacceptable conduct for public officials according to the law

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

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

Furthermore, **additional prohibitions** and restrictions are imposed on public officials by the following legislation. The Act on Conflict of Interest restricts elected officials from abusing their office, power or information, from receiving personal benefits, and from participating in other businesses. It also

defines an irreconcilability of functions in Parliament and in some administration authorities, namely ministries (in appointed or decision-making functions), the army, the police, the State Attorney's Office, the Supreme Audit Office, etc. The Act on State Statistical Service obliges public officials in statistical service to maintain secrecy on individual data received during their service. The Act on Tax and Fees Administration obliges tax administrators to maintain secrecy on individual data received during their service and to pay special attention to the rights of taxpayers and persons involved in the tax administration process.

The Chamber of Deputies adopted a new Act on the Protection of Personal Data on 27 January 2000; it should enter into force in the second half of 2000, after approving by the Senate. The Act forbids to collect personal data without accord of the persons concerned. Keeping of the Act will be supervised by the newly created Office for the Protection of Personal Data; any person concerned will be entitled to submit a complaint to this Office.

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

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

These include:

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

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

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

b) Informing and training public servants on ethics issues

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

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

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

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

These include:

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

d) Disclosure policy

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

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

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

e) Procedures to report misconduct/suspected corruption

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

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

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

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

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

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

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

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

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

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

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

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

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

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

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

These include:

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

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

VI. Co-ordination and self-assessment

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

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

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

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

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

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

As already mentioned, the recently adopted National Programme to Fight Corruption provides many measures to promote ethical conduct and prevent corruption and misconduct, and sets a time schedule for their implementation through 2001. After all the described measures have been implemented and

functioning for some time, an assessment will be made of their effectiveness and consistency with the policies set.

DENMARK

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

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

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

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

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

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

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

However, this should not lead to the impression that ethical issues have been completely absent from the political agenda, but compared to other countries the ethical issues have not (yet) attracted very

much attention. The principal ethics-related issues which have been debated have centred on the political/administrative interface. More specifically debates have arisen concerning the **relationship between ministers and civil servants** (and the use of political advisers), freedom of speech for civil servants, and the right and duty of civil servants not to accept illegal instructions.

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

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

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

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

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

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

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

II. Core values for the public service

a) Stating core values for the public service

The core values for the public service are the following:

- Legality.

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

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

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

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

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

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

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

III. Standards of behaviour for the public service

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

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

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

Specific institutions have established **additional guidelines** for their employees. The Tax and Customs Agency has published a guide regarding secondary employment. This guide states that it is the employee's responsibility to avoid conflicts of interest and ensure that his or her secondary

employment does not create any kind of uncertainty of the Agency's impartiality. The Danish Financial Supervisory Authority has more strict rules regarding personal finances and ownership. With the same purpose as the Tax and Customs Agency – to make certain that personal dispositions do not influence the job – employees are requested to give access to their personal accounts and report any kind of change in their financial situation, e.g. new mortgages, etc.

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

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

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

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

b) Unacceptable conduct for public officials according to the law

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

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

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

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

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

These measures include:

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

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

b) Informing and training public servants on ethics issues

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

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

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

These measures include:

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

d) Disclosure policy

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

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

e) Procedures to report misconduct/suspected corruption

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

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

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

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

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

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

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

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

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

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

Criminal offences committed by civil servants will be **prosecuted** by the police and the ordinary public prosecution and will be brought directly to court. Disciplinary cases will be handled by the agency or department itself. In some cases the agency or department is required by the Civil Servants Act to hold an inquiry. The decision of the agency or department concerning disciplinary sanctions may be challenged before the courts. In disciplinary cases the civil servant may appeal to the courts against the decision of the agency or department.

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

These include:

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

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

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

VI. Co-ordination and self-assessment

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

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

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

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

- Establishment of a **tradition and culture** in the public service which ensure the independence and professionalism of the public servants.
- The piecemeal and **pragmatic approach** for introducing public sector reforms in Denmark, which has always used extensive dialogue with civil servants, and pilot projects and

experiments before the implementation of full-scale measures. This approach has helped adjust and improve ideas in order to prevent ethical dilemmas or undesired effects.

FINLAND

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

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

The principal ethics-related issues are:

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

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

These include:

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

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

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

II. Core values for the public service

a) Stating core values for the public service

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

- Independence.
- Impartiality.
- Objectivity.

- Trustworthiness of government.
- Transparency.
- Service-mindedness.
- Sense of responsibility.

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

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

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

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

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

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

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

III. Standards of behaviour for the public service

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

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

etc. Moreover, general information is given, for example in the form of civil service training. The following points are covered:

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

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

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

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

b) Unacceptable conduct for public officials according to the law

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

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

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

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

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

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

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.

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

b) Informing and training public servants on ethics issues

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

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

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

These include:

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

d) Disclosure policy

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

e) Procedures to report misconduct/suspected corruption

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

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

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

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

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

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

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

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

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

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

These include:

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

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

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

- Public authorities, which include: the Council of State and Ministries, courts of law, government offices and institutions, municipal and regional authorities, ecclesiastic bodies (for example, parishes of the Evangelic Lutheran and Orthodox Churches).

- Public servants, including cabinet ministers, judges, police officers, military officers, public prosecutors, municipal managers, members of municipal councils, social welfare workers, tax commissioners, employees of governmental, municipal or ecclesiastic bodies.
- Others carrying out public functions.

Anyone may complain to the Parliamentary Ombudsman, regardless of age, citizenship or other similar reason. A complaint will be investigated if the Parliamentary Ombudsman finds there is reason to suspect unlawful or improper action subject to the Ombudsman's jurisdiction. The Parliamentary Ombudsman cannot intervene in the manner in which a public authority exercises the discretionary powers conferred on it by law, unless this discretion is abused. The investigation of complaints involves no fees and the complaints are investigated in an impartial manner.

The Parliamentary Ombudsman may take the following measures:

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

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

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

VI. Co-ordination and self-assessment

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

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

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

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

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

FRANCE

I. The general context for managing ethics in the public service in France⁵

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

The main ethics-related issues are as follows:

- Rapid development of commercial real estate in cities.
- Insufficient transparency in the awarding of public procurement contracts due to a rigid and cumbersome procedure
- Movement of senior officials to the private sector (known as “*pantouflage*”) because of higher salaries.
- The criminal offence of deriving undue advantages from one’s position as a serving or retired public servant.
- Greater interpenetration of the public and private sectors, which exposes central government and regional and local public servants to risks of corruption in the current process of decentralisation.

a) Recent measures to improve ethical conduct in the public service

The following measures have been taken regarding public servants who move temporarily or permanently to the private sector:

- Under Section 72 of the Act of 11 January 1984 containing provisions on the central government public service and the equivalent sections for the two other levels of the public services, and Section 87 of the Act of 29 January 1993, as amended, on corruption prevention and transparency of economic transactions and public procedures, public servants in the three levels of public service who leave the service permanently or request a leave of absence are prohibited from exercising a professional activity in the private sector or the competitive public sector that is incompatible with their previous functions in the administration; this legislation

5. In France, the public service comprises all permanent civilian employees of the central government, regional or local authorities and their public establishments and public hospitals. Civilian public servants are governed by two sets of provisions: legislative provisions that define the main guarantees, obligations and principles governing the employment and career of public servants (primarily the General Rules governing the public service, Title I of which lays down the rights and obligations of all public servants and Titles II, III and IV of which lay down the rules applicable respectively to public servants employed by the central government, regional or local authorities and public hospitals), and regulatory provisions that lay down special rules applicable to each corps of public servants. This chapter mainly concerns the central government public service. When all three levels are being discussed, this will be stated specifically.

also establishes an “ethics commission” in each of the three levels of public service. Decree No. 95-168 of 17 February 1995, as amended, defines the prohibited activities and lays down the procedures by which the commissions operate. An ethics commission has been established for members of the military and a specific control procedure has been implemented for magistrates.

- In addition, guides to ethics and codes of ethics have been prepared in some administrations for their officials in positions particularly susceptible to corruption. Examples in this regard are the code of ethics of the national police (Decree No. 86-592 of 18 March 1986), the guide “Ethics for Public Servants” prepared for employees of the General Directorate for Taxation (June 1996), the guide “Preventing Internal Misconduct” for the heads of post offices, managers and senior officials of the Post Office (May 1997) and the guide “Accountability and Ethics”, a reference guide for heads of service and managerial staff of the Ministry for Infrastructure, Transport and Housing (January 1998).
- Ethical training has been introduced into schools of administration (*Ecole Nationale d’Administration*, regional institutes of administration).

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

The following plans are in preparation:

- Reinforcement of the control exercised by the ethics commissions, which will be extended to all types of transfers from positions in the public service to the private sector or the competitive public sector (currently only permanent departures and requests for a leave of absence are monitored).
- The preparation of new codes of ethics and the creation of new commissions, such as the code of ethics of the prison administration and the future national commission for security-related ethics.
- The revision of the Decree-Law of 1936 on multiple pensions, salaries and positions, which should lead to new regulations for public officials in this respect.
- The organisation, under the aegis of the General Directorate for the Administration and Public Service, of a committee bringing together inspectorates-general to exchange experience and good practice.

II. Core values for the public service

a) Stating core values for the public service

The core values for the public service are defined both in legislation and in case law. They are set out in the codes of ethics and guides to ethics mentioned above. For example, the legislation on the public service, and in particular Act No. 83-634 of 13 July 1983 on the rights and obligations of public servants (in Title I, Chapter IV, of the General Rules governing the public service), contains a list of the obligations of public servants, such as:

- The obligation to devote their professional activity exclusively to the tasks assigned (Section 25).
- The obligation to respect professional secrecy and professional discretion (Section 26).
- The obligation to obey their hierarchical superiors, unless the order given is clearly illegal or seriously detrimental to the public interest (Section 28).
- Accountability for misconduct and disciplinary sanctions (Sections 29 and 30).

- Public servants are also subject to the rules of the Criminal Code regarding wrongdoing (the criminal offences of extortion, bribery, illegal use of their position as a public servant to obtain undue advantages, embezzlement and misappropriation of public goods and funds).

Other regulations are applicable to public officials, such as the previously mentioned Decree-Law of 29 October 1936 and the Act of 29 January 1993. Certain obligations required of public servants are not provided for by legislation, but have been created by case law. This is the case of the “*obligation de réserve*”, which requires public servants to show restraint when expressing their opinions, and especially their political opinions, subject to disciplinary sanctions. However, this obligation is included in the rules governing certain categories of public servants, such as judges.

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

These values are communicated to public servants in the following ways:

- The codes of ethics and guides to ethics mentioned above.
- Initial training, induction training in each administration and continuing professional training.
- The dissemination to all administrations of the annual reports of the ethics commissions established in the three levels of the public service.

c) The statement on core public service values was revised during the past ten years

A number of new provisions have been implemented over the past ten years, in particular the aforementioned Act of 29 January 1993, which establishes new anti-corruption measures for public officials and public procedures, and Decree No. 95-168 of 17 February 1995, as amended, which defines the private activities prohibited to public officials and lays down the procedures by which the ethics commissions operate.

III. Standards of behaviour for the public service

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

There is no single statement of standards of behaviour for public servants, but rather a series of standards contained in the Public Service Act, specific legislation, case law and the codes of ethics and guides to ethics of each administration. These standards cover the following points:

- Receiving gifts and benefits.
- Use of official information.
- Work outside the public service.
- Restrictions on post-employment.
- Special conditions on movement from the public sector to the private sector.
- Involvement in political work.

There are also **additional guidelines** presented in specific codes of professional conduct for certain categories. Guides to ethics and codes of ethics have been prepared in some administrations for their officials in positions particularly susceptible to corruption, such as:

- The code of ethics of the national police (Decree No. 86-592 of 18 March 1986).

- The guide “Ethics for Public Servants” prepared for the employees of the General Directorate for Taxation (June 1996).
- The guide “Preventing Internal Unethical Conduct” for the heads of post offices, managers and senior officials of the Post Office (May 1997).
- The guide “Accountability and Ethics”, a reference guide for heads of service and managerial staff of the Ministry for Infrastructure, Transport and Housing (January 1998).
- A decree establishing a code of ethics for the prison administration (in the planning stage).

The **minimum standards** of behaviour for the public service are defined by the legislation on the public service and the various laws contained in the Civil Code, the Criminal Code and the Public Procurement Code.

b) Unacceptable conduct for public officials according to the law

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

- Active, passive, direct or indirect corruption of public officials/corruption committed by public officials (Articles 432-11 of the Criminal Code).
- Abuse of office or public trust (Articles 432-1 to 432-6 of the Criminal Code).
- Receiving of undue advantages by serving or retired public servants from enterprises that they controlled, monitored or with which they were involved in awarding a public procurement contract or in giving an opinion on these contracts (Articles 432-12 and 432-13 of the Criminal Code).
- Extortion, i.e. when public officials require or receive sums that they know are not due or are in excess of what is due, or grant a benefit in breach of the law or regulations (Article 432-10 of the Criminal Code).
- Embezzlement or misappropriation of public funds (Articles 432-15 and 432-16 of the Criminal Code).
- Breach of professional secrecy (Article 226-13 of the Criminal Code).
- Discrimination (Article 432-7 of the Criminal Code).

The following **prohibitions and restrictions** imposed on public officials by other legislation can be mentioned by way of example:

- Prohibition from combining public employment with other private or public employment, except for narrowly defined exceptions: Section 25-1 of Act No. 83-634 of 13 July 1983 on the rights and obligations of public servants and the Decree-Law of 29 October 1936 on multiple pensions, salaries and positions.
- The rules governing public procurement procedures contained in the Public Procurement Code.

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

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

The following measures are used:

- There are rules/guidelines/policies for recruitment and promotion procedures that ensure the transparency of decisions and equal opportunity (recruitment by competitive examination,

career progression by seniority and by selection, consultation of bipartite administrative commissions, promotion through competitive examination).

- The openness of the selection procedures is ensured by publishing the recruitment rules (legislation on the public service) and publicising vacant positions.
- Movement of public servants to the private sector is supervised.

Special attention is given to officials in positions particularly susceptible to corruption, as is shown by the fact that guides to ethics and codes of ethics have been prepared in certain administrations: the national police, employees of the General Directorate for Taxation, the heads of post offices, managers and senior officials of the Post Office and heads of service and managerial staff of the Ministry for Infrastructure, Transport and Housing.

b) Informing and training public servants on ethics issues

Two types of training are provided:

- Initial training: the students of the *Ecole Nationale d'Administration* and regional administrative institutes take mandatory courses in ethics and criminal liability.
- Continuing professional training: when they take up their functions, officials in positions particularly susceptible to corruption are informed of the ethical rules that apply to them. During their career, they are encouraged to take courses in ethics in various training bodies as part of continuing training.

To solve any ethical problems that may arise, officials may obtain information about the procedure to be followed when moving to the private sector by contacting the secretariats of the ethics commissions (the General Directorate for the Administration and Public Service of the Ministry for the Civil Service, State Reform and Decentralisation for the central government public service; the General Directorate for Regional and Local Authorities of the Ministry for the Interior for the regional and local public service; the Directorate for Hospitals of the Ministry for Employment and Solidarity for public servants in hospitals). In additions, there are “ethics advisers” in a number of administrations. Lastly, human resource managers are well informed about these issues and can advise officials in this regard.

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

These include:

- Identification and reporting of conflict of interest situations, especially in the areas of financial management, post public employment and receiving gifts and benefits such as fees, payments and entertainment.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness of responding to requests.
- Anti-corruption provisions in bids for public contract.
- Specific controls on public procurement procedures.
- Access to administrative records.
- Internal hierarchical control; compliance with the hierarchical principle in the administration; raising management’s awareness of the issues of ethics and of supervision of employees.

d) Disclosure policy

Under Acts No. 88-226 and No. 88-227 of 11 March 1988 on financial transparency in politics and Decree No. 96-672 of 1 September 1996, the President of the Republic, candidates in presidential elections, deputies and senators, members of the government, Members of the European Parliament, presidents of regional and local deliberative assemblies, mayors of communes of over 30 000 inhabitants and the presidents, general directors and deputy directors of state-owned enterprises and state-owned industrial and commercial public establishments and certain public or semi-public bodies are required to make a declaration of personal assets and submit it to the Commission for Financial Transparency in Politics. Some of these declarations are published in the Official Gazette of the French Republic (for example, the declarations of personal assets of presidential candidates). Candidates may be declared ineligible if they fail to comply with these requirements.

e) Procedures to report misconduct/suspected corruption

There are procedures for public servants to report acts of corruption committed by other public servants; the fact that information is centralised helps deter and detect wrongdoing (Central Anti-Corruption Service of the Ministry for Justice, created by the previously mentioned Act of 29 January 1993). Article 40, paragraph 2, of the Code of Criminal Procedure lays down that “any public servant who, in the exercise of his duties, learns of a criminal offence or misdemeanour shall inform the public prosecutor’s office at once and provide it with all relevant information, records and evidence.”

Citizens can also report wrongdoing by public servants either by initiating direct legal action, notifying the ombudsman or writing directly to the administration concerned.

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

Internal control contributes to anti-corruption efforts through:

- The control of expenditures by auditors.
- Internal hierarchical control.
- Inspectorates-general and the control bodies of ministries.
- Departmental inspectorates.

Audit and hierarchical control are ongoing and are binding for public servants. However, the frequency of the reports by inspectorates-general and departmental inspectorates is determined by the schedule for inspection campaigns. These reports are not binding on the administration and are only informational reports to the minister concerned. Decisions taken on the basis of hierarchical control are only disclosed to the public servants concerned, and if necessary to bipartite administrative commissions if they concern the public servant’s career.

The public has access to the reports prepared by inspectorates under the terms laid down by Act No. 78-753 of 17 July 1978 establishing various measures for improving relations between the administration and the public (...), which enables users to request that the administration provide access to the administrative documents and records it holds, namely “any files, reports, studies, records, minutes, statistics, guidelines, instructions, circulars, notes and ministerial replies (...), opinions (...), forecasts and decisions in the form of written documents, audio-visual recordings or computerised data that do not refer to individuals by name.”

The administration may deny permission for documents to be released if this would be detrimental to the smooth functioning of government, the public interest or legally protected private interests or if prohibited by law.

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

Public officials are only subject to disciplinary proceedings if there has been misconduct on their part. The Public Service Act of 13 July 1983 defines this as “any misconduct committed by public servants while exercising their functions”. In some cases, the misconduct may constitute a criminal offence (misappropriation of funds, bribery, extortion, breach of professional secrecy). The full range of disciplinary sanctions are listed in Section 66 of Act No. 84-16 of 11 January 1984 containing provisions on the central government public service. Sanctions are divided into four groups:

- First group: warning; reprimand.
- Second group: freeze on career advancement; loss of grade; suspension for a maximum of two weeks; transfer.
- Third group: demotion; suspension for a period of three months to two years.
- Fourth group: compulsory retirement; dismissal.

For sanctions more serious than a reprimand, the competent bipartite administrative commission must be consulted, sitting as a disciplinary council. Public servants being sanctioned may, under the terms of ordinary law, lodge an administrative appeal with the superior who imposed the sanction or a hierarchical appeal with higher authorities. Under certain conditions they may also bring the matter before the Appeals Commission of the Higher Council of the Central Government Public Service (127 such appeals were lodged in 1997). This commission’s opinion, which is not binding, is forwarded to the relevant Minister. The public servant may also bring an action for illegal use of power before the Administrative Tribunal under the terms of ordinary law.

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

The bodies in place **to investigate** misconduct and corruption in the public service are as follows:

- General inspectorates and the control bodies of ministries.
- Departmental inspectorates.
- Financial audit bodies (the Court of Auditors and regional audit bodies).
- The Central Public Procurement Commission and the Interministerial Mission for the Investigation of Public Procurement and the Devolution of Public Services.
- The Central Anti-Corruption Service.

The bodies in place **to prosecute** misconduct and corruption in the public service are as follows:

- Disciplinary action: the authority that appointed the public servant in question.
- Criminal action: the judicial authorities only; action is initiated by the public servants who learned of the suspected criminal offence (Article 40 of the Code of Criminal Procedure), proceedings may also be initiated by the government or the body that employs the public servant.

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

These include:

- Parliamentary committees.
- The courts;
- Ethics commissions.
- The Court of Auditors and regional audit bodies.
- The Ombudsman (recommendations)

With regard to Parliamentary committees, a distinction should be made between standing committees (finance, legislation, etc.) and investigative committees. The “work programme” of the latter is determined by Parliament (e.g., the investigative committee established in 1994 on the issue of corruption).

The frequency of judicial review depends on the number of appeals. Currently, there are approximately 100 convictions per year for criminal offences involving misconduct, although it is not possible to say how many of these cases involve public servants.

The Court of Auditors and the regional audit bodies carry out investigative and statutory audits within their respective jurisdictions (audits of the accounts of paymasters, of the execution of the finance act, of public enterprises, social security bodies, and bodies that receive public subsidies for the Court of Auditors, and audits of the budgets of regional and local authorities and local public establishments, and of authorities’ accounts, for the regional audit bodies).

The Ombudsman, established in 1973 to resolve contentious matters between citizens and government, only handles cases referred through a Member of Parliament; the Ombudsman may also take the initiative of addressing administrative problems of a general nature.

VI. Co-ordination and self-assessment

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

The General Directorate for the Administration and Public Service is responsible for adapting rules and regulations, co-ordinating initiatives and ensuring that experience is shared and put to good use. Regulatory bodies also implement the policy guidelines laid down by the government. With regard to the control of movement to the private sector, the ethics commissions established within the various levels of the public service each prepare annual reports, which are submitted to the government; the report of the central government commission is published.

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

The government has given priority to improving the effectiveness of administrations and public services, in particular by developing the ministerial and inter-ministerial evaluation of public policies. In this regard, Decree No. 98-1048 of 18 November 1998 created a National Evaluation Council responsible for implementing an inter-ministerial procedure for evaluating public policies; its role is to assess the effectiveness of public policies by comparing outcomes with the goals set and the resources used. The annual report of the Council is published. On the basis of this report, the General

Commissariat for Planning and the administrations concerned prepare proposals on the measures or policies to be adopted, which are submitted to the Prime Minister for decision. Thus far, the Council has not had the opportunity to evaluate ethics policy.

GERMANY

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

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

Evaluation of cases of misconduct that have been identified, in particular in the context of disciplinary proceedings, has not furnished any indication of significant changes as regards the period under consideration.

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

For **public officials**⁶ (statutory civil servants for life) whose rights and duties, including remuneration and retirement benefits, are regulated by law, public service law instruments have already been in existence for decades. These instruments stress the need for ethically correct conduct, and are in place to prevent neglect of duty and to counter misconduct (see Section II.a below). Accordingly, the measures taken under public service law over the past few years only have a complementary or clarifying function:

- Reward for co-operation in the investigation of cases of corruption ("minor provision for crown witness turning State's evidence")⁷.
- Clarification that any acceptance of gratuities or gifts is prohibited and that a public service employer may agree to such acceptance only in exceptional cases.
- Extension of the obligation to disclose information to the public service employer prior to engaging in any outside occupation that is not taken up at the employer's express request, especially outside work performed for remuneration. The reasons are to:
 - Avoid even any suspicion of potential conflicts of interest or loyalty.
 - Ensure that public officials place their entire working capacity at their employer's disposal.

For **public employees** and **wage-earners** whose legal status is, in its basic structures, regulated by the general labour law applying also to those employed in trade and industry and by the collective agreements for the public service, provisions imposing compliance with ethical conduct have been incorporated in collective agreements for many years already (see also Section II.a below). No major need for improvements has been identified.

6 The public service of Germany distinguishes between statutory civil servants on the one hand (nowadays usually designated as "**public officials**"), and staff employed under private law comprising **public employees** and **wage-earners**, on the other. The three categories are grouped under the term "**members of the public service**".

7. Referring to "crown witnesses" in criminal procedural law: refraining from prosecution of the crown witness or discontinuing the proceedings in case of active regret and the perpetrator's voluntary disclosure of his/her knowledge.

It was only in the course of the past years that, through the inclusion in collective agreements of reference to the legal provisions governing outside occupation of public officials, only the aforementioned extended disclosure requirements before taking up work outside the public service have come to apply to public employees and wage-earners as well.

Following a number of changes to penal law, to criminal procedural law, to the Unfair Competition Act and to public service law and disciplinary regulations, the Federal Government Directive concerning Corruption Prevention within the Federal Administration (Anti-Corruption Directive) entered into force on 14 July 1998. The non-statutory provisions collated in that Directive are to lead to corruption-risk prevention, especially concerning persons susceptible to being offered benefits or bribes, that will be as uniform as possible throughout the federal administration. In parallel with the text of the Anti-Corruption Directive, "recommendations" were developed by the (ministerial) departments concerned. These recommendations help with the implementation of the Directive and of the various provisions. These include, for instance, the Anti-Corruption Code of Conduct which each public office holder should receive, the Guide for Superior/Senior Officials and Heads of Authorities and the Administrative Regulation Prohibiting Acceptance of Gratuities and Gifts which is yet to be completed.

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

Since the public service law instruments have already been in existence for decades to enforce ethical principles in the public service, the major concern at present is to **raise the awareness** of public office holders as regards these issues.

Thus, an Administrative Regulation Prohibiting Acceptance of Gratuities and Gifts is being prepared by the federal administration with the aim of ensuring a uniform procedure within the federal administration as regards both the public office holder's notification of gifts or rewards/gratuities and, on the part of the competent authority of the service, refusal of acceptance or exceptionally granted approval of acceptance. At the same time, this Administrative Regulation is to be provided to staff members as guidance and as a rule of conduct. Some of the other public service employers (i.e. *Länder*⁸) have already enacted such administrative regulations.

More generally, it is the duty of each supreme authority of the service and of each superior official to find appropriate ways of bringing the standards of conduct to the notice of public office holders, especially those in particularly exposed areas of activity, or whenever the need arises.

II. Core values for the public service

a) Stating core values for the public service

As regards the values laid down for the public service, it must be stressed that access to the public service must be geared to the following **eligibility criteria**, both for public officials and for public employees and wage-earners:

- Aptitude.
- Qualifications.
- Professional achievements.

⁸ Federal States.

For public officials, the central values shaping the special relationship of service and loyalty defined by public law include the following **duties**:

- The duty to exercise their office impartially and justly, in line with the common good, and loyally.
- The duty to exercise the office incumbent on them disinterestedly and to the best of their knowledge and belief, including the duty not to accept any gratuities or gifts.
- The duty of full devotion to the civil servant's profession, especially the commitment not to practise any other profession.
- The duty to maintain official secrecy.
- The duty to obey, under which public officials are bound in principle to comply with the instructions of their superiors (except "the duty of remonstrance", see below).
- The duty to advise and support one's superior, especially with reference to the legality and expediency/suitability of the superior's action, including the duty to point out to the superior that the action he/she intends to take is inappropriate or even unlawful.
- The duty to assume full personal responsibility for the lawfulness of their official acts, with the consequence that they will have to answer -- in terms of penal law, disciplinary regulations and liability provisions -- for any unlawful official act, even if such unlawful official action had been approved by the superior.
- The duty to remonstrate, i.e. to report any reservations as regards the unlawfulness of an official order to the immediate superior without delay (duty of remonstrance). On the one hand, the duty to remonstrate takes account of the personal responsibility of public officials, in a relationship of service and loyalty defined by public law, for the lawfulness of their action and, on the other hand, defines the limits of their fundamental duty of obedience (duty to comply with instructions): if public officials have any doubts regarding the lawfulness of any action they are asked to perform, they have to inform their superior of such doubts. If the superior nevertheless upholds the official order, the public official has to turn to the next higher superior. It is only when the latter confirms the official order that the public official concerned must, in principle, comply with it unless he/she would thereby commit a criminal or administrative offence or violate human dignity. A public official will be protected against any subsequent claims under disciplinary regulations or liability provisions only if he/she has complied with his/her duty to remonstrate.
- The duty not to go on strike so as to ensure, for the public good, the functioning of government at all times.
- The duty to conduct oneself in a respectable manner both inside and outside the public service.

As regards **public employees** and **wage-earners**, in addition to the duties applying also to those employed in trade and industry, the following specific **duties** entailed by employment in and for the public service are regulated in the specific (individual) employment contracts and in the public service collective agreements:

- The pledge to carry out official duties conscientiously and to observe the laws.
- General duty to conduct oneself -- both inside and outside the public service -- in a manner expected of those employed by the public service.
- Recognition of the free, democratic basic order.
- Duty to comply with instructions, unless an instruction is perceptibly contrary to penal laws.
- Maintaining the secrecy of official information.
- Overall prohibition to accept rewards or gifts.
- Limitations on taking up outside occupation (reference to civil service law, i.e. legal provisions applying to public officials).

As a correlate to the duties particularly imposed on them, the following **rights** are also of central significance to **public officials**:

- The principle that public officials are employed with life tenure -- a principle which ensures the independence and neutrality of government and under which termination of service is possible only in exceptional cases expressly laid down by the legislator:
- Reaching a prescribed retirement age.
- Placement in temporary retirement (non-active status). This is only admissible with regard to a category of persons, expressly enumerated in the respective law, performing functions at the political/administrative interface (politically appointed officials/political civil servants).
- Retirement of officials who have become (medically) unfit for service.
- Resignation (dismissal at the official's request).
- Removal from service as a disciplinary measure which, however, may be imposed only after formal disciplinary proceedings instituted by an independent court.
- Termination of the employment of public officials by virtue of law if a public official is sentenced with legal effect by a court to imprisonment of at least one year because of an intentional criminal offence or to imprisonment of at least six months because of crimes against the security of the State.
- The maintenance (alimentation) principle ensures that the public servant will receive remuneration and benefits appropriate to his/her office, including the relevant training, and will be able to devote him/herself to his/her life-tenure profession while keeping his/her economic independence so that he/she will not be susceptible to corruption for material reasons. At the same time, this will ensure that the public service, too, will be able to recruit qualified and motivated staff from the labour market.
- The right to an assignment appropriate to the individual's status also ensures an administrative/governmental system independent of the interplay of political forces.

Public employees and **wage-earners** in the public service have the same **rights** as wage and salary earners employed in trade and industry; in particular, unlike public officials, they have the right to strike. On account of detailed provisions included in the collective agreements for the public service, the employment of such persons is safeguarded after 15 years of public service employment, but not before completion of the 40th year, unless there are reasons for dismissal without notice (notice of dismissal in exceptional circumstances; notice to quit for cause), such as serious misconduct.

Core public service values are stated in both legal documents and other forms:

- The Constitution (Basic Law) prescribes and safeguards the eligibility criteria for access to the public service for all employment categories and lays down, in broad terms, and protects the rights and duties of officials in a special relationship of loyalty defined by public law.
- Through **laws** or pertinent **implementing regulations**, the legal status of public officials has been developed in greater detail and thus their rights and duties have been specifically laid down.
- The **individual employment contract**, **collective agreements** and **general labour law** regulate the rights and duties of public employees and wage-earners.
- In addition, awareness of the aforementioned values is promoted as part of the general public relations activities pursued by the federal government. **Information material**⁹ is accessible to everyone, and information is included in textbooks and treatises on public service law and the law concerning collective bargaining, as well as in the commentaries on the regulations under public service law and collective bargaining law.

9. For example, the core values and standards of behaviour are set out on page 45 of the brochure "The Public Service in Germany".

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

Core public service values are also imparted to public officials as part of their specific training within and for the public service. If public employees and wage-earners have not received training within the public service, they will obtain the relevant information, at the latest, through the publication of important legal provisions which the employer is required to make known on bulletin boards or otherwise within the agency or firm.

c) The statement on core public service values was last revised in 1997

The complementary and clarifying service regulations (see Section I.b above) entered into force in 1997. The interests of public officials are represented and safeguarded by the top organisations of trade unions and professional associations when general public service regulations -- i.e. laws, statutory ordinances (ordinances having the force of law) and administrative regulations relating to public service law -- are developed. Accordingly, these organisations were, and will be, provided with the texts of the aforementioned regulations while in the drafting stage. Consequently it was, and is, possible to take account of the suggestions made by such bodies. The aforementioned provisions under public service law have been put into effect by laws adopted by Parliament, so it was possible for the public at large, through its representatives, to exert its influence throughout the entire legislative process.

III. Standards of behaviour for the public service

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

For **public officials**, all general provisions regulating their terms and conditions of service are laid down in laws or the pertinent implementing provisions so that the various standards of conduct also derive from the relevant public service statutes (see the end of this Section). For **public employees** and **wage-earners**, the collective agreements contain the standards of behaviour (see the end of Sections II.a and II.b above). They cover the following issues:

- Receiving gifts or benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Use of corporate credit cards.
- Work outside the public service.
- Restrictions on post-employment.
- Special conditions/permissions on movement from the public service to the for-profit sector.
- Involvement in political work.
- When in situations outside the public service, all those in public service are expected to behave in a way worthy of the respect and trust which the general public can expect of the public service.
- Anybody in public service must inform his/her superior immediately of all circumstances liable to give concern as regards partiality in the performance of a task assigned to him/her.

On principle, the same requirements apply to all public officials, on the one hand, and to all public employees and wage-earners, on the other. An exception applies in the case of police officers and firemen expected, in view of their specific assignment, to make increased, dedicated efforts even if there is danger to life and limb. Also organisational measures (e.g. multiple-presence rule) are taken to ensure that

standards of conduct in line with public service law are complied with in areas of activity exposed to particular risks.

Public officials, public employees and wage-earners who perform functions at the political/administrative interface are subject to the same rules of conduct as the other public office holders of their respective status category. The only difference is that those at the political/administrative interface may be placed in temporary retirement at any time and without any reasons given.

In principle, members of the federal government and Parliamentary State Secretaries are also subject, by virtue of law or by analogy, to the standards of conduct imposed, in particular, on public officials. However, they are forbidden to engage in any, even minor, outside work performed for remuneration.

The standards of behaviour prescribed under public service law are primarily stated in the following legal documents:

- The Constitution (the Basic Law).
- The Civil Servants Framework Act (which defines the Scope of Public Officials' Rights and Duties) and the Federal and State Civil Servants Statutes.
- The Administrative Procedure Act, which prescribes the duty of public officials, public employees and wage-earners to inform their superior on circumstances influencing their impartiality.

b) Unacceptable conduct for public officials according to the law

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

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

As regards the **criminal liability of the bribe-taker**: under German law, both acceptance of gratuities by officials (Section 331 of the Criminal Code) and venality (corruptibility, bribe-taking) of officials (Section 332 of the Criminal Code) are punishable. Acceptance of gratuities/advantages is already assumed to exist when an official (office-holder, as detailed in the Criminal Code: "a functionary, ... a person especially engaged in civil service, ... a soldier ..., a judge or arbitrator") demands, or allows him/herself to be promised, or accepts a gratuity in return for an official act (regular performance of duties). It is not necessary to establish that the accused official performed a specific official act in return for the gratuity in question. Therefore, even properly performed official action does not preclude criminal liability for "acceptance of gratuities". The more serious offence of venality (bribe-taking, Section 332 of the Criminal Code), however, presupposes official acts, the performance or omission of which violates, or would violate, the office-holder's official duties.

Regarding the **criminal liability of the briber**: as a counterpart to the bribe-taker's criminal liability under Sections 331 and 332 of the Criminal Code, criminal liability of the briber is incurred for the offences of granting gratuities (Criminal Code, Section 333) and of bribery (Criminal Code, Section 334). This means that whoever offers, promises or grants a gratuity/advantage to an official (as defined in the paragraph above) in return for an official act incurs criminal liability for granting gratuities. As in the case of acceptance of gratuities (Criminal Code, Section 331), such criminal liability exists irrespective of whether or not the official action concerned is in breach of duty. On the other hand, criminal liability for bribery (Section 334 of the Criminal Code) is incurred by whoever offers, promises or grants a gratuity/advantage to an official in return for a specific official act taken or to be taken in violation of his/her official duties.

Attempted acceptance of gratuities (Criminal Code, Section 331) is punishable only in the case of judges and arbitrators; the attempt to grant gratuities is not punishable (Criminal Code, Section 333). Attempted venality (Criminal Code, Section 333) is punishable in principle; while attempted bribery (Criminal Code, Section 334) is punishable only for judges and arbitrators.

If and where **partiality** in official decision-making results in official action that is in breach of duty, it may be punishable as venality (Criminal Code, Section 332) provided that the other elements of an offence punishable under this legal provision exist as well. Office-holders in prominent positions (e.g. judges, public prosecutors, and other officials in a comparable position) might also incur criminal liability for perversion of law (Criminal Code, Section 339) if such officials wilfully and seriously misapply the law knowingly when conducting or deciding a legal matter.

Abuse of authority may also be punishable under Section 266 of the Criminal Code (breach of public trust) if the official function also comprises tasks related to property rights -- especially as regards planning, award of contracts, control of outside services and, generally, the use of public funds. Criminal liability for breach of public trust is incurred, *inter alia*, by a public office holder who -- being entrusted with the property interests of another person and misusing his/her powers or violating any of his/her duties to preserve the property interests of another -- causes prejudice, i.e. property loss, to that other person.

The duties (listed in Section II.a. above) and behaviour (mentioned in Section III.a) are imposed on public officials primarily by the laws regulating their legal status or by the pertinent implementing provisions.

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

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

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.
- Taking ethical considerations into account in the recruitment process. Personnel are recruited on the basis of aptitude, qualifications, and professional achievements (see also Section II.a above). Accordingly, it is the general rule to select from among several applicants the candidate who proves to be the most qualified and also be expected to meet the demands of the given post. In addition to examinations and/or performance reports, a personal interview and medical examination are required in the recruitment process to check physical and psychological fitness. Applicants have to take written and/or oral tests in Assessment Centres, and commissions established for this purpose evaluate these tests.
- Considering ethical behaviour in the performance appraisal, which must regularly contain statements regarding the following, *inter alia*:
 - The lawfulness and expediency of the official action of the person whose performance is being appraised.
 - His/her readiness to take on responsibility and to co-operate with others.

The Federal Government Directive concerning Corruption Prevention within the Federal Administration (Anti Corruption Directive No. 2.) **requires identification of the areas of activity susceptible to corruption**, and particularly susceptible to corruption in all federal agencies. The areas particularly susceptible to corruption include, *inter alia*, the public contract awarding/public procurement, where consideration is to be given to the use of risk analyses. Depending on the results of such risk assessments, further steps are to be taken: e.g. changes to work flows and processes, staff rotation, introduction of the multiple-presence principle, etc.

b) Informing and training public servants on ethics issues

Training in the public service is not offered on a general basis, but is geared to the various areas of activity and thus is widely diversified. Consequently, training is differentiated according to career brackets and service/career categories:

- For **public officials**, training is designed and organised by the public service employers, i.e. the federal government and the States (*Länder*). However, the common basis for the training of public officials of all career brackets and categories is to impart the core values of the public service as the foundation of governmental action (see Section II.a above). The ethical values embedded in civil service law run through the entire training system as a unifying thread and are not confined to just a number of partial segments. Within the federal administration, special elements of training (trainee service) for the higher intermediate service (executive class of service) are devoted to the self-image of public officials, to socially-oriented action, to communication and leadership, to competence for acting within an administration that is responsive to citizens, and to self-reliance in terms of acting, assuming responsibility and making decisions.
- To the extent that **public employees** and **wage-earners** are trained within the public service, the specific values of the public service are also imparted to them.

In the follow-up training of public officials and public employees and wage-earners, these values are taken up and are studied on the basis of topical phenomena, current manifestation and problems. Advanced training focuses on imparting the bases of co-operation and leadership, of social competence (in interrelations with citizens), and a responsible approach to the performance of official duties.

In accordance with the same principles, on the **sub-national level** the *Länder* and local governments organise similar training and follow-up training measures for those employed in their public services.

Ethical problems emerging during the performance of specialised tasks must be solved exclusively through the proper channels (line of responsibility), i.e. through the superior official -- if warranted, by way of remonstrance (see Section II.a above). In other respects as well, the superior official -- through dialogue, information and his/her own exemplary conduct in terms of ethics -- has to create the overall conditions for a relationship of trust which leaves scope for the discussion of ethical issues. Similar requirements are to be met by the next higher superior.

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

These include:

- Identifying and reporting of conflict of interest situations, especially in areas of financial management, post public employment, receiving gifts or benefits such as fees, payments, entertainment, award of public contracts, official travel, and use of corporate credit cards.
- Requiring the release of internal information related to ethical conduct and possible transgressions.

- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness of responding to requests.
- Anti-corruption provisions in bids for public contract (e.g. companies found guilty of corruption, are disqualified/suspended from future tenders/bids).
- Specific controls on public procurement procedures, including judicial redress available for the unsuccessful bidder.
- Risk assessment of the areas susceptible to misconduct.

The Federal Government Directive concerning Corruption Prevention within the Federal Administration listed a set of individual measures (and recommendations) to be implemented or applied if and where necessary. The Anti Corruption Directive specifically deals with the **detection and reporting** of situations in which **conflicts of interest** might arise:

- Contact Person for Precautionary Anti-Corruption Measures, for Corruption Prevention (Directive No. 5).
- Notification of the Public Prosecutor's Office and of the Supreme Authority of the Service (Directive No. 12).
- General Separation, to the Extent Possible, of Planning, Awarding and Settlement of Accounts in the Public Contract Awarding/ Public Procurement (Directive No. 13).
- Principle of Public Invitation to Tender, Advertised Bidding (Directive No. 14).
- Anti-Corruption Clause (Directive No. 16).

Moreover, risk assessments are used in areas particularly susceptible to corruption, e.g. in public procurement (see also Section IV.a above).

d) Disclosure policy

As a whole, public servants (i.e. all groups employed in public service) are not under any general obligation to disclose information on their personal financial assets/liabilities. However, in individual cases, the financial interests of the public servant or of persons close to him/her might constitute a reason to exclude him/her from the performance of a duty on account of partiality. For example, all circumstances apt to justify distrust regarding impartial performance of official duties should be reported immediately. Gifts, in principle, are required to be disclosed before their intended acceptance -- which at any rate is admissible only in exceptional cases. In the case of outside occupation, the following distinctions are made:

- **Prior** to the planned acceptance of an outside occupation to be reported or subject to approval: information on the essential details of such outside occupation, i.e. its nature, scope, the expected amount of remuneration, and the contracting firm/agency.
- **Immediately**, whenever any of the aforementioned circumstances change.
- On a **yearly** basis, information on the remuneration received from a secondary activity performed within the public service if such remuneration exceeds DM 1,000 (gross) in a calendar year. The background for this is provided by the provisions of public service law which require the income from such secondary employment to be surrendered in order to prevent any duplication of maintenance/benefit payments (alimentation) from the public budget.

The relevant information must be treated confidentially and be included in the personnel files/employee records. It serves to preserve the integrity of the public service and to prevent any conflicts of interest or loyalty.

e) Procedures to report misconduct/suspected corruption

Public officials are under the obligation to report misconduct/suspected corruption through the proper channels, i.e. through their superior. A duty to report exists in the following cases:

- When the misconduct/suspected corruption refers to the tasks incumbent on the public official: as a result of his/her personal responsibility for the lawfulness of his/her official action, he/she also has the duty to inform his/her superior and, if warranted, to call upon the superior's superior in case of remonstrance.
- When the misconduct/suspected corruption refers to a subordinate public office holder: the official's immediate superior, on account of his/her duty to advise and support the official superior (superior authority), must report any misconduct of his/her subordinate in office since the official superior, in his/her turn, is bound by the mandatory investigation principle according to which the superior must institute investigations whenever a disciplinary offence is suspected.
- When the misconduct/suspected corruption comes to the official's notice by coincidence or incidentally: in this case, too, the duty to report through the proper channels (line of responsibility) derives from the public officials' particular duty of loyalty. In view of reasonable practicability and in order to avoid denunciations, however, this duty exists only if there is certainty or, at least, reasonably strong suspicion that a particularly serious disciplinary offence has been committed -- especially if such offence might give rise to doubts as to the integrity of the public service (for instance, in the case of corruption).

For **public employees** and **wage-earners**, unlike in the case of public officials, the duty to report through the proper channels exists only if they are directly confronted with the misconduct/suspected corruption in the concrete function to be performed by them (for example, as case officials responsible for a specific matter, or as superiors of a staff member infringing the standards of conduct). Contrary to public officials, public employees and wage-earners do not have the duty to remonstrate vis-à-vis their next higher superior in case of unlawful conduct/orders of their immediate superior.

Protection/safeguard is available to public servants who expose wrongdoing. On account of their duty of care, public service employers must extend the required and **appropriate protection** to public office holders (public officials or public employees) who, through the proper channels, report any misconduct of other public office holders or external third parties. The duty to maintain official secrecy already imposes the requirement to ensure anonymity. In individual cases, consideration may also be given to granting legal protection to the reporting agents.

Even if at a later time the report should prove ungrounded, the reporting public official is protected against any arbitrary action on the part of the public service employer, especially on the part of any superiors who might (also) be affected by the report. In practical terms, this protection is based on the principle that public officials are employed with life tenure and, as regards the professional identity of the public official concerned, on his/her right to employment/assignment appropriate to his/her status (see Section II.a above). For public employees and wage-earners, similar protection is provided by limitations on the scope, in the public service, for dismissal from employment (see also Section II.a above).

Number 5 of the Federal Government Directive concerning Corruption Prevention within the Federal Administration provides for the assignment of a "contact person for precautionary anti-corruption measures (corruption prevention)". This person, without having to go through channels, provides a point of contact for public office holders and the agency management level, but for citizens as well. Furthermore, any person, i.e. even a person not affected by the specific official act concerned, may file a petition for administrative review (disciplinary complaint) without any prescribed time limit.

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

Internal control -- both spot-check and mandatory reviews and controls -- has a preventive effect, helps with vulnerability analyses and forms the basis of measures to remedy deficiencies in an anti-corruption context. The following mechanisms are used:

- Preliminary audit of orders to pay: mandatory review prior to an instruction to pay.
- Internal audit: review of structures, procedures and operations with regard to their legality, correctness and appropriateness; there are no mandatory procedures for such audit.
- Administrative review and technical supervision by the superior official.
- Rules of procedure and in-house instructions: regulation of internal business.
- Authority to sign and power to give instructions: ensuring the "two-man rule".

The institutional control bodies in Germany are the Federal Disciplinary Attorney, the data protection commissioners and the contact person for precautionary anti-corruption measures.

Internal control is required by law, by guidelines/directives and in-house instructions as well as assignment of tasks. Control reviews take place on a continuous basis, e.g. according to yearly review schedules and the implementation of proposed improvements is monitored by means of follow-up checks and controls. The reviewed institution, the top executive level and the agencies responsible for remedying deficiencies have access to the reports of the reviews.

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

For public officials, this procedure has been laid down in the respective disciplinary codes. By way of example, disciplinary proceedings are detailed in the following with reference to **federal public officials**¹⁰.

When facts become known which justify suspicion of a disciplinary offence, the official's superior must arrange for the **preliminary investigations** required to establish the factual circumstances. Such investigation must cover the identification of the incriminating, the exculpatory and those circumstances which are of significance for the assessment of the disciplinary measures to be imposed. The details of the procedure (hearing given to the public official, right to inspect files, right to assistance by an attorney) are laid down in Section 26 of the Federal Disciplinary Code.

If the official's superior does not dismiss proceedings upon completion of the preliminary investigation and if he/she considers his/her disciplinary powers to be sufficient, he/she will issue a disciplinary order. Such disciplinary order issued by the responsible superior may only:

- Administer a reprimand (official rebuke for particular behaviour).
- Impose a fine (not exceeding one month's salary).

Otherwise, the superior will initiate **formal (official) disciplinary proceedings** or will obtain a decision from the next higher official superior. In the context of such official disciplinary proceedings, the **Disciplinary Courts** may also impose other disciplinary measures as listed in Section 5 of the Federal Disciplinary Code:

- Reduction of salary (by maximum one-fifth of the salary, and for five years at the most).
- Transfer to a post of the same career structure with a lower final basic salary ("downgrading").

10. However, comparable procedures apply to public officials in the *Länder*.

- Removal from service (entailing loss of official emoluments, of the claim to benefits and of the permission to bear titles referring to official status).
- In the case of retired civil servants: cut in pension (instead of reduction of salary).
- In the case of retired civil servants: deprivation of pension (total loss of the pension entitlement instead of removal from service).

An administrative appeal may be made against a disciplinary order (Section 31 of the Federal Disciplinary Code). The public official concerned may request a decision of the Federal Disciplinary Court to review the decision on the administrative appeal made by the next higher official superior or to review the disciplinary order issued by the supreme authority of the service. Moreover, an appeal may be lodged with the Federal Administrative Court against sentences passed by the Federal Disciplinary Court in the formal proceedings within one month after the sentences are handed down (Section 80 of the Federal Disciplinary Code).

Outside the disciplinary proceedings -- often before the start of proceedings -- the public official may be forbidden, for compelling service-related reasons, to continue the performance of his/her official duties. The ban will cease to apply unless, until three months have elapsed, formal disciplinary proceedings have been initiated or other proceedings have been instituted with the aim of revoking the appointment or terminating the employment of the respective public official (Section 60 of the Act on Federal Public Officials). The authority initiating the disciplinary procedure may suspend a public official from office if formal disciplinary proceedings are being, or have been, initiated (Section 91 of the Federal Disciplinary Code). By virtue of suspension from office, the public official is exempted from the obligation of performance of official duty.

At the same time as suspension from office, or later, the initiating authority may order that an amount -- not to exceed half of the salary -- be retained out of the public official's emoluments (for retired civil servants, maximum one-third of the retirement pension) if it is to be expected that the findings of the disciplinary proceedings will result in removal from office or deprivation of pension (total loss of the pension entitlement) (Section 92 of the Federal Disciplinary Code). At the request of the public official concerned, the Federal Disciplinary Court will decide on whether or not the rulings made pursuant to Sections 91 and 92 of the Federal Disciplinary Code are to be upheld. If the disciplinary proceedings do not result in removal from office, back payments will have to be made for the amounts withheld.

For **public employees** and **wage-earners**, there are no regulations that would be comparable to the disciplinary regulations in force for public officials. Sanctions are provided in general labour law, such as warning (reprimand), notice of dismissal and, in case of serious neglect of duty, notice to quit for cause (notice of dismissal in exceptional circumstances) (termination without notice).

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

As described above, the detection of misconduct is the general responsibility of the official's superior who could initiate a **preliminary investigation**. As a further step, the Disciplinary Courts are in charge of the formal (official) disciplinary proceedings.

Prosecution of all offences, including those committed by persons employed in the public service, is incumbent on the public prosecutor's offices of the *Länder*. They will accept reports/complaints of an offence, conduct the pre-judicial preliminary investigation and make a decision on whether or not to bring

a public action. The public prosecutor's office is a judicial authority independent of the courts. Authority to give directions lies with the superior public prosecutors and with the Justice Ministers of the *Länder*. However, such authority is delimited by the duty incumbent on public prosecutors to institute legal proceedings if criminal offences have been committed. Consequently, the duty of the public prosecutor's office to comply with instructions must not hinder proper discharge of functions. As a prosecution service, the public prosecutor's office is authorised and obliged to bring presumed cases of corruption directly to court if the preliminary investigation has yielded sufficient evidence to justify the expectation that the person charged will be convicted by the court. The work of public prosecutor's offices is funded out of the budgets of the *Länder*.

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

These include:

- Independent/external auditors reporting to elected bodies such as Parliament.
- Other bodies having a role in scrutinising actions of the administration, such as federal and *Länder* Courts of Audit; internal audits within a number of German public authorities (at the federal, *Länder* and local government levels).

There are procedures/mechanisms available to bring wrongdoing to the attention of bodies exercising independent scrutiny on public service activities. External audit covers the entire budgetary and financial management at the federal level. External audit reports -- about 800 reports per year -- are published routinely.

VI. Co-ordination and self-assessment

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

The preventive measures listed in the Federal Government Directive concerning Corruption Prevention within the Federal Administration (Anti-Corruption Directive) cover all branches of activity within the federal administration. They uniformly apply to all government services/agencies. It is the task of each ministerial department to review the measures already taken by it at an earlier time for conformity with the Anti-Corruption Directive and, where this has not yet been done, to initiate the implementation of the Directive within the given department and on its sole responsibility, and to require all agencies within the given jurisdiction to take appropriate steps accordingly.

In the foreseeable future it is planned to identify, in a *tableau*, the measures implemented by the ministerial departments. This *tableau* will then form the basis for another inter-departmental round of talks in order to review the content of the Directive and, to the extent required, to update it. Otherwise, general ethic conduct rules are incorporated in the legal and/or collective agreement regulations and obligations applying to all members of the public service.

As regards corruption, the Catalogue of Anti-Corruption Measures published by the Federal Ministries of the Interior and of Justice on 20 March 1996 and the Anti-Corruption Directive based on that Catalogue form the national corruption prevention plan. Moreover, the Ministers of the Interior of the *Länder* have also agreed on a catalogue of measures which in content is largely identical with the Federal Government Directive. The Federal Government Directive and the anti-corruption concept developed by the *Länder* provide for many measures to be taken by the various public authorities. The most important measures are the following:

- Identification of activities susceptible to corruption.
- Risk analysis.
- Changes to work flows.
- Multiple-presence rule and staff rotation.
- Contact person for corruption prevention.
- Internal audit.
- Raising the awareness of public service staff, and promoting awareness in further training courses.
- Guide for Superior Officials and Heads of Authorities.
- Special safeguards applying to the award of public contracts.
- Notification requirement incumbent on (government) agencies.

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

The Federal Government Anti-Corruption Directive has been in force for one and a half year. Therefore, it is not possible either to assess its effectiveness or to make an appraisal of how often the measures should be re-viewed and assessed or to identify those measures/provisions that are to be regarded as successful instruments. There is an extremely wide range of possible impediments to further reducing corruption: in individual cases, for instance, remuneration/compensation perceived by the person concerned as inadequate, or frustration felt for whatever reasons may form such an impediment. Generalisations are not useful, since they are mostly speculation

GREECE

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

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

New public management, together with globalisation and privatisation, has been the main reason for the crisis in values experienced by the traditional administration and for problems with corruption and unethical behaviour.

The main ethics-related issues that have confronted the public service in Greece are as follows:

- The arbitrary construction of buildings in public areas, and in particular in forest areas.
- Non-transparent procedures relating to faster service in hospitals.
- The collection of taxes and charges.
- Public works and public procurement.

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

The following measures have been taken:

- Both passive and active bribery of civil servants are offences under the regulations of the Penal Code.
- Provisions in the new Code for Civil Servants list offences for which disciplinary action can include dismissal. It also increases penalties for civil servants involved in corruption.
- Law 2065/1992, “The Reform of Direct Taxation and other Regulations” contains provisions aimed at combating bribery of civil servants in the Ministry of Finance, particularly the acceptance of bribes in the form of “gifts”.
- Law 2429/1996, “The Financing of Political Parties – Publicity and Control of the Finances of Political Parties and Candidates for Parliament, Declaration of Assets By Politicians, Civil Servants, Mass Media and Press Proprietors and other Categories of Personnel” contains legal procedures and checks to ensure transparency.
- Law 2522/1997, “Legal Proceedings in the Period Preceding Signature of Public Works, Procurement and Services Contracts in accordance with EEC Directive 89/665”, establishes a mechanism providing for the effective legal protection and award of damages to parties with an interest in the public works, procurement or services contracts concerned and who have suffered or may suffer prejudice following a breach of Community or domestic law.
- Law 2576/1998 on “Improved Procedures for the Award of Public Works Contracts” provides for review by the Ministry of Public Works of any notice or order by any public authority concerning public works on application by any interested party. It also provides for the annual declaration of assets of all agents with authority to award and execute public works contracts.

- Law 2477/1997 established the office of the Ombudsman (the Citizen's Advocate) in Greece. This is an independent administrative authority whose mission is to mediate between citizens and public services, local government and public corporations, to protect citizen's rights, prevent mismanagement and to see that the law is enforced.
- Law 2477/1997 also set up an audit agency known as the "Inspectors - Controllers Body for Public Administration" with a view to safeguarding the internal functioning and procedural transparency of the administration. Grade A' and B' government and local authority services, public corporations, etc., all come under the remit of this body, which operates as a form of in-house control.
- Subsequent to Law 2343/1995, "Reorganisation of the Ministry of Finance and Other Regulations" a finance inspectorate was established with powers to conduct regular and special audits and investigations of grade A' and B' government and local authority financial services, public corporations, etc.
- Under the same law, the Economic Offences Prosecuting Agency (SDOE) was established. It is directly accountable to the Ministry of Finance and its mission is to prosecute cases involving tax evasion or smuggling, to investigate, expose and prosecute economic offences, frauds, crimes and illegal practices that are against the national economic interest and to prevent, prosecute and punish other offences, i.e. illegal drug and arms trafficking.
- Presidential Decree 393/1994 provided for the constitution of a special Committee to co-ordinate controls at national and European level on programmes financed by the European Union and implemented by Greek public services, local authority agencies, public companies and private citizens.
- Law 2656/1998 ratifying the 1997 Convention on combating bribery of foreign public officials in international business transactions. Measures will also to be taken to implement the revised recommendation on combating bribery in international business transactions.

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

A Code of Conduct for Civil Servants has been drafted by a committee and submitted to the Minister of the Interior, Public Administration and Decentralisation.

II. Core values for the public service

a) Stating core values for the public service

The core values of the public service – legality, integrity, efficiency, honesty, impartiality, transparency, accountability, etc. are defined in the first part of the Code of Conduct for Civil Servants. The core values are also set out in Greece's Constitution.

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

Once the Code of Conduct is published, it will be distributed to new recruits and the public services. The core values will also be communicated via the Internet.

c) The statement on core public service values has not been revised in the last 10 years

The statement of the core values of the public service has now been revised and is to be published in the new Code for Civil Servants (Law 2683/1999).

III. Standards of behaviour for the public service

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

The new Code for Civil Servants and Code of Administrative Procedure make reference to values such as legality, integrity, impartiality, transparency, accountability. The draft Code of Conduct for Civil Servants contains standards of conduct covering the following areas, among others:

- The acceptance of gifts or benefits.
- The use of official information.
- Official travel.
- Work outside the public service.
- Involvement in politics.

There are no additional requirements for particular categories of civil servant.

The **minimum standards** of conduct expected in the civil service are prescribed by law: as indicated above, the Code for Civil Servants and the Code of Administrative Procedure are statutory codes (Law 2683/1999 on the ratification of the Code for Civil Servants and Law 2690/1999 on the ratification of the Code of Administrative Procedure).

b) Unacceptable conduct for public officials according to the law

The **types of conduct** considered **unacceptable** for public officials are explicitly defined under criminal law:

- Active, passive, direct and indirect corruption, attempted corruption of or by public officials.
- Partiality in decision-making in the exercise of public office.
- Abuse of office or public trust.

The following **prohibitions and restrictions** are imposed on public officials by the Code for Civil Servants (Law 2683/1999):

- No person convicted of a crime or stripped of his or her civic rights for malpractice or of insufficient probity to become a civil servant may be appointed to the civil service.
- Immediately on appointment, civil servants must declare their assets. Any changes during the course of their service must be declared.
- No civil servant may accept work outside the civil service without prior permission from the civil service.
- No civil servant may take decisions on issues in which he or a family member or relation has an interest.
- No civil servant, especially civil servants employed by the Ministry of Finance, may hold a position of authority in his place of origin.

Moreover, the following are deemed to be offences:

- The use by a public official of information gained through his position for personal or any other private interest.
- The acceptance of bribes.
- Close relations with persons whose interests come within the sphere of duty of the public official.
- Undue preference for recent cases at the expense of long-standing cases.
- Participation at auctions by Committees of which the public official is a member.

Lastly, Law 2065/1992 requires any civil servant of the Ministry of Finance who is subject to proceedings for accepting gifts (bribery) to resign his/her post.

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

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

The following instruments are used:

- Regulations, directives and policies on recruitment and promotion procedures.
- Recruitment and promotion are based on merit.
- Publishing recruitment regulations, directives and policies as well as vacancy notices to ensure the transparency of selection procedures and reviewing selection procedures.
- Only the appropriate published selection criteria are taken into account for recruitment purposes.
- Ethical considerations are taken into account in the recruitment procedure: under article 8 of the Code for Civil Servants, persons convicted of certain offences may not hold civil services posts.
- Ethical conduct is taken into consideration in evaluating performance; civil service performance evaluation criteria include aspects such as “relations and conduct within the service”.

Particular attention is paid to public officials holding posts that are particularly susceptible to corruption. Indeed, all civil servants are required to submit a declaration of their assets. However, for certain categories of officials in posts that are particularly “susceptible” to corruption (Ministry of Finance, Public Works, etc.), the declaration is subject to stricter requirements and to more thorough checking. For instance, public officials with major responsibilities in the area of public works submit their declaration to the Public Prosecutor. This requirement also applies to members of the finance inspectorate (Law 2343/1995). The heads of each finance service are also required to re-deploy staff to all of the areas dealt with by the service (PD 16/1989).

b) Informing and training public servants on ethics issues

Most public servants are informed of ethical issues through both induction and further training courses. The agency responsible for training in Greece is the National Centre for Public Administration, comprising the National School for Administration (induction training) and the Institute for Further Training.

Given the hierarchical structure of the public administration in Greece, public officials can turn to their line manager for advice and guidance.

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

These include:

- Identification and reporting of conflict of interest situations, especially in areas of financial management and receiving gifts and benefits such as fees, payments, entertainment.
- Requiring the release of internal information related to ethical conduct and possible transgressions.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Standards for maximum time taken to respond to user requests.
- Anti-corruption provisions in invitations to tender for public contracts.
- Specific controls on public procurement procedures.
- Risk assessment for areas susceptible to misconduct.
- Prohibiting public officials, whether acting in an individual capacity or as part of a body, to decide cases from which they or persons related to them would benefit (article 36 of the Code for Civil Servants).

d) Disclosure policy

In accordance with the new Code for Civil Servants, all civil servants are required to disclose their assets. The same requirement applies to elected representatives. For certain categories of civil servants holding “susceptible” posts (Ministry of Finance, Public Works, etc.), the requirements and checks are stricter. For instance, civil servants with major responsibilities for public works submit their declaration to the Public Prosecutor. The same applies to members of the finance inspectorate (Law 2343/19995). The heads of each finance service are also required to re-deploy staff to all of the areas dealt with by the service (PD 16/1989).

The following information has to be disclosed in biennial declarations (annual declarations for certain categories), on first taking up a civil service appointment, and in the event of any significant change:

- Assets.
- Source and level of income.
- Outside activities.

The declarations of all civil servants are kept in their personal file, which is held by personnel management. Should a change in the situation of a civil servant appear unusual, personnel management must conduct an inquiry. If the inquiry indicates that an offence warranting disciplinary or criminal action has been committed, the Minister is required to take the necessary steps to ensure that proceedings are taken against the official. For some categories of public official, the requirements are more stringent.

e) Procedures to report misconduct/suspected corruption

As a general rule, the procedure for public servants is no different to procedures for any citizen. There is a civil servants safeguards system for reporting bribery, in accordance with the Civil Code. For the public, there are special procedures for reporting bribery by public officials to the Ombudsman.

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

Internal controls that support efforts to prevent corruption are financial controls, inspection bodies and line management controls. The internal controls required by law enable the administration to detect and redress irregularities. Internal review reports can be accessed by the bodies carrying out reviews (Inspectors - Controllers Body for Public Administration) by the personnel management division responsible for the employee concerned, and by Parliament if it so requests.

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

The disciplinary procedures range from a reprimand to disqualification, as follows:

- reprimand;
- fine (maximum of three months' salary);
- disqualification from promotion for a period ranging from one to five years;
- demotion (by one grade);
- temporary suspension from functions for a period of three to six months, without pay;
- dismissal.

The penalties in each case are stipulated in the legislation.

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

Bodies in place to **investigate** misconduct and corruption in the public service are:

- The Institutions and Transparency Committee, accountable to Parliament.
- The Finance Inspectorate, directly accountable to the Minister of Finance.
- The Economic Offences Prosecutions Agency, directly accountable to the Minister of Finance.
- The Citizen's Advocate (Ombudsman), as an independent administrative authority.
- The Inspectors-Controllers Body for Public Administration, responsible to the Minister of the Interior, Public Administration and Decentralisation.

The **prosecuting authorities** are:

- The Public Prosecutor
- The courts
- The Economic Offences Prosecutions Agency (SDOE)

The investigative agencies mentioned above can refer suspected corruption cases directly to the courts.

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

These institutions include:

- Parliament, which exercises parliamentary oversight of the civil service. The following Parliamentary Committees have been set up in order to improve transparency: the Public Banks and Public Utilities Committee, which advises on the suitability of nominees for the positions of Chairman of the Board, Managing Director and Executive Director of Public Banks and Public Utilities; the Institutions and Transparency Committee whose mission is to oversee the independent administrative authorities and to investigate and evaluate relevant information for the study and development of proposals to improve the transparency of policy and public life in general in Greece and to oversee their application.
- The Ombudsman
- The judicial review courts.

There are no procedures available for bringing misconduct to the attention of bodies charged with independent scrutiny of the activities of the public service.

VI. Co-ordination and self-assessment

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

The Greek Government is examining the possibility of creating a special high-level inter-ministerial unit to co-ordinate and implement the government's ethics and anti-corruption policy. A co-ordinating committee on anti-corruption policy is currently operating under the Ministry of the Interior, Public Administration and Decentralisation.

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

The Committee referred to above is also responsible for assessing the effectiveness of measures promoting ethical conduct and preventing misconduct. In addition, each Minister assesses the effectiveness of measures promoting ethical conduct and preventing misconduct.

HUNGARY

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

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

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

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

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

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

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

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

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

II. Core values for the public service

a) Stated core values for the public service

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

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

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

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

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

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

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

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

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

III. Standards of behaviour for the public service

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

Legal provisions cover the following points:

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

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

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

- Criminal Code.

b) Unacceptable conduct for public officials according to the law

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

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

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

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

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

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

These include:

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

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

b) Informing and training public servants on ethics issues

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

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

These include:

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

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

d) *Disclosure policy*

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

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

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

e) *Procedures to report misconduct/suspected corruption*

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

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

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

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

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

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

- Censure.

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

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

V. Scrutinising misconduct in the public service

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

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

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

These include:

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

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

The State Audit Office performs external audit. The functions, jurisdiction, competency and degree of independence of this organisation are defined by the Constitution of the Republic of Hungary as well as by the Act on the State Audit Office (Act No. XXXVIII of 1989). The State Audit Office is the financial/economic supervisory arm of Parliament and is governed exclusively by the relevant Acts of law. It controls the management of the public finance system, examines (among other things) the soundness of the budget proposals and the legitimacy of expenditures, controls the management of State assets and

monitors compliance with the State accounting regime. The frequency of external audits could range from regular (yearly) to occasional. Audits are determined by the annual working plan of the State Audit Office. The audit reports are published routinely, but some of them are confidential.

VI. Co-ordination and self-assessment

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

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

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

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

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

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

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

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

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

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

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

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

ICELAND

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

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

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

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

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

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

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

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

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

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

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

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

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

As mentioned above, public service ethics is usually not treated as a separate issue. Therefore no measures have been taken specifically to improve ethical conduct. However, important steps have been taken during the past years which do indeed affect public service conduct. These include:

- The Administration Procedure Act (37/1993) formalises many principles that had been applied for many years, but not systematically. The Act defines a number of principles that guide public service conduct.
- The Access to Information Act (50/1996) formalises principles of openness and transparency.
- The Civil Service Act (70/1996) defines requirements in relation to public service conduct and how to deal with misconduct and unsatisfactory performance.
- A number of actions have been taken to improve accountability. These include a new post of the Ombudsman and making the State Audit Office more independent. Both the Ombudsman and the State Audit Office report directly to *Althingi* (the Parliament).
- Improving financial planning and reporting.
- Making public procurement more transparent and thus reducing the risks of misconduct in relation to procurement.
- Introduction of performance management to strengthen commitment to performance and making the civil servants more accountable.
- Privatisation and corporatisation of commercial activities.
- The implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions has led to some changes in legislation, making offers of bribes by individuals and companies to public servants nationally and abroad unlawful.

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

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

II. Core values for the public service

a) *Stating core values for the public service*

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

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

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

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

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

III. Standards of behaviour for the public service

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

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

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

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

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

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

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

- The Penal Act.

b) Unacceptable conduct for public officials according to the law

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

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

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

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

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

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

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

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

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

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies and publicising vacant positions. However, rules/guidelines/policies for recruitment and promotion procedures are only partial and cover only certain aspects.

- Basing recruitment and promotion on merit. However, the merit principle is not defined explicitly in legislation (except for some parts of the public service). Nevertheless, requirements for recruitment and promotion procedures and principles of equal treatment formally exclude other considerations than merit. Practice may vary and there are accusations that other factors influence appointments. Relatively flexible procedures and the lack of a formally stated merit principle may make it easier to ignore merit.

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

b) Informing and training public servants on ethics issues

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

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

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

These include:

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

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

d) Disclosure policy

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

e) Procedures to report misconduct/suspected corruption

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

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

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

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

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

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

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

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

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

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

- Police.
- State Prosecutor.

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

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

These include:

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

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

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

VI. Co-ordination and self-assessment

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

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

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

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

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

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

IRELAND

I. The general context for managing ethics in the civil service¹¹ in Ireland

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

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

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

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

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

¹¹ In considering this chapter on the management of ethics in the Irish public service it is important to note the distinction in an Irish context between the civil service and the wider public service. The civil service is composed of staff employed by central government departments (i.e. “ministries”) such as the Departments of Finance and of Justice, Equality and Law Reform. Issues such as recruitment to and dismissal from the civil service are subject to distinct statutory provisions, namely the Civil Service Commissioners Act, 1956 and the Civil Service Regulation Act, 1956. The wider public service, which includes employees of local authorities, the health services and teachers, is not subject to the same statutory regulatory provisions.

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

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

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

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

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

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

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

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

II. Core values for the civil service

a) Stating core values for the civil service¹²

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

- Impartiality.
- Political neutrality.

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

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

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

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

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

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

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

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

III. Standards of behaviour for the civil service

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

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

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

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

- Outside income.

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

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

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

b) Unacceptable conduct for public officials according to the law

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

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

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

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

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

The Bill includes provisions regarding:

- Active and passive bribery, including the criminalisation of trading in influence.
- Extension of existing categories to include active and passive corruption involving: an office holder or a director of a public body; a person occupying a position of employment in a public

body; a special adviser; a member of the Court of Auditors of the European Communities; and domestic, foreign and international parliamentarians and judges.

- Criminal liability of heads of businesses and corporate liability.

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

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

These include:

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

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

b) Informing and training civil servants on ethics issues

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

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

These include:

- Identifying and reporting conflict of interest situations, especially in areas of financial management, receiving gifts or benefits such as fees, payments and entertainment.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness of responding to requests for information.
- Specific controls on public procurement procedures.

The enactment of the Freedom of Information Act, which came into effect in April 1998 for central government departments and offices, was a significant step forward. It has also been extended to parts of the wider public service, i.e. the local government and health sectors, in October 1998. The key feature of the Act is the creation of a legal right of access by the public to information held by public bodies, to be

exercised both as an individual right and as an effective means of scrutinising and evaluating decisions by public bodies. The Act also confers the right on members of the public to seek reasons for decisions. This right can be exercised by a person who is affected by an act of a public body and who has a material interest in the matter.

d) Disclosure policy

Members of the *Oireachtas* are obliged to declare all registrable interests for publication. The annual disclosure obligation on senior civil servants and senior executives of State bodies in the wider public service is confined to those interests which could materially influence them in relation to the performance of the functions of their directorship or position. In addition, the statements provided by *Oireachtas* Members and office holders (e.g. ministers) are entered in a register and published. Statements of interests of senior special advisers are laid before the Houses of the *Oireachtas* and given to the Public Offices Commission. By contrast, statements made by senior civil servants and senior executives of State bodies in the wider public service in respect of their personal interests and those of a spouse or child are confidential, but they are available to the Public Offices Commission either directly or on request.

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

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

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

e) Procedures to report misconduct/suspected corruption

There are no specific legal provisions or procedures for reporting by civil servants of misconduct or suspected corruption in the civil service. However, a draft Whistleblowers Protection Bill is currently under consideration by the Government. This proposed legislation would provide protection from civil liability or penalisation to employees who make certain protected disclosures in relation to the affairs of

their employers and to provide for related matters. Public servants would be covered by the proposed legislation.

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

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

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

Disciplinary measures may vary from reprimand, decrease in earnings, demotion, to dismissal depending on the seriousness of the breach of public service standards. Such disciplinary measures can be appealed to the Civil Service Disciplinary Appeals Board and the courts.

V. Scrutinising misconduct in the civil service

a) Institutions and procedures to investigate and prosecute misconduct

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

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

The Public Offices Commission, established under section 21 of the Ethics in Public Office Act 1995, has the right to investigate allegations of corrupt activity which breaches this Act. It is independent of Government, and is composed of the Comptroller and Auditor General, the Ombudsman, the Chair of the Lower House of Parliament and senior Parliamentary civil servants. However, it is of course also open to police authorities to investigate any matter which may involve a breach of anti-corruption laws. Responsibility for investigating suspected offences of bribery and corruption is a matter for the *Garda Síochána* (police force) and, as is the case generally with prosecutions on indictment, discretion on whether to prosecute rests with the Director of Public Prosecutions, who is independent in the exercise of his functions. If the Public Offices Commission, during or after an investigation, forms the opinion that the person being investigated may have committed an offence relating to the performance of his/her functions, the Commission may report, in writing, to the Director of Public Prosecutions.

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

These include:

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

- Independent office of ethics.

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

VI. Co-ordination and self-assessment

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

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

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

As stated previously, the Public Offices Commission provides an annual report on its activities for the *Oireachtas* and Government. In the context of the wider public service, a number of statutory tribunals of inquiry have also examined issues in relation to ethical conduct and preventing misconduct. Reports from such tribunals form an important element in the ongoing evaluation of the effectiveness of measures to promote ethical conduct.

ITALY

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

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

During the past 10 years in Italy, the ethics-related issue that has been of the greatest concern to institutions and public opinion has been the fight against widespread law-breaking in the public administration and in State-owned companies. This culminated in serious cases of corruption and cover-ups by politicians even at the highest levels of government and have brought to light the misappropriation of considerable public resources.

The action to combat corruption, which has primarily been handled by specialised sections of criminal courts and in particular by the *Pool Mani Pulite* of the Milan Public Prosecutor's Office, has shown – apart from the criminal aspects that have come to light – that on the whole, compared with what occurred in the political and business spheres, public servants and employees were not the worst offenders. In this regard, the Minervini Commission¹³ pointed out that the environment conducive to collusion and corruption in government unquestionably stemmed from the progressive deterioration of political life, in which special and private interests predominated, and from the lack of proper functioning of markets due to large-scale government monopolies.

The Commission therefore concluded that the chief means of preventing illegal behaviour by public servants was the restructuring and renewal of the public administration in order to raise it to an acceptable level of efficiency.

As a result, for the past 18 months the government – aware of the need to renew ethics in the public sphere – has been introducing co-ordinated legislation to reorganise the public administration, streamline procedures and regulate relations between government and citizens. These measures are aimed at making citizens, both as individuals and groups, the central focus of government, administrative action and public institutions. Parliament, for its part, has examined a Bill combining the different proposals made by various political parties with a view to establishing anticorruption standards in the public administration.

Consequently, there is a high degree of awareness in Italy of the problem of ethics in the public service at all levels. The issue of proper and transparent professional ethics at all levels of government is given prime importance in the platforms of political parties, in discussions within institutions and in public debate. The importance of the issue is also due to the fact that, by enforcing ethics in government and in the relations between civil society and government at all levels, the criminal convictions handed down over

13. The Minervini Commission – named after its Chairman, Prof. Gustavo Minervini, professor at “*Università La Sapienza*” of Rome – was appointed by the Civil Service Department and the Ministry of the Treasury on 7 November 1996. Its purpose was to study the causes of widespread corruption in government and in public enterprises and to propose appropriate measures to improve government and prevent illegal activities and behaviour.

the past seven years have created the conditions for fundamental political and economic renewal in Italy and for a new approach to internal relations within government and its external relations with citizens.

Consequently, over the past decade – whether from the standpoint of the public administration, civil society or parliamentary institutions – great strides have been made in all sectors to make administrative action more transparent and honest and to give private citizens and the media a right of access, not only for informational purposes, but also so that they can monitor the honesty and fairness of public employees.

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

Recently introduced measures that are aimed directly at curbing corruption are contained in:

- Anti-Mafia legislation (Act of 19 March 1990, No. 55; Legislative Decree No. 490/1994; Act of 17 January 1994, No. 47; and a circular of the Ministry of the Interior).
- Currency control and legislation to prevent money laundering.
- The Local Government Autonomy Act, in particular where it makes the distinction between the political structure and the actual administrative management of government units (Act 142/1990)¹⁴.
- The Act on the Communication and Transparency of Administrative Procedure (Act. No. 241/1990).
- The Act on Competition Supervision and the Market (Act. No. 287/1990).
- The Administrative Simplification Act (Act. No. 127/1997, Art. 6, c.2).
- The laws bringing Italian legislation into line with EU directives in the field of public tenders, transport and telecommunications.

In 1993, Legislative Decree No. 29, with later additions, and Act No. 537 introduced further significant anti-corruption provisions, separating administrative management even more clearly from the direct influence of political power in the fields of organisation, procedures and public employment.

In 1994, Act No. 109 (Framework Law on Public Works), with subsequent amendments, established an Observatory for Monitoring Public Works and a corresponding Authority specifically required to report any irregularities (Art. 4). It also laid down that a single official was responsible for the procedure for the design, planning, awarding of contracts and execution of public works, but separated planning and the awarding of contracts for work - all of which limit the opportunities for illegal practices and make it more difficult to conceal corruption and collusion between the public administration and tendering firms.

In 1997, three Acts, No. 59, No. 94 and No. 127, laid down a general framework for administrative reform, including decentralisation, reorganisation of central administration, completion of the privatisation of public employment, legal and procedural streamlining, simplified monitoring and a radical modification of the State budget.

These are important Acts, which, even though they are not directly aimed at combating corruption, nevertheless - like the earlier Administrative Simplification Act No. 15 of 1968 - tend to reinforce

14. For local government units, the law provides for assigning to administrators very sensitive duties that were previously given to political appointees, who being subject to the influence of political parties did not always use them properly; these range from chairs of commissions in charge of competitive bidding to responsibility for tender procedures and awarding contracts. In particular, Art. 6 of Act No. 127 and the amendments to the regulations for the staff of local government units made by Act No. 142/1990 have completed the process of separating the administrative and political management of government units. For ministries, administrators are responsible for carrying out all acts that bind the administration vis-à-vis the outside, thus adopting what is the third organisational scheme for relations between ministers and administrators.

impartiality of government, promote the smooth running of the administration, and create a new and direct relationship of service and accountability of government to citizens. Through legislation ensuring their right of access, citizens are given a virtual duty to monitor administrative activity.

It has been recognised that to prevent corruption, it is of key importance to define and disseminate to public servants and government employees common values and principles of behaviour based on the standards of impartiality, efficiency and public service that should characterise the public administration under the Italian Constitution.

Art. 58b of Legislative Decree No. 29/1993, introduced by Legislative Decree No. 546/1993, states that the Civil Service Department of the Office of the President of the Council of Ministers, after hearing the most broadly representative trade union confederations, shall define a **Code of Conduct for Government Employees**¹⁵, which shall include the necessary organisational measures to be adopted to ensure the quality of the services rendered to citizens. This article also specifies that a copy of this Code shall be given to employees when they take up their duties and that the President of the Council of Ministers shall issue guidelines to ARAN (*Agenzia per la Rappresentanza Negoziabile delle Pubbliche amministrazioni*), the agency that conducts collective bargaining on behalf of the government, to ensure that the code is included in departmental contracts.

Lastly, the recently passed Act No. 127/1997 (Art. 17, Paragraph 22) - which extends to senior public officials the obligation to declare personal assets already required of elected officials and the heads of some public institutions under Art. 12 of Act No. 441/1982 - has created a highly dissuasive anti-corruption instrument that also promotes transparency.

The fight against corruption is also being actively promoted through the government's large-scale initiatives based on interministerial co-operation and co-ordinated by the Civil Service Department. In this regard, extensive investigations have recently been conducted - such as on the regularity of the direct hiring of the disabled by the public administration - and initiatives have been launched to raise standards for the use of public goods - such as the investigation of the public telephone system and subsequent issuing of general guidelines on the use of telephone and telematic communications in government, or the standards regulating and limiting the use of official cars (Finance Law No. 962/1996).

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

II. Core values for the public service

a) Stating core values for the public service

The core values for public service are the following:

- Legality.
- Impartiality.
- Efficiency.
- Serving the government: requirement that public employees work exclusively for the government.
- Loyalty to the country.

¹⁵ The first such code was issued by a Decree of the President of the Council of Ministers of 31 March 1994.

The core values for public service are primarily stated in the Constitution and the Single Text on Central Government Employees approved by Presidential Decree No. 3 of 1957. Furthermore, they are specifically listed in the Decree of the President of the Council of Ministers of 31 March 1994, which states the Code of Conduct for Government Employees.

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

The following forms are used:

- Core values are automatically provided when someone joins the public service.
- The statement of core values is part of the employment contract/document.

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

However, in accordance with Art. 58b of Legislative Decree No. 29/1993, the Code of Conduct for Government Employees sets out an initial set of rules of conduct based on the aforementioned principles of impartiality, efficiency and public service. The Code also stated that guidelines of the President of the Council of Ministers to ARAN would be aimed at “ensuring that the principles would be combined with disciplinary accountability” (which is now provided for in contracts) and that the General Affairs and Staff Offices of each organisation would monitor the proper enforcement of the Code and advise employees on concrete cases. The Code is to be updated every four years, on the basis of indications and suggestions from practical experience.

Nevertheless, the Government, in accordance with Art. 11 i) of the recent Act No. 59/1997, is in the advanced stages of preparing a revised Code of Conduct, which *inter alia* sets out the procedures for linking the terms of contracts with disciplinary sanctions, the adoption of codes of conduct by individual organisations and the establishment of monitoring and advisory bodies for the enforcement of these codes.

The public service was indirectly involved in the formulation of these provisions through its main trade union bodies, who were asked to provide comments, proposals and evaluations. Furthermore, the public was involved indirectly in the process, since the reactions of the mass media to the changes being introduced were carefully examined.

III. Standards of behaviour for the public service

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

The statements on the standards of behaviour are contained in the Code of Conduct currently in force for all public employees. Further specific ethical codes are adopted by sectoral organisations. They cover the following points:

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

- Special conditions/permissions on movement from the public service to the for-profit sector.
- Involvement in political work.

Standards of behaviour are communicated to the public through publication of documents on standards in the Official Gazette of the Republic and in the gazette of individual Regions. Specific codes of conduct of communes, provinces or other local government or public service bodies are posted publicly.

Specific guidelines/requirements for certain professions are added to the general standards for public employees, as in the case of lawyers working in the public service or in legislative offices or government-employed engineers and physicians.

Further guidelines exist for public servants and political leaders working at the political/administrative interface. For example, Art. 98 of the Constitution states that public employees, if they are Members of Parliament, may only be promoted on the basis of job tenure.

Moreover, the **minimum standards** of behaviour for the public service are stated in legislation, including the Acts on Civil Service, Public Administration, Administrative Procedures, special anti-corruption laws, and other primary legislation including the Constitution.

b) Unacceptable conduct for public officials according to the law

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

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

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

- The Decree of the President of the Council of Ministers of 31 March 1994 issued the Code of Conduct for Government Employees, as provided for by Art. 58b of Legislative Decree 29/1993. Art. 11 i) of Act 59/1997 states that the Office of the President of the Council of Ministers shall adopt codes of conduct subject to disciplinary procedures.
- Act No. 662 of 1996 is another piece of legislation containing provisions aimed at raising ethical standards in government and combating corruption in general. Paragraphs 56 to 65 of Art. 1 of this Act supersede the existing provisions of the Consolidation Act on State Civil Servants approved by Presidential Decree No. 3 of 1957, by specifying more stringent standards regarding conflict of interest and part-time work, considering that any violation of this principle constitutes grounds for dismissal.

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

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

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies and publicising vacant positions.
- Considering ethical behaviour in the performance appraisal. However, this is not required by legislation.

Moreover, special attention is given to officials in positions particularly susceptible to corruption, for example in the customs and tax administration.

b) Informing and training public servants on ethics issues

Expected standards are communicated to public servants by means of induction training for raising awareness. In general, the induction training on ethics is compulsory for all public servants and is monitored by a central organisation. In some cases, e.g. customs officials, initial training on ethics is centralised in a single institution, such as the Higher School for Public Administration, but is continued in specific courses in the internal training school of the finance administration. Public servants do not obtain further training to improve their skills for ethical judgement. Managers are responsible for providing advice to public servants on resolving their work-related ethical problems.

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

These include:

- Identifying and reporting of conflict of interest situations, especially in areas of financial management, post public employment and receiving gifts or benefits such as fees, payments or entertainment. For example, outside employment for public servants is generally forbidden unless specifically authorised (Art. 1, Paragraphs 56-65 of Act No. 662/1996), and the acceptance of gifts or advantages as rewards, payments or other emoluments is forbidden, unless they are customary gifts of slight value (Art. 3 of the Code of Conduct).
- Requiring the release of internal information related to ethical conduct and possible transgressions. Except in specific cases, the circulation of information on ethical behaviour and breaches of ethics is allowed.
- Requiring reasons for administrative decisions: Art. 3 of Act No. 241/1990 requires that the reasons for administrative decisions be given, to ensure their legitimacy and transparency.
- Providing redress against administrative decisions: Art 113 of the Constitution provides for the possibility of appealing against administrative decisions.
- Setting standards for timeliness of responding to requests, for example Art. 8 of Act No. 241/1990 states that for each administrative procedure the time limit for its completion and the name of the responsible official must be made public.
- Anti-corruption provisions in bids for public contract (e.g. companies found guilty of corruption are disqualified/suspended from future tenders/bids).

- Specific controls on public procurement procedures.
- Risk assessment of the areas susceptible to misconduct. For example, the issuing and use of official credit cards are controlled through audits.
- Setting standards on charges/cost recovery for information provided.

d) Disclosure policy

Disclosure of personal information (declaration of personal assets, financial interests, etc.) is required from elected officials and senior public servants. A fundamental role in preventing corruption is played by the Act of 5 July 1982, No. 441, which introduced the requirement that the following officials must report their earnings on a yearly basis:

- Members of the Senate and Chamber of Deputies, the President of the Council of Ministers, ministers, State Secretaries.
- Regional councillors, provincial councillors, councillors of communes that are the capital of a province or have a population greater than 50 000.
- Presidents, vice-presidents, managing directors and general directors of public institutions (including public enterprises) who are appointed, nominated or approved by the President of the Council of Ministers, the Council of Ministers or individual ministers.

The law also extends the requirement to report personal assets to the following:

- Presidents, vice-presidents, managing directors and general directors of companies in which the central government or public bodies hold a capital share of greater than 20 per cent.
- Presidents, vice-presidents, managing directors and general directors of private companies in which the central government or public bodies pay more than 50 per cent of the administrative expenses shown in the balance sheet, provided that the annual amount is greater than five hundred million lire.
- General directors of autonomous central government enterprises.
- General directors of special enterprises established under the Royal Decree of 15 October 1925, No. 2578, and of communes that are capitals of a province or have a population greater than 100 000.

The information on assets, sources and level of income is required to be disclosed on an annual basis and when joining or leaving the public service. The information is published in bulletins prepared by the Office of the President of the Council of Ministers that are available to the general public. Other than for the verification of the reports filed under Act 441/1982, there is no body, office or board formally responsible for investigations or generalised anti-corruption monitoring on an on-going basis.

e) Procedures to report misconduct/suspected corruption

Legal provisions define the procedure for exposing wrongdoing as well as the rights and obligations of public servants in terms of reporting misconduct. Legal protection is available to public servants who expose wrongdoing.

For the public, special procedures are available, such as complaint procedures and a telephone line, to expose wrongdoing committed by public servants. Furthermore, there are procedures in place to bring wrongdoing to the attention of bodies exercising independent scrutiny on public service activities. These include:

- Reporting specific acts of wrongdoing to the supervisory or monitoring authority.

- An enquiry is conducted either by the criminal investigation authorities or the administrative office of the immediate supervisor, when applicable, or by outside inspection bodies such as the Inspectorate for the Civil Service or the General Inspectorate for Finance.

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

Internal control supports corruption prevention efforts by enabling management to detect irregularities and identify procedural problems, providing specific recommendations for systemic improvements. The follow-up is carried out by the Inspectorate for the Civil Service attached to the Civil Service Department of the Office of the President of the Council of Ministers and by the General Inspectorate for Finance attached to the General Accounting Office of the Ministry of the Treasury.

Internal control is required by law, and the legal provisions determine when internal controls and audits of the management of public bodies and public enterprises may or must be required. The very recent Legislative Decree No. 286/1999 on the reorganisation of the monitoring of public administration states that auditing bodies, accounting offices and inspection services are in place to monitor the regularity of administration and accounts. Moreover, this Legislative Decree requires that public enterprises comply with the general principles of corporate audits, to the extent that they are applicable. Further legal provisions are stated in Art. 20 of Legislative Decree No. 29/1993 on assessment and internal control units, and Act No. 20/1994 on audits of expenditure carried out by the General Accounting Office, and on management control and control of results made by the Court of Auditors.

According to the aforementioned legislative decree, the management control reviews must be carried out at least every six months. The following persons and bodies have access to the reports of the reviews: employees in the units carrying out the management control; senior management and policy guidance bodies of the administration. The individuals concerned have access to reports on staff evaluation and strategic control.

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

Disciplinary procedures are available in case of a breach of public service standards. The disciplinary procedures and sanctions/penalties are legislated in general, and further details of disciplinary procedures and methods of imposing sanctions are specified in departmental contracts. In disciplinary procedures, Art. 113 of the Constitution recognises the right to legal redress, including appeal to court, as a fundamental right.

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

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

- Parliament.
- Judiciary.
- Administrative bodies.

The investigative power of **Parliament** lies both with Parliament as a whole and with individual Members of Parliament, each of whom is empowered to address specific issues by exercising what is known as parliamentary inspection. Members of Parliament can address questions to the Government both orally in

parliamentary sessions or formally in writing on any subject or aspect of government activity, including those involving corruption in the public sector. The relevant official must reply within a brief period specified by law.

Each branch of Parliament or Parliament as a whole may establish special Commissions of Inquiry composed of Members of Parliament to investigate issues of particular interest for the general welfare, including corruption in public life. These Commissions can directly question any authority, office or person, with their own powers to conduct criminal investigations (as was done, for example, by the Commission of Inquiry that investigated the corrupt activities related to the P2 Masonic Lodge in the 1970s).

To deal with particularly serious criminal activity, Parliament has established standing commissions for information-gathering and/or investigation and monitoring, such as the Parliamentary Commission on the Mafia that deals with all aspects and ramifications of the Mafia, including active and passive corruption at all levels in the public sector.

Judicial bodies assist the courts, which by law are normally responsible for investigating and punishing criminal activities. The investigative bodies of the criminal police, which are only formally subject to the investigating magistrate, have broad investigative discretion while retaining all the specific characteristics of the police corps to which they belong.

Administrative investigative bodies may be general or specific, hierarchical or extra-hierarchical. The following bodies have **general jurisdiction** and are **extra-hierarchical in nature**:

- The General Inspectorate of Finance, established by Act No. 1037/1939, under the supervision of the General Accounting Office of the Ministry of the Treasury.
- The Inspectorate for the Civil Service, supervised by the Civil Service Department of the Office of the President of the Council of Ministers, established by Act No.93/1983 revised by Legislative Decree No. 29/1993.

These inspectorates have extra-hierarchical jurisdiction and powers, and their inquiries are primarily aimed at making comparative measurements and evaluations across homogeneous sectors, functions and responsibility centres.

Individual ministries through the exercise of their power of self-organisation and hierarchical supervision establish ministerial inspectorates. The jurisdiction of these inspectorates is limited to the department to which they belong, and thus either general or limited to the sector to which they are assigned.

The most important **special investigative bodies** exercising activities that involve oversight of ethics in government are as follows:

- The Observatory for Monitoring Public Works and the Authority for Monitoring Public Works, established by Act No. 109/1994 (Framework Law on Public Works), are specifically required to report wrongdoing (Art. 4). While the Observatory is subject to the Minister of Public Works, the Authority is under the direct supervision of the President of the Council of Ministers and Parliament.
- The Central Service of Tax Inspectors (SECIT) also combats corruption. In the finance administration, it is responsible for the financial control of tax payment by citizens and the proper behaviour of government offices and employees, both as regards office procedures and individual conduct and contact with users.
- Under Paragraph 62 of Art. 1 of Act No. 662/1996, all institutions are required to establish an investigative body with specific jurisdiction: the special sector of the internal inspectorate. This

Act, which amends the existing provisions of the Consolidation Act on State Civil Servants, approved by Presidential Decree No. 3 of 1957, establishes more stringent standards regarding conflict of interest and part-time employment, stating that any misconduct in this regard shall be considered valid grounds for dismissal.

- The Inspectorate for the Civil Service also carries out monitoring activities, and if need be may ask the Inspectorate of the Customs Service to conduct administrative investigations.

On the whole, it can be said that investigative and monitoring bodies have a sufficiently high level of **independence** since, even though their officials are normally directly accountable to the administrative or political officials who appointed them, they all are required to report to the judicial authorities any cases of suspected crime, whether they concern public servants, government appointees (as in SECIT) or, especially, officers in the criminal police.

In particular, Art. 20 of Presidential Decree No. 3/1957 specifies that directors-general or heads of service are required to report suspected crimes, or the Minister if the former are suspects in the case. Art. 32 of Act. No.335/1976 specifies the other individuals who are subject to this requirement, i.e. regional administrators and heads of regional offices and, if these individuals are suspects in the case, the relevant collegiate body.

Finally, senior officials with inspection duties are specifically required to report suspected crimes. This is specified in Art. 20 of Presidential Decree No. 3/1957; Art. 12 of Presidential Decree No. 748/1972; Art. 86 and 91 of Legislative Decree No. 77/1995; and Art. 6 of Act 1291/1962, which requires the General Accountant of the State to report to the Court of Auditors any wrongdoing discovered in the course of administrative/accounting audits carried out by the Finance Inspection Services.

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

These include:

- Extraordinary commissions reporting to Parliament.
- Independent/external auditors reporting to Parliament.
- Courts for judicial review.

Extraordinary commissions of inquiry may be appointed by the Government, with general jurisdiction for the entire public administration, or by the management of individual institutions, with jurisdiction limited to that sector of competence¹⁶. These commissions, unlike those appointed by Parliament, have only administrative powers. The investigations carried out by administrative commissions are generally aimed at determining the nature and extent of wrongdoing in the administration or in the specific sectors in which it occurred.

The powers of administrative commissions of inquiry are defined by the provisions under which they are established. They are of a purely administrative nature and reflect the disciplinary/administrative aspects considered to be appropriate in terms of the administrative chain of command and internal organisation. Some commissions may be given special powers of extra-hierarchical oversight - as in the case of commissions appointed by the Government - or information-gathering and investigative powers (as in the case of the Customs Service, the *Carabinieri* Corps, the State Police and the Army in general) with criminal police investigators assigned to work under the direct authority of commission members.

16. For example, the Customs Service recently appointed an internal commission of inquiry to investigate particularly serious problems of internal corruption.

Independent audits are carried out by the Internal Audit Services and the Regional Prosecuting Attorney of the Court of Auditors for Government Bodies (Acts Nos. 19 and 20 of 1994). Both for internal audits and the external audit of the Court of Auditors, the system provides for the use of a network of units responsible for verifying the legality and regularity of accounts. Audit reviews are conducted on a biannual basis or at least once a year, and audit reports are published routinely.

A Bill soon to be approved, providing for corruption prevention measures, entrusts the internal audit system with sensitive and very important duties of monitoring legality which are to be carried out by units with the necessary high professional standards. The internal audit system, aimed at ensuring the regularity of administration and management and the ethical conduct of public servants, will carry out four distinct types of activity:

- The control of administrative/accounting regularity, which also includes monitoring the legality and propriety of administrative action.
- Management control, aimed at optimising the cost/results ratio through monitoring and measures to improve the effectiveness, efficiency and cost-effectiveness of administrative action.
- Staff evaluation, and in particular of senior management, which may also be used for the purpose of setting variable salaries in contracts.
- Strategic evaluation and control aimed at supporting the activities of policy guidance and control bodies, and at evaluating the effectiveness of management choices in terms of the results obtained versus the goals set.

Strategic evaluation and control will be assigned to units attached to policy guidance bodies (which, in ministries, are the offices that work directly with the minister), while management control and staff evaluation will be carried out by units and/or individuals accountable to the administrative bodies in charge of the organisational divisions in question (directorates-general for ministries). The units responsible for controlling regularity will be existing bodies (audit boards, accounting offices, inspection services) to which the new duties contained in the corruption prevention Bill will be assigned, if necessary after additional training and staff have been provided.

Employees in units that carry out management control, staff evaluation and strategic control will forward their results only to the senior management bodies of the administration, the persons and the policy guidance bodies specified in the Bill itself.

In addition to the commissions of inquiry referred to above, which are extraordinary bodies, the **judicial authority** has jurisdiction under ordinary circumstances for investigating and punishing crimes of corruption in which the public administration is the plaintiff. The complete independence of the courts is guaranteed by law; however, administrative investigations are less independent in as much as administrative inspectorates are bureaucratic units that are more or less directly accountable to their supervisory Ministry, Head of Cabinet, Secretary-General or General Director. This is of course only true in terms of their administrative structure since, as stated previously, inspectors are personally required to report any evidence of wrongdoing to the competent criminal or accounting authority (Art. 361 of the Italian Penal Code).

VI. Co-ordination and self-assessment

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

The Civil Service Department of the Office of the President of the Council of Ministers is the central institution assigned to co-ordinate and manage the implementation of the government ethics policy. The Civil Service Department is defined by legislation. In its current form it was established as part of the Office of the President of the Council of Ministers under Framework Law No. 93 of 29 March 1983, which assigned to it an overall staff of 265. The Minister for the Civil Service is responsible for policy guidance when so designated.

The subject of corruption and ethical behaviour in the public service is always included in the Report on the State of the Public Administration that the Minister for the Civil Service presents annually to the Government and Parliament and subsequently publishes, bringing it into the public domain.

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

- Using risk assessment to steer policy development for prioritising and sequencing ethics measures.
- Analysing systemic failures and trends in criminal and disciplinary cases.
- Providing national guidance and/or a checklist to develop prevention strategies in organisations.

A national ethics or corruption prevention plan/strategy has not been developed, but the government is very aware of the need for such an ethics plan/strategy. The subject is currently being studied and specific legislation is being envisaged concerning a corruption prevention plan/strategy.

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

Under the regulations in force in the various departments of the public administration, controls of the regularity of the administration and accounts are carried out by auditing bodies, accounting offices or inspection services, including those specified in Art. 1, Paragraph 62, of the Act of 23 December 1996, the Finance Inspection Services of the General Accounting Office and bodies with general jurisdiction.

In general terms, the corruption prevention measures that are considered to be **effective**, even though they may be indirect, are the legislation on the simplification of administrative procedures, on transparency, on the justification of decisions and on communication. This legislation has sought to eliminate the bureaucratic procedures, administrative secrecy and arbitrary decision-making that very often foster active and passive corruption (for further information see Section I. b. above). A concrete successful instrument for corruption prevention was introduced by the Act of 5 July 1982, No. 441, which requires disclosure of earnings by senior officials on a yearly basis (for details see Section IV. d.).

The **main impediment** to achieving higher standards for combating corruption lies in the very nature of corruption itself. Corruption occurs because corrupt officials, who are well aware of the legislative framework designed to prevent corruption, are able to plan and commit with impunity the very crimes that the laws and regulations are meant to punish. This means that, since no measures can by themselves entirely prevent those who are determined to do so from engaging in wrongdoing, only a deliberate effort to persuade officials to change their conduct will lead them to behave in an ethical manner.

This can be achieved by combining dissuasive legal and procedural provisions with solid training in ethics and morality. This training must begin with the teaching of the citizenship ethic in families and schools,

and continue in government with the service ethic, which leads government employees, even when they are in positions of power and authority, always to act in such a way as to further the objectives and social outcomes laid down by the Constitution and the laws, and to protect the rights and meet the expectations of the public.

However, the values and convictions of the service ethic should not be limited only to public employees, but should be shared by everyone - both in the public and the private sector - who provides community services to the public. It is fair to say that this is the direction in which many of the efforts to raise the ethical standards of public life in Italy are moving.

JAPAN

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

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

No answer

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

Raising ethics awareness by training

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

Establishing codes of conduct

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

Strict and fair treatment over employees’ misconduct

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

A revision in disciplinary systems

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

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

Establishing the National Public Service Ethics Law

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

- Obligation on senior officials who receive gifts, favours, etc. of value beyond 5000 yen to report it.
- Obligation on very senior officials to report their stock exchange and income.
- Establishment of the National Public Service Ethics Board in the NPA responsible for the affairs concerning retention of ethics related to the office, for example, training, review of above-mentioned reports, investigation and punishment of unethical conduct. The Cabinet, with the consent of the *Diet*, appointed the President and Members of the National Public Service Ethics Board in December 1999.
- Prohibition or restriction of some kinds of conduct by the National Public Service Officials Ethics Instructions established as a government order.

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

II. Core values for the public service

a) Stating core values for the public service

Following are the stated core values:

- “All public officials are servants of the whole community and not of any group thereof.” (The Constitution of Japan, Article 15, Section 2).
- “Any employee, as a servant of the people, shall attend to his/her duties in the interest of the public, and exert his/her utmost effort in the performance of his/her duties.” (National Public Service Law, Article 96, Section 1). The National Public Service Ethics Law states the following as "Ethics Principles"(Article 3):
 - (a) Employees shall not give unfairly discriminative treatment to the nationals and shall always engage in their duties with fairness, recognising that they are servants of the whole nation.
 - (b) Employees shall not use their duties or positions for private gain.
 - (c) Employees shall not, while in their duties, take any actions that create public suspect or distrust.

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

The following forms are used:

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

c) *The statements on core public service values have been revised in the last decade*

The National Public Service Ethics Law passed by the *Diet* on 9 August 1999 updated the core public service values.

III. Standards of behaviour for the public service

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

Standards of behaviour for the public service are stated in the NPSL (National Public Service Law) and the codes of conduct established in each ministry and agency. Based on the National Public Service Ethics Law, a new code of conducts, i.e., the National Public Service Officials Ethics Instructions, will be issued. They cover the following issues:

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

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

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

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

- No employee shall be an officer, political adviser, or member with a similar role of any political party or political organisation.

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

b) Unacceptable conduct for public officials according to the law

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

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

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

- Prohibition of acts of labour dispute (Article 98).
- Prohibition of acts causing discredit to the public service (Article 99).
- Prohibition of divulging any secret which may have come to employees' knowledge in the performance of their duties (Article 100).
- Prohibition of holding two or more government positions simultaneously without authorisation by law or orders, and prohibition of receiving compensation for additional government position even with authorisation (Article 101).
- Restriction on political activities (Article 102 of the NPSL).
- Restriction on employment in profit-making enterprises (Article 103).
- Restriction on participation in other undertakings or business (Article 104).

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

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

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies and auditing/monitoring the selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.
- Taking ethical considerations into account in the recruitment process. For example in the course of the interviews – which are part of the recruitment examinations for national public service – the interviewers are required to evaluate the ethical standards of the applicants.
- Considering ethical behaviour in the performance appraisal. The employee's ethical behaviour may be one dimension to be evaluated in the performance appraisal, which is developed in each ministry and agency.
- Conducting ethics training.
- Regular rotation or replacement of personnel.

Special attention is given to officials, who are in charge of budget-execution, licensing and approval affairs. They are discouraged from occupying their posts for a long period.

b) Informing and training public servants on ethics issues

Ethics training is executed by the NPA, a central personnel Agency, and each ministry and agency. Each training course primarily consists of lectures and discussions of pertinent ethical issues. Lectures focus on raising ethics awareness, and discussions on improving skills for ethical judgement. Training programmes conducted by the NPA and each department are explained as follows:

- The NPA conducts inter-ministerial training courses for administrative officers according to their grade, whose curricula include case studies in ethics awareness. Only those officials who are recommended for training by their respective departments receive training. However, all Level I employees (public servants who were appointed as the result of passing the Level I Recruitment Examination) are required to attend the initial training course upon their employment.
- The NPA also offers a programme for administrative officers who are expected to become instructors of ethics training for officials of their own departments, on how to conduct ethics training.
- Each ministry and agency, under the guidelines of the NPA, provides ethics training in its own training courses for administrative officers of each stratum/grade, according to their own schedule.
- The NPA develops teaching materials for ethics training, such as booklets and videos.

Public employees who have work-related ethical problems or dilemmas, may consult with Discipline Management Officers of their ministries or agencies responsible for promoting discipline.

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

These include:

- Identifying and reporting of conflict of interest situations, especially in areas of post public employment and receiving gifts and benefits such as fees, payments, and entertainment.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness of responding to requests.

d) Disclosure policy

Disclosure of personal information (declaration of personal assets, financial interests) is required from elected officials and members of the Cabinet. The following information is required to be disclosed when they take up their position in the public service and on an annual basis:

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

The disclosed information is open to the public upon request. The purpose is to establish the political ethics of elected officials and members of the Cabinet by disclosing information -- such as personal assets and liabilities -- to the public and therefore to contribute to the development of democracy.

The National Public Service Ethics Law will introduce a disclosure system for senior government officials. It will require senior officials to report gifts with a value of more than 5000 yen received not from individuals but from organisations, and very senior officials to report their transaction of stocks and their income. Certain parts of the report on gifts received will be open to public upon request.

e) Procedures to report misconduct/suspected corruption

Legal provisions define the procedure for public servants on how to expose wrongdoing committed by public servants. There is no protection/safeguard provided for public servants who expose wrongdoing. Neither procedures nor supporting institutions are in place for the public to expose misconduct committed by public servants.

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

There is no internal control to support the improvement of ethical conduct in the public service.

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

When a public servant falls under one of the following cases (Article 82 of the NPSL), an employee may, as disciplinary punishment, be dismissed, suspended from duty, suffer reduction in pay or a reprimand:

- When he/she has acted contrary to the National Public Service Law, National Public Service Ethics Law or orders issued thereunder.
- When he/she has acted contrary to the duties of his/her position or has neglected his/her duties.
- When he/she is guilty of such misconduct as to render himself/herself unfit to be a servant of the people.

Concerning availability of redress, the Article of 90 of the NPSL provides that the employee subject to disciplinary punishment may file with the NPA only an objection such as an appeal for review or submittal of a protest under the Law for Examination of Objections Against Administrative Acts. Article 92-2 provides that no lawsuit may be brought for its cancellation until after the NPA has rendered a ruling or a decision on the said appeal or the protest submitted.

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

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

- Police.
- Public Prosecutors' Office.

Police officers are the major investigative force carrying out their duties within the jurisdiction of the Prefectural Police concerned. According to the jurisdiction of the Police Act (Articles 4 and 5) the National Public Safety Commission exercises administrative supervision over the National Police Agency within its authority. While the Commission is under the jurisdiction of the Prime Minister, the Prime Minister is not empowered to command or control the Commission directly. The Prefectural Public Safety

Commissions exercise administrative supervision over their prefectural police by formulating basic policies and regulations for the police operations. However, neither the Prefectural Public Safety Commissions nor Prefectural Governors or elected assemblies may supervise individual case or specific law enforcement activities of the Prefectural Police. (Article 38 of the Police Act). The National Police Agency employs 1,405 police officers, 922 imperial guards and 5,323 civilians while 226,401 police officers and 29,351 civilians are in service in the Prefectural Police. The national budget provides around 230 billion yen for the National Police Agency and around 3,5 billion yen for the Prefectural Police in the financial year 1999/2000 (1 April 1999 –31 March 2000).

Public prosecutors operate with jurisdiction over the whole public service. Public prosecutors are empowered to both investigate and prosecute misconduct and corruption committed in the public service. The Minister of Justice (who is a civilian) may control and supervise public prosecutors generally in regard to their functions. However, in regard to the investigation and disposition of individual cases, the Minister of Justice may control only the Prosecutor-General. The Public Prosecutors Office Law grants the security of tenure. Except for the cases regulated by the Act, no public prosecutor shall, against his/her will, lose his/her office, be suspended from the performance of his/her duties or suffer reduction of salary unless by disciplinary action. Public prosecutors are empowered to bring suspected cases of corruption directly to court. Currently 1,304 public prosecutors, 919 assistant public prosecutors and 9,134 assistant officers and technical officers work for the public prosecutors offices. Their financial resource is about 105 billion yen for the current financial year (1 April 1999 – 31 March 2000).

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

In Japan, courts have the authority to judge legality of administrative dispositions in specific cases. Courts perform scrutiny of actions of the administrative organisations within certain limits. The following requirements are necessary for courts to perform scrutiny of revocation lawsuits of administrative actions:

- The administrative actions come under administrative dispositions.
- The plaintiff has legal benefit in respect of his or her asking for revocation of the disposition.
- The lawsuits are filed within the time period specified by the law.

VI. Co-ordination and self-assessment

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

As a central personnel agency, the NPA is responsible for basic standards for service discipline and matters concerning disciplinary action. The Prime Minister, another central personnel agency, is also responsible for matters concerning discipline, although in practice the Management and Co-ordination Agency (MCA) plays this role. The NPA, defined by the NPSL, provides an annual report for the Diet and the Cabinet concerning its activities. Matters concerning discipline are stated in the report.

The principal action and commonly used procedure in Japan to ensure the **consistency** of the government ethics and anti-corruption measures is the analysis of systemic failures, trends in criminal and disciplinary cases. No national ethics or corruption prevention plan has been developed.

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

The National Personnel Authority has reviewed all aspects of human resource management including ethics retention when necessary. If a revision requires an amendment in any law, the NPA recommends amendments to the Cabinet and the Diet.

KOREA

I. The general context for managing ethics in the public service¹⁷ in Korea

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

The principal ethics-related issues are:

- Misconduct and wrongdoing related to civil petitions.
- Transparency in the administrative procedure.

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

These include:

- Amendment of the Public Service Ethics Act (11 June 1993): the registered property of senior public officials (Grade 1 and above) shall be open to the public, and the authority of the Public Service Ethics Committee is strengthened.
- Enactment of new laws, such as the Act on Special Cases concerning Forfeiture for Offences of Public Officials (5 January 1995); Act on Disclosure of Information by Public Agencies (31 December 1996); Act on the Framework of Administrative Regulation (23 August 1997); Civil Petitions Treatment Act (23 August 1997); Administrative Procedures Act (15 December 1997); Act on Combating Bribery of Foreign Public Officials in International Commercial Transactions (28 December 1998).
- Government reorganisation and outsourcing to achieve a small and efficient administration.

17. According to the National Civil Service Act, Korean public officials are classified into career service and non-career service. The career service means officials who are appointed in accordance with their record of performance and qualification, and whose status is guaranteed until their retirement. The categories of such officials are as follows:

- General Service: technical and/or research affairs as well as administration in general, classified by occupational groups and series of classes.
- Special Service: judges, public prosecutors, diplomats, policemen, fire-fighters, military personnel, professors and teachers.
- Technical Service: technical and skilled workers.

The non-career service includes elected officials and political appointees, contract personnel, etc.

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

The following comprehensive anti-corruption measures are being discussed:

- Formulation of a code of conduct for public officials.
- Protection of whistle-blowers.
- Requirement that public officials report any wrongdoing they witness.
- Confiscation of ill-gotten gains.
- Reduction of regulatory powers of public officials to lessen the temptation to offer bribes.

II. Core values for the public service

a) Stating core values for the public service

The following values are enumerated as duties of Korean public officials:

- Fidelity.
- Obedience.
- Kindness and impartiality.
- Confidentiality.
- Integrity.
- Dignity.

They are enumerated in the following legal documents:

- Constitution of the Republic of Korea.
- National Civil Service Act.
- Decree on the Service of National Officials.
- Public Service Ethics Charter.

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

The following forms are used:

- Core values are automatically provided when someone joins the public service.
- Any revisions of core values are distributed to all public servants.
- Core values are communicated through training of public servants such as job-training and in-service training.

III. Standards of behaviour for the public service

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

There is no single code of conduct, but the standards of behaviour expected of public officials can be found in many acts and decrees, all of which are available to all public officials. Standards cover the following points:

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

There are no specific guidelines/requirements for public servants and political leaders working at the political/administrative interface. There is one exception, however, for those working at the political/administrative interface: the prohibition of political activities is loosely applied to them. Duties of public officials stipulated in the National Civil Service Act and the Decree on the Service of National Officials serve as their **minimum standards of behaviour**.

b) Unacceptable conduct for public officials according to the law

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

- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Abuse of office or public trust.
- Abandonment of duties.
- Divulgence of official secrets.
- Alteration of a public document, or drafting a false one.
- Illegal arrest and detention of citizens.

Further prohibitions and restrictions imposed on public officials by the National Civil Service Act and the Decree on the Service of National Officials include the following:

- Prohibition of deserting office.
- Prohibition of engagement in lucrative business.
- Prohibition of political activities.
- Prohibition of collective actions (e.g. petitions through the joint signature for improvement of public official's own benefits).
- Restrictions on holding concurrent employment.
- Restrictions on the employment of retired officials in job-related private companies.

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

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

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.

- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.
- Considering ethical behaviour in the performance appraisal: ethics-related elements such as integrity and impartiality are accorded high importance in evaluating work behaviour.

Special attention is given to officials in positions particularly susceptible to corruption. For officials who are engaged in prosecution, police, inspection, customs and tax, the obligation to report on their properties annually is applied to a wider range of grades than other officials. They are also re-deployed regularly.

b) Informing and training public servants on ethics issues

All public officials in the career service are required to take ethics training at the time of appointment and promotion. Public officials in tax and inspection affairs take additional special training on ethics. The training contains theories and case studies. The courses are provided by the Central Officials Training Institute (COTI), training agencies of various ministries such as the Tax Officials Training Institute (TOTI), and private professional training bodies.

According to the National Civil Service Act, public officials can request advice or counselling on their work-related ethical problems and dilemmas from the Government Personnel Appeals Commission (GPAC).

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

These include:

- Identification and reporting of conflict of interest situations, especially in areas of financial management, post public employment, receiving gifts or benefits such as fees, payments, and entertainment.
- Providing redress against administrative decisions.
- Setting standards for timeliness to respond to requests.
- Anti-corruption provisions in bids for public contract (e.g. companies found guilty of corruption are disqualified/suspended from future tenders/bids).
- Specific controls on public procurement procedures.

d) Disclosure policy

Disclosure of personal information (declaration of personal assets, financial interests) is required from:

- Elected officials.
- Senior public servants (assistant minister level and above).
- Directors, deputy directors and auditors of government-invested institutions.
- Governor, Deputy Governor and Auditor of the Bank of Korea.
- Director of the Financial Supervisory Service.
- Presidents and auditors of the National Agricultural Co-operatives Federation, National Fisheries Co-operatives Federation and National Livestock Co-operatives Federation, etc.

The disclosure requirements are more rigorous in the following particular sectors:

- Prosecution.
- Police.
- Customs administration.
- Tax administration.

The following information is required to be disclosed on an annual basis and when joining or leaving the public service:

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

Registered information is kept confidential except that of senior public servants (assistant minister level and above) which is publicised in the official gazette (public bulletins). Only the Public Service Ethics Committee has access to the confidential information for examining and detecting illicit enrichment.

e) Procedures to report misconduct/suspected corruption

Legal provisions define the general procedure for exposing wrongdoing, and internal rules determine the procedure within each organisation across the public service. There is no protection/safeguard available to public servants who expose wrongdoing. For the public, special procedures are available, such as complaint procedures, ombudsman, help desk, or telephone line to expose wrongdoing committed by public servants.

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

Financial and management control is ensured by internal audit and inspection. Internal control, required by law every 1 to 3 years, supports the improvement of ethical conduct in the public service. The management of the agency that is audited, the President of the Republic and the Board of Audit and Inspection (BAI) have access to the reports of the reviews. Internal control detects and corrects misconduct and irregularities, and provides momentum for systemic improvements when necessary. Follow-up mechanisms to implement recommended measures for systemic improvements are not required.

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

Disciplinary measures are classified into: dismissal with pension reduction, dismissal, suspension, pay reduction, and reprimand. These are stipulated in the National Civil Service Act. The Government Personnel Appeals Commission reviews the appeals made by public servants against disciplinary actions, and the Commission's decision can be brought to administrative lawsuits if one disobeys it.

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

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

- The Board of Audit and Inspection (BAI), under the supervision of the President of the Republic, operates with jurisdiction over all public officials of central and local government. The Constitution accords independence to the BAI in performing its duties (822 staff as of 1 July 1999).
- Public prosecutors operate with jurisdiction over all public officials. They retain independence in dealing with specific cases (1207 prosecutors and 2153 staff as of 1 July 1999). Police officers obey any official order issued by the competent public prosecutors in a criminal case (94,840 policemen as of 1 July 1999).
- Auditors inside each ministry (or agency); they are not independent.

Only public prosecutors can **prosecute** misconduct in court. No investigative or prosecuting bodies are empowered to bring suspected cases of corruption directly to court.

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

These include:

- Parliament/Parliamentary committee.
- Ombudsman.
- Courts for judicial review.
- The Board of Audit and Inspection.

There are procedures/mechanisms available to bring wrongdoing to the attention of bodies exercising independent scrutiny on public service activities: citizens can submit petitions to scrutinising bodies for correction of wrongdoing by public officials and/or for disciplinary measures.

The Board of Audit and Inspection performs external audit (this independent organisation reports directly to the President of the Republic) for all affairs where public expenditure is used, once a year for central administrative agencies, and once every two years for other organisations. External audit reports are published routinely.

VI. Co-ordination and self-assessment

a) Co-ordination and management of government ethics policy

The following institutions are defined by legislation for co-ordination and management of government ethics policy:

- The Office for Government Policy Co-ordination (31 staff as of 1 July 1999) under the Prime Minister.
- The Ministry of Government Administration and Home Affairs (36 staff as of 1 July 1999).

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

- Using risk assessment to steer policy development for prioritising and sequencing ethics measures.
- Providing national guidance and/or a checklist to develop prevention strategies in organisations.
- Assigning a central office responsible for oversight of all ethics related measures, including ensuring the consistency of legal regulations.

No national ethics plan or national corruption prevention plan has been developed. Non-governmental organisations such as the Citizen Coalition for Economic Justice (CCEJ) can be involved in the ethics policy process through petitions.

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

The Board of Audit and Inspection and the Prime Minister's Office review and assess the effectiveness of the preventive measures if the occasion arises. The oversight of Citizen Organisations (NGO) over the activities of public servant and strengthened internal control can be considered as successful instruments for corruption prevention.

The major impediments to further reducing corruption in the public service are:

- A weak sense of responsibility among public officials which is caused by frequent change in posts.
- The general tendency of Korean people to prefer "mercy and harmony" to "strict implementation of law".

LUXEMBOURG

I. The general context for managing ethics in the public service in Luxembourg¹⁸

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

The repercussions of what were known as “malfunctions” in the Ministry of Health certainly made the news in 1998 and 1999 in this field. Following a memorandum from the Commissioner for Hospitals on the evidence of budgetary irregularities within the Department of Health, and the joint meeting on 22 January 1998 of two Parliamentary Committees (Health/Social Security, and Finance/Budget), the Health Minister assumed political responsibility and resigned from ministerial office. On the same day, the Chamber of Deputies set up a special committee to analyse certain financial practices within the Ministry of Health and, secondarily, various processes and procedures used by government bodies and administrations. It submitted its final report on 26 March 1998.

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

One-off measures within the Health Department included:

- Imposition of disciplinary penalties on a senior public servant.
- Reorganisation of the ministerial department following an external audit.
- Appointment of an internal auditor.

Among the more wide-ranging measures:

- The Chamber of Deputies adopted the Act of 8 June 1999 (a) regulating the national Budget, Accounts and Treasury; (b) amending the Act of 10 March 1969 establishing a General Finance Inspectorate; (c) amending the Act of 16 August 1966 (amended) on organisational arrangements for the Treasury, the disbursement office (*Caisse générale de l'Etat*), the local authority accounts inspection service, and specific public bodies. Under the Act, a new department known as the financial auditing directorate (*Direction du contrôle financier*) has been set up to audit the commitment and payment of all government expenditure. Its auditors will verify that all internal controls by government are properly carried out, hence the obligation for all ministerial departments to introduce such procedures.
- The Act of 8 June 1999, passed by the Chamber of Deputies, relates to the organisation of the Court of Auditors (*Cour des Comptes*). Its main purpose is to introduce stricter arrangements to audit the use of financial resources allocated by government, in particular by extending the scope

18. The information relating to public servants also applies, *mutatis mutandis*, to local authority (communal) staff.

of such arrangements to all public entities not subject by law to any other external audit. As well as examining the legality and regularity of revenue and expenditure, the Court of Auditors also verifies the sound financial management of public funds.

- Under the Act of 31 May 1999, establishing a Grand Duchy police force and a general police inspectorate, all existing police forces have been merged (*gendarmerie* and police) and a new department has been set up to monitor police operations, one aspect of its remit being to investigate criminal misconduct in the force.
- The emphasis is on improving the quality of internal administrative processes, and thereby helping, inter alia, to make government more transparent. As early as January 1997, the Government Action Plan for Administrative Reform had proposed, for instance, a review of internal procedures in areas such as correspondence, follow-up, archives and documentation, and a framework for assessing the impact of new regulations (introduction of a compulsory impact assessment for any project submitted to the Cabinet from September 1998 onwards).

To sum up, not only have measures been taken to improve and extend the auditing of government expenditure but an additional effort is under way to enhance broad organisational arrangements throughout government.

c) Plans in preparation to address ethical issues in the public service of Luxembourg

The statement by the new government on 12 August 1999 included the appointment of a citizen's representative to look into complaints about government, together with improvements to the organisational side of government, with the establishment of a central unit to conduct public service audits, in collaboration with the services concerned, and implement their recommendations.

As for the General Public Service Regulations, there are plans to make senior government officials more accountable, enabling the supervisory authority to force them to take early retirement. The disciplinary procedure will undergo reform, while the current Disciplinary Council will be given jurisdictional status and will include, where possible, a staff representative.

With regard to legislation, the bill on embezzlement, destruction of official documents, misappropriation of public funds, illegal financial interests and bribery, which also amends other legal provisions, is intended to be a virtual rewrite of Section IV, Volume II, of the Penal Code: "Crimes and offences against public order by public servants in the exercise of their duties or by ministers of religion in the exercise of their ministry", Chapter III: Misappropriation of public funds by public servants (Article 240 and *et seq.*) and Chapter IV: Bribery of public servants (Article 246 *et seq.*), currently submitted for opinion to the Council of State. The ultimate aim of the bill is dual, i.e. to improve the prevailing legislation (clarifying and extending the target group) and to supplement it with definitions of new offences based on French criminal law:

- Extension of the definition of bribery involving those in public office: the law now defines as a full offence any approach by one or other party with a view to concluding a bribery agreement; the definition of bribes has been extended; no distinction is made as to how bribes are offered, nor as to whom they are offered; and there has been an increase in the types of corrupt conduct envisaged.
- Creation of new offences and procedural rules, with the introduction of six new offences, namely trading of favours, retrospective bribery, *pantouflage* (post-employment in the private sector); unwarranted granting of exemptions (corruption of workers); and bribery of Community/European officials; for reference corruption of employees.

II. Core values for the public service

a) Stating core values for the public service

The Government Action Plan for Administrative Reform (January 1997) lists equality, neutrality and continuity as principles inherent in the very nature of public service, together with more modern principles such as:

- Accessibility.
- Outreach.
- Simplicity.
- Transparency.
- Less red tape.

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

Core public service values were communicated to public servants in the Government Action Plan on Administrative Reform in January 1997. They are also highlighted in further education courses on administrative reform. They can be seen on the Internet site of the Ministry of the Civil Service and Administrative Reform (<http://www.etat.lu/MFP>).

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

III. Standards of behaviour for the public service

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

Under the Act of 16 April 1979 on the General Public Service Regulations, and more specifically Chapter 5 - Duties of a public servant (Article 9 *et seq.*), standards of conduct comprise the following duties:

- To comply with the law and regulations, and the hierarchy.
- To be present, assiduous and watchful, without pursuing any another activity.
- To be honest.
- To be discreet, both in general and in a professional context.
- To reside in the vicinity of the place of work.

These expectations cover, for example:

- Receiving gifts and benefits such as fees, payments, entertainment.
- Use of official information.
- Official travel.
- Work outside the public service.
- Restrictions on post-employment (proposal).
- Involvement in political work.
- Obligation to reside in the vicinity of the place of work.

It should be noted that the General Regulations are supplemented/clarified with specific arrangements applying to certain groups of public servants (e.g. magistrates, police or diplomatic corps).

b) Unacceptable conduct for public officials according to the law

The **types of conduct that are considered unacceptable** are specified in the criminal legislation under the following articles of the Penal Code:

- **Article 233.** When action contrary to the laws or (royal) orders of the Grand Duchy has been planned, either in a meeting of individuals or bodies invested with any public authority, or by delegation or correspondence between them, the culprits shall be punished.
- **Article 234.** If, by the means set out in the preceding article, action has been planned to prevent the execution of a law or (royal) order of the Grand Duchy, the sentence shall range from six months' to five years' imprisonment.
- **Article 235.** If the civil authorities collude with the military forces or their leaders to plot against the security of the State, the agitators will be punished.
- **Article 236.** Public servants who agree to resign office with a view to preventing or suspending the administration of justice or the accomplishment of a legal service shall be punished.
- **Article 240.** Public servants or officials, or persons providing a public service, who misappropriate public or private monies, effects serving as such, official documents or belongings entrusted to them either by virtue or reason of their office, shall be punished.
- **Article 241.** Public servants or officials, or persons providing a public service, who wantonly or fraudulently destroy or remove official documents entrusted to them shall be punished.
- **Article 242.** If anyone removes or destroys criminal evidence or proceedings, or other papers, records, documents or effects contained in the public archives, registries or depositories, or handed over to a public depository as such, the public servant who is in charge of the depository and guilty of negligence shall be punished.
- **Article 243.** Public servants or officials, or persons providing a public service, who misappropriate public funds by ordering to be paid, demanding or receiving what they know is not due or exceeds what is due in duties, taxes, contributions, monies, income or interest, wages or salaries, shall be punished.
- **Article 245.** Public servants or officials, or persons providing a public service who, either directly or through an intermediary or fictitious documents, take or receive any interest whatsoever in documents, contracts, enterprises or companies which they were, at the time, fully or partially administering or supervising, or affairs which they were responsible for authorising payment of or winding down, shall be punished.
- **Article 246.** Public servants or officials, or persons providing a public service, who accept bribes or promises or receive gifts or benefits in return for an act required by their duties or work, and which may be just but is not subject to payment, shall be punished.
- **Article 247.** Public servants or officials, or persons providing a public service who, in return for bribes or promises, gifts or benefits, in the exercise of their duties take unjust action or abstain from the action required of them, shall be punished.

Furthermore, the General Public Service Regulations, and more specifically Article 10.2, state that public servants may not solicit, accept or be promised from any source, either directly or indirectly, any material benefits, which once accepted might place them in conflict with the obligations and prohibitions imposed on them by the laws and regulations, in particular the Public Service Regulations.

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

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

The following are used:

- There are rules/guidelines/policies for recruitment and promotion procedures.
- Recruitment and promotion are based on merit.
- The openness of selection procedures is ensured by publishing recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring selection procedures.
- Only published/appropriate selection criteria are considered in recruitment.
- Ethical considerations are taken into account in the recruitment process: Article 2 b) and c) of the Act of 16 April 1979 setting out the General Public Service Regulations states that “no person is taken into public service as a public servant if he/she does not: b) enjoy civil and political rights, c) display the necessary moral integrity”.

No special attention is given to officials in positions particularly susceptible to corruption.

b) Informing and training public servants on ethical issues

During the induction period, all newly appointed public servants attend a compulsory course given by the central training body, the National Institute of Public Administration (INAP), in which the focus is on ethics awareness, in particular during the course on “Regulations” (which explains the leading Public Service Regulations to all trainees, regardless of the public service group they have joined). INAP also provides voluntary further-training courses openly intended to raise ethics awareness. Further training includes a special course on “Public servants: rights and responsibilities”.

There are no special arrangements to provide public servants with guidance on resolving their work-related ethical problems and dilemmas.

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

These include:

- Identifying and reporting conflict-of-interest situations. Article 10.2 of the Act of 16 April 1979 setting out the General Public Service Regulations states that a public servant may not solicit, accept or be promised from any source, either directly or indirectly, any material benefits which once accepted might place him in conflict with the obligations and prohibitions imposed on him under the laws and regulations, in particular the Public Service Regulations (see above). Article 15.2 of the same Act states that public servants who, in the exercise of their duties, are obliged to give a decision on matters in which they may have a personal interest likely to jeopardise their objectivity must inform their supervisors.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness of responding to requests: under the administrative procedure, the absence of any response from the administration for a specific length of time means that an application has been turned down, subject to appeal before the administrative courts.

- Anti-corruption provisions in bids for public contracts;
- Specific controls on public procurement procedures.

d) Disclosure policy

Disclosure of personal information is required of all public servants. An annual declaration is required of any remunerated outside activity in the private sector with the exception of those listed under §2, indent 2, Article 14 of the Act of 16 April 1979 (amended) setting out the General Public Service Regulations (Ministerial Regulation of 13 April 1984, Mem. A, 1984, p. 499). Exemptions thus include scientific research; the publication of work or articles; artistic activities; and trade union activities. The relevant Minister then forwards these declarations of remunerated outside activities to the Cabinet, with a copy to the Ministry of the Civil Service.

e) Procedures to report misconduct/suspected corruption

Under Article 23 (2) of the Penal Code, any official authority, public official or public servant who in the exercise of their duties learns of a crime or offence must report it to the State Prosecutor without delay, along with any relevant information, reports or documents. No special protection or safeguard is available to public servants who expose wrongdoing. Where the public is concerned, there is no special procedure for reporting wrongdoing by public officials. However, the Government coalition agreement of 12 August 1999 provides for the appointment of a citizens' representative to look into complaints from citizens about public authorities.

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

There is currently no internal control, but 1 January 2000 will see the entry into force of the Act of 8 June 1999 (a) regulating the national Budget, Accounts and Treasury; (b) amending the Act of 10 March 1969 establishing a General Finance Inspectorate; (c) amending the Act of 16 August 1966 (amended) on the organisational arrangements for the Treasury, the disbursement office (*Caisse générale de l'Etat*), the local authority accounts inspection service, and specific public bodies. Under the Act, a new department, known as the financial auditing directorate (*Direction du contrôle financier*) has been set up to audit the commitment and payment of all government expenditure. Its auditors will verify that all internal controls by government are properly carried out, hence the obligation for all ministerial departments to introduce such internal auditing procedures.

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

While Article 56.1 of the Act of 16 April 1979 setting out the General Public Service Regulations states that responsibility for disciplinary investigations lies with the supervisor and the Disciplinary Council, Article 51 stipulates that no disciplinary action can be taken until public servants have been allowed to present their case. They are entitled to access to the documents relating to their case as soon as the investigations have been completed. They then have ten days to submit their comments and request further investigation.

The supervisor forwards the case, with comments, to the authority referred to under Article 52, paragraph 1 which stipulates that the right to impose penalties lies with the authority that has power of appointment, except in the case of minor penalties which may also be imposed by the relevant member of government

and head of department, respectively. Unless it is decided to close the matter, the relevant authority can either impose a minor penalty (listed under Article 47, points 1, 2 and 3 below), or forward the matter to the Disciplinary Council, if it considers that the facts established by the investigation constitute the kind of misconduct that requires a stiffer penalty.

Article 59 set out the rules on appointments to the Disciplinary Council, and its composition. It is worth noting that the authority invested with disciplinary powers may, following an opinion from the Disciplinary Council, either impose the penalty proposed by the Council, impose a lesser penalty or dismiss the case.

Article 54 sets out possible means of appeal before the administrative courts for public servants subject to one of the disciplinary measures mentioned below.

Article 47 of the same General Rules lists the following disciplinary penalties:

- Warning.
- Reprimand.
- Fine.
- Appointment of special staff commissioned to complete, at the public servant's expense, the work that he has failed to complete.
- Transfer.
- Suspension of biennial increases.
- Delayed promotion.
- Demotion.
- Temporary disqualification from office.
- Immediate retirement for professional incapacity or moral discredit.
- Dismissal.

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

Currently, Article 56.2 of the Act of 16 April 1979 on the General Public Service Regulations stipulates that supervisors are to launch an **investigation** when they are given evidence that public servants have failed in their duties. It also stipulates that the investigation must never be conducted by the public servant who has detected the misconduct, nor the one who may have to pass judgement. The governmental declaration of 12 August 1999 states that the conditions in which disciplinary procedures take place are going to change and that a service specialising in the investigation of disciplinary cases throughout government is scheduled to be set up.

Corruption is not only a disciplinary offence but also an offence under criminal law. The rules applying to the **prosecution** of offences, as set out in the Code of Criminal Investigation, therefore apply. The Public Prosecutor's Office can institute proceedings. It is independent, although placed under the administrative supervision of the Ministry of Justice. The police responsible for criminal enquiries (*police judiciaire*) under the supervision of the examining magistrate have authority to investigate crimes and criminal offences and collect proof. The Public Prosecutor's Office has authority to bring directly before the courts any suspected cases of corruption; investigative bodies do not have this authority.

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

These are:

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

Pending the entry into force on 1 January 2000 of the Act of 8 June 1999 on the organisation of the Court of Auditors (see Section I) the current Chamber of Auditors is responsible for auditing the execution of the State budget which is the responsibility of the executive. To that end, it has a right to audit in advance any payment by the ministry authorising the expenditure and must ensure that there are no budget overruns (*ex ante* auditing). It should be noted that its powers of inspection are confined to the legality and regularity of the expenditure and do not extend to assessing either the grounds for or the timeliness or usefulness of government expenditure. If the Chamber of Auditors does not accept the legality or regularity of an item of expenditure, it can refuse payment. If the minister authorising the expenditure considers the refusal to be unfounded, he may put the matter to the Cabinet, which will not take a decision but may give an opinion. If the disagreement persists, the matter goes before the administrative tribunal which will settle the dispute. In addition, the Chamber of Auditors has to comment on the general government accounts submitted to the Chamber of Deputies for approval (*ex post* auditing).

There are procedures/mechanisms available to bring misconduct to the attention of bodies exercising independent scrutiny of public service activities: these are criminal procedures set out in the Code of Criminal Investigation. All external auditors' reports are systematically published.

VI. Co-ordination and self-assessment***a) Co-ordinating and managing the government ethics or anti-corruption policy***

No institution has been assigned to co-ordinate and manage the implementation of the government ethics policy.

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

No reply

MEXICO

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

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

Disparity between public and private sector wages is decreasing through recent plans of the federal administration. There is also better awareness of action taken by the administration.

b) Recent measures and plans in preparation to improve ethical conduct in the public service

Several amendments and additions have been made to the Federal Criminal Code of 1931 throughout the years, the last ones in May 1999. The National Development Plan 1995-2000 and the Programme of Modernisation of the Public Administration 1995-2000 contain several lines of action to address ethical issues in the Mexican public service.

II. Core values for the public service

a) Stating core values for the public service

Article 47 of the Federal Law of Responsibilities of Public Servants establishes such values. Furthermore, the Mexican Federal Constitution establishes guarantees for all individuals which may not be restricted or suspended, except in cases and under conditions established by the Constitution itself, thus protecting all persons individually or as a group.

Other articles in the Constitution establish: the right to choose an occupation; the free expression of ideas; the right to address petitions to the authorities; the right not to be judged by special laws or tribunals; that no law can have retroactive effect; the inviolability of person, family, domicile, papers or possession except by means of a legally based ruling from a competent authority; conditions for detention and imprisonment; basic rules for criminal process; and prohibition of confiscation of property except in special cases. Furthermore, Mexican citizens enjoy a number of special rights within which the right to petition the authorities is expressly established.

The Organic Law of the Federal Public Administration also sets rules in regard to efficiency, decentralisation, deconcentration, administrative simplification, and investigation of conduct of public servants, which may require the identification of administrative responsibility and the necessity for sanctions. These functions are assigned to the Ministry of Comptrollership and Administrative

Development which is also in charge of receiving and registering the Patrimonial Declaration that all public servants are obliged to present yearly.

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

All public servants are aware of core values through the above-mentioned law, which was duly published in the Official Bulletin and printed by the above-mentioned Ministry of Comptrollership, so copies are plentiful and obtainable at no cost. Therefore, it is available to all public servants. Every state has similar laws and official bulletins where core values are published. Each state of the Mexican Republic has its own laws, mainly based on those applied in Mexico City (Federal District) applicable within their own territorial jurisdiction. Nevertheless, federal laws such as the Constitution -- and in matters in which the federal tribunals are competent -- the Federal Criminal Code and others, are applicable throughout the whole territory of the Republic.

c) Revisions of the statement of core public service values

The National Development Plan 1995-2000 dates from 1995, the Programme of Modernisation of the Public Administration 1995-2000 from 1996. Public servants across the administration and the public were involved in the development of these programmes. Several consultation fora were organised among public servants and representatives of the private sector in order to gather their opinions.

III. Standards of behaviour for the public service

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

There is a statement of the standards of behaviour expected of public servants. These expectations cover the following points:

- Receiving gifts or benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Work outside the public service.
- Restrictions on post-employment.
- Special conditions/permissions on movement from the public service to the for-profit sector.
- Involvement in political work.
- Lobbying (which is forbidden for a year after the end of public service, as well as other activities).

There are **specific guidelines/requirements** in addition to the general standards applicable to all public servants. These regulations are issued in every ministry or entity and through labour conditions in contracts. In each Secretariat (Ministry) “regular” public servants are subject to General Working Conditions, a printed ruling which specifies their rights and obligations. The “confidence” or trustworthy officials are subject to individual contracts which also contain their rights and obligations. There are specific guidelines for public servants and political leaders working at the **political/administrative interface**. The Federal Law of Responsibilities of Public Servants sets these obligations in full (article 47).

Minimum standards of behaviour for the public service are stated in the Federal Law of Responsibilities of Public Servants.

b) Unacceptable conduct for public officials according to the law

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

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

The Federal Penal Code establishes (in Title Ten) which actions by public servants constitute a crime and defines and punishes the following:

- Unlawful exercise of public service.
- Abuse of authority.
- Coalition (an alliance or a union) of public servants to take measures against a law or regulation or to prevent its execution, or to resign their positions in order to suspend or impede public administration in all its branches.
- Undue use of attributions and faculties, such as unduly granting public service concessions or permits for exploitation, profiting or use of properties belonging to the Federation etc.
- Misappropriation by a public servant if – in the normal course of duties related to taxes, contributions, rentals, interests, salary or income – he/she (directly or indirectly) demands money, values, services or any other advantage which he/she knows not to be due or in a larger amount than permitted by law.
- Intimidation.
- Abuse of the exercise of functions.
- Traffic of influence.
- Corruption.
- Embezzlement.
- Illicit enrichment.

Title Eleven of the same Code also establishes that actions by public servant to impede the administration of justice, and undue exercise of a right, constitute crimes. **Further prohibitions and restrictions** are imposed on public officials by the OAS and OECD conventions on corruption.

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

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

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit in general terms, but there are exceptions.
- Taking ethical considerations into account in the recruitment process, such as verifying data regarding lack of responsibility (checking whether the entrant has a criminal record and whether

he/she has been found incompetent according to the Federal Law of Responsibilities of Public Servants).

- Considering ethical behaviour in performance appraisal , such as verifying data regarding lack of responsibility (checking whether the public servant has been found incompetent according to the Federal Law of Responsibilities of Public Servants).

Special attention is given to officials in positions particularly susceptible to corruption: in the areas of public procurement, customs and tax administration. Public servants in these areas are audited and re-deployed regularly.

b) Informing and training public servants on ethics issues

Public servants are trained and informed on ethics issues in training courses oriented to medium and upper level officials that take place in every ministry and its subordinate agencies. These courses are compulsory for all public servants and vary in accordance to the tasks or position of the public servants, but they mainly focus on raising awareness.

Public servants may ask for help and/or advice from the Ministry of Comptrollership and Administrative Development (SECODAM), as well as from the Control's Internal Office (OIC) in each ministry or in its subordinate agencies, to solve their work-related ethical problems and dilemmas.

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

These include:

- Identification and reporting of conflict of interest situations, especially in areas of financial management, post public employment, receiving gifts or benefits such as fees, payments, entertainment, or in other cases such as authorising the employment in the public service of someone who has been disqualified by a final resolution of a competent authority (Article 47 of the Federal Law of Responsibilities of Public Servants).
- Requiring the release of internal information related to ethical conduct and possible transgressions.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness for responding to requests.
- Specific controls on public procurement procedures.
- Risk assessment of the areas susceptible to misconduct.
- Anti-corruption provisions in bids for public contract.

Other measures are stated in the Federal Law of Responsibilities of Public Servants. For example a person may be temporarily disqualified for employment or a commission in the public service (Article 33 of the Law). When one disposition has a bearing on another law it is customary to state "other measures as established" or "in further terms as established" by such and such a law, whether those conditions or terms actually exist or not. This is necessary to avoid contravening another ruling.

Mexico's **public procurement procedures** are established in the Law of Acquisitions and Public Works which regulates all issues related to public procurement and includes provisions on circumstances that make suppliers and contractors ineligible to participate in future tenders, definitely or for a certain period of time. The Law also defines who cannot be considered for bids in public procurement procedures, including:

- Relatives or persons who have a personal or business connection with public servants involved in the procurement procedure.
- Public servants themselves, and companies in which a public servant is a member or associate.
- Persons, companies or any of their affiliates in an activity which, by its nature, may be in conflict with the contract under consideration.
- Those who -- by themselves or through affiliates -- elaborate judgements, appraisals or valuations for the solution of controversies between entities and suppliers.

This Law also establishes specific controls on public procurement procedures through the intervention of the General Comptroller in any part of the process. All documents and information related to any procurement procedure are kept for a period of five years.

d) Disclosure policy

Disclosure of personal information (declaration of personal assets, financial interests) is required from elected officials, senior public servants and all other public servants. Disclosure requirements are more rigorous concerning spouses' assets. The following information is required to be disclosed on an annual basis and when joining or leaving the public **service**:

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

The disclosed information is confidential and is used only by a competent court order to determine illicit enrichment.

e) Procedures to report misconduct/suspected corruption

Legal provisions define the procedure for exposing wrongdoing. There is no protection/safeguard available to public servants who expose wrongdoing. For the public, special procedures are available, such as complaint procedures, help desk, telephone line and internal control offices to expose wrongdoing committed by public servants.

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

In general terms, several internal control methods are related to ethics and are oriented to control financial and budgeting activities, human resources management and management in general. They are based on reports, questionnaires and/or auditing. Internal control supports corruption prevention efforts by enabling management to detect irregularities, identifying procedural problems and providing specific recommendations. Both general and specific guidelines from the reports produced through the permanent control programmes are used in the formulation of policies to prevent misconduct by public servants. The follow-up mechanisms used are those related to specific audit cases and areas of permanent monitoring programmes. Internal control is required by law and by general policy. In principle, it is constant.

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

The disciplinary procedures are defined in articles 49 to 78 of the Federal Law of Responsibilities of Public Servants. The administrative sanctions range from private or public summons, private or public admonishment, suspension, destitution, and economic sanction to temporary disqualification from holding employment or a commission in the public service.

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

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

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

The Federal Law of Responsibilities of Public Servants establishes these bodies functions and places responsibility with the Ministry of Comptrollership and Administrative Development (SECODAM). The Minister of Comptrollership or head of this department is responsible to the President of the Republic.

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

- “*Procuraduria General de la Republica*” (PGR)
- “*Procuraduria General del Distrito Federal*” (PGDF)
- State *Procuradurias*, through their various branches (equivalent of the Attorney General’s offices in other countries)

The heads of these bodies are accountable, respectively, to the President of the Republic, the Governor of Mexico City and each of the governors of the 31 states. The PGR has over 16,000 staff members, the PGDF has about 10,000. Only the *Procuradurias* are empowered to bring directly suspected cases of corruption before a court.

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

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

The Chamber of Deputies undertakes an annual revision of the public budget. If the Chamber of Deputies does not approve the budget, it does not become effective and the previously authorised budget remains valid. The annual external audit (by an independent organisation reporting to an elected body such as Parliament) covers financial and managerial areas. External audit reports are published routinely.

VI. Co-ordination and self-assessment

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

The Ministry of Comptrollership and Administrative Development (SECODAM), a department of state defined by legislation with over 2000 employees and officials, is assigned to co-ordinate and manage the implementation of the government ethics policy. The SECODAM provides an annual report to the government on the state of ethics in the public service.

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

- Analysing systemic failures, trends in criminal and disciplinary cases.
- Providing national guidance and/or a checklist to develop prevention strategies in organisations.
- Assigning a central office responsible for oversight of all ethics-related measures, including ensuring the consistency of legal regulations.

A national ethics strategy as well as a national corruption prevention plan has been developed. These are declared in administrative documents such as the National Plan of Development 1995-2000 and the Programme of Modernisation of the Public Administration 1995-2000. Further sources are the Federal Law of Responsibilities of Public Servants and the Law of Acquisitions and Public Works. This strategy requires diagnosis, citizen participation, administrative decentralisation and evaluation of public management and ethical behaviour of civil servants at the organisational level, all of which are supervised by the Ministry of Comptrollership and Administrative Development. Non-governmental organisations were not involved in the preparation and implementation of ethics policy.

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

All administrative units in the federal administration must submit reports on progress made under the Programme of Modernisation of the Public Administration, at least every six months. Measures considered as successful instruments for corruption prevention are auditing, inspections and evaluations, all of which give similar results. New information technologies are currently being used to systematise public services. For example the Ministry of Comptrollership used the Internet while developing the *Compranet* system which is intended to publish bids or tendering procedures for selling goods or effecting services to the government. This system is based on the Internet and gives details of every step up to the granting of a contract, plus a special procedure to follow in cases of complaint by any of the participants.

Major impediments to further reducing corruption in the public service include: the level of salaries, promotion practices, and the lack of career stability in the public service (a law to establish a career civil service is under consideration).

THE NETHERLANDS

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

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

- Privatisation and decentralisation of tasks formerly provided by central government.
- More contacts between the public administration and the private sector.
- Increasing complexity of the concept of ministerial responsibility.
- Increasing individualisation, loyalty to organisations or other groups has become less self-evident.
- Nowadays, working for the public administration is perceived to be a job like any other, while it used to be considered a job (if not a vocation) for life.

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

- In 1994, the Minister of the Interior and Kingdom Relations published the **document** “Integrity in the public sector: **a systematic development of preventive integrity policies**”. This document served as an important impulse for the ministries to develop preventive integrity policies.
- In 1996, the Lower House of the Parliament adopted a motion, asking the government to take certain **institutional measures** to protect the integrity of public administration. The motion concerned the following elements:
 - Work outside the public service.
 - The receipt of gifts and benefits.
 - Procedures for reporting misconduct and suspected corruption.
 - Job rotation for positions susceptible to corruption.
 - The appointment of a confidential officer.
- In 1996, the Minister of the Interior and Kingdom Relations developed a **method** that can be used by organisations at all levels of public administration, to investigate their vulnerability to violations of the integrity. Under certain conditions, the National Security Service (*BVD*), which is part of the Ministry of the Interior and Kingdom Relations, can support the use of this method. This method is still in use.
- In 1996, the Ministry of the Interior and Kingdom Relations established a **unit** within the National Security Service, where citizens can **report suspected violations** of integrity by civil servants or by public authorities.
- In 1998, an **evaluation study** revealed that almost all ministries had made arrangements or policies with regard to all the elements of the motion mentioned above.
- At the end of 1999, following several discussions in Parliament, the Minister of the Interior and Kingdom Relations published a document with **new integrity measures**, including:

- Internal financial disclosure.
- Public disclosure of outside positions.
- Whistleblowing.

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

More **changes** are planned **in the legal framework** to:

- **Tighten** the anti-corruption regulations in the Penal Code.
- Provide a statutory basis for regulations on financial **disclosure**, disclosure of work outside the public service and whistleblowing. First, the Civil Service Act (*Ambtenarenwet*) will be amended, relating to both central and local government. These regulations for the public service will be elaborated later in the General Civil Service Regulations (*Algemeen Rijksambtenarenreglement, ARAR*).
- Include **core values** in the new, modernised Civil Service Act.
- Provide for the possibility to detect and disqualify or suspend companies found guilty of corruption, from future tenders and bids (Bill on Promotion of Incorruptible Decision-Making in the Public Service, *BIBOB*). In order to prevent the public administration from unintentionally facilitating criminal activities, it should **assess** the integrity of individual persons, organisations or companies when they apply for grants or for certain licences, or when they submit a tender for a governmental order to deliver goods or services. The *BIBOB*-bill, which has recently been sent to Parliament for approval, provides for an instrument that can be used for such an assessment by national and local authorities. Dependent on the outcome of the assessment, a grant or a licence can be refused or cancelled. The bill also establishes the **Probity Screening Agency** that is to give advice, on request, to administrative authorities whether or not there exists a danger of the criminal misuse of a grant or a licence.

Assessment of the measures in place include:

- The evaluation of integrity policies of the ministries.
- The Ministry of Finance will carry out a study with regard to the possibilities of giving departmental accountants' offices a role in the control of the carrying out of integrity measures.

Together with the Union of Dutch Local Authorities, the Minister of the Interior and Kingdom Relations will promote the realisation of integrity policies **at local level**.

II. Core values for the public service

a) Stating core values for the public service

Core values are stated in legal or quasi-legal documents and brochures published by ministries. The legal provisions:

- Prescribe that administrations shall act in an impartial way (General Administrative Act, *AWB*)
- Require the internal disclosure of outside positions and prohibit certain outside jobs (Civil Service Act, *Ambtenarenwet*).

- State that a public servant shall behave as can be expected of a good public servant (General Civil Service Regulations, *ARAR*).

Oath or affirmation of office forms also contain core values with respect to the use of confidential information. Further sources of values are quasi-legal documents, such as guidelines for the whole central public service provided by the Minister of the Interior and Kingdom Relations and codes of conduct of individual ministries stating core values for their own employees. In general, these codes consist of the same values throughout the whole central public service, namely integrity, reliability, legality, equality, due caution, respect, honesty, probity and openness. Finally, core values are mentioned in brochures of the Ministry of the Interior and Kingdom Relations and of individual ministries.

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

The following means are used:

- Core values are automatically provided when someone joins the public service.
- The statement of core values is part of the employment contract/document.
- Core values, after revision, are distributed to all public servants.
- Instruments of new technology such as Internet communicate core values.

III. Standards of behaviour for the public service

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

Similarly to the core values, the standards of behaviour expected of public servants are stated by laws (Civil Service Act, *Ambtenarenwet*; General Civil Service Regulations, *ARAR*; General Administrative Act, *AWB*), guidelines, oath or affirmation of office forms and information brochures. In addition many public organisations developed codes of conduct to give specific standards relating to the type of work done by these organisations. The above-mentioned documents cover the following issues:

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

In addition to the general standards applicable to all public servants, the Ministry of Economic Affairs and the Ministry of Finance have developed **additional requirements** for specific public servants working in the financial sector. Moreover, there are specific guidelines relating to contacts between public servants and the Parliament and to the treatment of confidential information. **Minimum standards** of behaviour for the public service are stated in the legislation, including the Civil Service Act (*AW*), General Civil Service Regulations (*ARAR*), the General Administrative Act (*AWB*) and the Penal Code.

b) Unacceptable conduct for public officials according to the law

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

- Active, passive, direct, indirect and attempted corruption of public officials and corruption committed by public officials.
- Partiality in official decision-making.

Further prohibitions and restrictions imposed on public servants by the Civil Service Act and the General Civil Service Regulations include the following:

- It is prohibited for public servants to take part in the supply of goods and services to public administrations, unless the competent authority approves this.
- It is prohibited for public servants to accept gifts, benefits or promises in the exercise of their work, unless the competent authority approves this.
- It is prohibited for public servants to accept bribes.

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

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

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies and publishing vacant positions.
- Taking ethical considerations into account in the recruitment process. The General Civil Service Regulations (ARAR) oblige every person who joins the central government to take the oath or make an affirmation of office. This offers a good opportunity for the employer to stress the need for integrity in the civil service.
- Considering ethical behaviour in the performance appraisal.

The following types of **examinations** could check the vulnerability of the candidates before their entry into the central public service:

- A **security clearance** issued by the Dutch Security Service is needed if the position represents a potential risk to the national security or other important national interests (a position involving confidentiality). The security clearance will not be issued if the investigation by the Dutch Security Service indicates that there are insufficient guarantees that the applicant for the position will “under all circumstances faithfully carry out the duties ensuing from the position”.
- An **examination of a person’s antecedents** would be needed for positions that call for specific high standards of integrity or responsibility. A minister can decide about the need for that examination which would be carried out by the Ministry of Justice and involves a check of the extract from the criminal records.
- A **certificate of good behaviour** can be required for other jobs than the above-mentioned positions in the central public service. The Mayor of the town where the applicant has residence supplies

this certificate. For his/her examination, the Mayor can for instance draw on the extract from the criminal records and data from police records.

Special attention is given to civil servants in positions particularly susceptible to corruption, where measures like financial disclosure – for those working in the financial sector – and job rotation are used, for instance in the tax administration.

b) Informing and training public servants on ethics issues

Training is the responsibility of individual ministries, provinces and municipalities. Training, workshops and round tables on integrity issues are organised across the levels within the organisations. The aim is to raise awareness of integrity issues and improve the skills for ethical judgement in management. In addition, the method developed to detect areas vulnerable to integrity violations in the public administration is an instrument to further increase employees' awareness regarding their own role in identifying vulnerabilities and safeguarding integrity.

Public servants facing work-related ethical problems or dilemmas can raise these issues in contacting their superior. In addition, all ministries have appointed one or more **integrity confidential officers**. The role of these officers differs among ministries, but mostly they provide advice and guidance. The role of the ministerial confidential officers will be evaluated in year 2000.

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

These include:

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

d) Disclosure policy

All civil servants have to disclose to their managers any **outside positions** that have a relationship to their work. Public servants judge themselves if they are to disclose the outside positions to their manager or not. The manager prohibits this outside position for the civil servant concerned if the outside job conflicts with the position in the public service or is harmful for the public service as a whole. In the coming years, the Civil Service Act will be amended in such a way that it will be possible to make public the internally disclosed outside positions of certain groups of civil servants, for instance those of the top civil servants.

In addition, the Civil Service Act will be amended to provide a statutory basis for regulations on internal financial disclosure. After the revision of the Civil Service Act, each minister will have to decide for his/her own ministry those public servants who are obliged to disclose internally their financial assets.

This internal financial disclosure will only be required from certain specific groups in the civil service. Currently, the Ministry of Economic Affairs and the Ministry of Finance already have financial disclosure regulations for certain groups of public servants.

The following information is required to be disclosed on an annual basis, when joining the public service and when relevant circumstances change:

- Outside positions (all civil servants).
- Gifts (all civil servants).
- Assets and liabilities (specific groups of civil servants).

e) Procedures to report misconduct and suspected corruption

In the case of criminal offence, civil servants are obliged to inform the public prosecutor according to the Criminal Procedures Code (*Wetboek van Strafvordering*). The General Administrative Act (AWB) provides the right for a civil servant who is confronted with disciplinary measures to make an objection against this decision. A legal protection provision will be incorporated in the General Civil Service Regulations (ARAR).

Moreover, **whistleblowing** policies are being developed in the Dutch public service. The Civil Service Act (*Ambtenarenwet*) and the General Civil Service Regulations (ARAR) will be amended accordingly to provide the necessary legal framework for whistleblowing. The proposed legislation sets out the procedures to be followed in order to ensure that abuse or presumed abuse are adequately dealt with the organisation: when a civil servant notices an abuse or presumes that there might be an abuse, the proper way to raise this matter is through his/her superior. Additionally, the civil servant has the possibility to inform the departmental integrity confidential officer. The superior has to ensure that the highest administrative hierarchical level of the ministry -- secretary general, deputy secretary general – or the minister is informed. Only when the civil servant has followed the internal procedure, and is of the opinion that the highest level management of the ministry has not taken adequate measures against the abuse or presumed abuse, he/she may – only in certain very serious cases – request the external Commission on Integrity in the Civil Service (*Commissie Integriteit Rijksoverheid*) to investigate the matter. This independent commission will advise the minister concerned.

A citizen confronted with wrongdoing by public servants can turn to the National Security Service (BVD). This institution protects the reporting citizen by guaranteeing full anonymity. Its main purpose is to help detect and neutralise wrongdoing by public servants and/or authorities. The National Security Service investigates major cases that are reported. In many of the other cases, citizens who report wrongdoing will be introduced to another competent investigation service or their information will be forwarded to such a service. Other options for citizens are the National Ombudsman and the Commission of appeal of the Parliament. Finally, according to the General Administrative Act (AWB), a citizen who disagrees with a decision made by a public servant on behalf of the minister can turn to the Administrative Judge.

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

The Government Audit Policy Department (DAR) of the Ministry of Finance has recently carried out a study among the audit departments of the ministries. One of the conclusions of this study was that internal control supports financial integrity within the Dutch ministries. Internal control measures support corruption prevention methods, for example through the detection of areas of risk and the revelation of individual cases of corruption or fraud. The audit staff of the ministries perform internal control reviews during the year; their frequency depends upon the risks and the financial amounts involved. The

Parliament, ministers and the management of the departments have access to the reports of the reviews. The audit departments of the ministries assess whether recommendations have had adequate follow-up actions. The Minister of the Interior and Kingdom Relations has developed a method that can be used by ministries to investigate their vulnerability to violations of integrity.

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

The disciplinary process, including the range of sanctions available, are contained in the General Civil Service Regulations (ARAR). The disciplinary sanctions range from reprimand, financial penalties, and reduction of holidays to dismissal.

V. Scrutinising misconduct in the public service

The National Police Investigation Service (*Rijksrecherche*) operates with jurisdiction over the whole public service. Other **investigative** organisations involved in anti-corruption efforts also perform independent scrutiny of the administration, these include:

- The National Security Service (*BVD*), under the authority of the Minister of the Interior and Kingdom Relations. Citizens can turn to a specialised unit within the National Security Service if they are aware of or suspect violations of integrity by civil servants or by public authorities.
- The Public Prosecutor's Office (*Openbaar Ministerie*) of the Ministry of Justice which is also in charge of **prosecuting** misconduct in the public service.
- The National Audit Office (*AR*) conducts external audit covering all parts of the public service and gives its opinion on the financial state of central government (and sometimes that of independent public institutions). The reports of the National Audit Office are published routinely: each year on central government level and during the year on specific issues.
- The National Ombudsman.
- Parliamentary fact-finding commission, that can be established in special cases.
- The Commission on Integrity in the Civil Service (*Commissie Integriteit Rijksoverheid, CIR*) is planned to be set up in the near future. When a civil servant is of the opinion that the management of the ministry has not taken adequate measures with respect to his/her reporting of abuse or presumed abuse, he/she may – in certain cases – request the external Commission on Integrity in the Civil Service to investigate the matter. This independent commission will then advise the minister concerned.

VI. Co-ordination and self-assessment

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

The Minister of the Interior and Kingdom Relations is responsible for integrity policy in the central public service. This task mainly concerns legislation on integrity issues, providing the ministries with guidelines for the implementation of centrally developed integrity policies and analysing systemic failures, trends in criminal and disciplinary cases. The minister also reports to the Parliament, at least twice a year in

practice, on the state of integrity in the public service. The implementation of integrity policy however, is largely decentralised to individual ministries. In the Ministry of the Interior and Kingdom Relations, no special unit is assigned to co-ordinate and manage the implementation of the government ethics policy. One of the ways to ensure consistency of government efforts, is to put integrity policies and results of periodic policy-evaluations on the agenda of the Council of Ministers, which can decide on new integrity measures and policies.

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

A general evaluation of integrity policy in the public service is scheduled for year 2000. The Ministry of Finance is currently examining the possibility of enhancing the involvement of the departmental accounting offices in assessing the extent to which integrity policies are carried out within the ministries.

NEW ZEALAND

I. The general context for managing ethics in the public service in New Zealand

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

The relative fragmentation of the State sector since the mid-1990s through re-structuring, devolution of responsibility for employment, and greater autonomy at agency level, has meant that processes for acculturation and socialisation (concerning awareness and understanding of principles, conventions, and practice, including ethical values and standards) are not uniform or consistent. During the past 10 years there has been much greater activity at the interface between the public and private sectors, through contracting out, consultancy work, and partnership arrangements, leading to the importation of private sector analogues, and an emphasis on business values and standards.

The reforms of the past 10-15 years have sharpened the distinctions between the role of ministers of the Crown, and the role of chief executives of departments. The application of contract-like instruments has contributed to a reinterpretation of the notion of ministerial accountability, and some reordering of values. At the political level, with changes to the electoral process and an increase in the number of parliamentarians, there has been apparent change in the relationship between citizens and their elected representatives, leading to the not uncommon observation that standards of conduct in public life (and ethical values and standards) have “fallen”. However, the importance of leadership and modelling at the political level for the maintenance of ethical values and standards in public management is generally recognised in New Zealand.

So, the issues relate to:

- Competition between “traditional” public service values and “new public management” ones.
- Absorbing new values, and new ways of working, through heightened interaction with the private sector.
- Changes in the understanding of accountability and responsibility.
- A perceived absence of strong leadership and modelling at the political level.
- Fragmentation of the core public service, with a consequent lessening of “control” in the maintenance of standards.

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

By and large the reforms were concentrated on improving efficiency, effectiveness, and accountability. They were not motivated by a particular concern with any loss of integrity in the public service as a whole, or by breaches of ethical standards. Any loss in confidence and trust related more to matters of competence, than to matters of stewardship, honesty, or trustworthiness.

The measures that have been employed to sustain ethical conduct (initiated at a central agency level) have related to:

- Pre-emptive controls — codes of conduct, communication of expectations (of standards of conduct).
- Integrative controls — incorporation of standards into performance management instruments, promulgation of guidance material, etc.
- Diagnostic controls — evaluation of chief executive performance, and departmental performance assessment (particularly in matters of organisational integrity), and occasional reviews and audits.
- Interactive controls — incorporation of ethics-related content into conferences, leadership initiatives (such as public statements), and encouragement of dialogue across departmental boundaries.

c) Plans in preparation to address ethical issues in the public service of New Zealand

These include:

- The use of an ethics framework to help determine where and how efforts should be directed.
- Re-publication of guidance material.
- Refinement of audit and evaluation methodology.

II. Core values for the public service

a) Stating core values for the public service

There is no single document that contains a succinct statement of core public service values. In most cases the values are implied, or expressed through principles (as, for instance, in the Public Service Vision Statement, or in the Public Service Code of Conduct).

The set of “core values” or of commonly held beliefs are concerned with:

- Justice and fairness.
- Responsibility and integrity.
- Openness and accountability.
- Efficiency and effectiveness.
- Stewardship and guardianship.

Put another way, they may be expressed as honesty, reciprocity, and fairness.

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

Core public service values are not communicated generally in any centralised or systematic manner. Nor do departments necessarily have planned induction programmes that incorporate statements of “core” public service values, or ongoing education and training programmes to communicate and reinforce “core” public service values (as distinct from departmental-specific values), though some of them do.

III. Standards of behaviour for the public service

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

There are statements of expectations (of standards of conduct) for chief executives and statements of expectations of performance by departments. A Public Service Code of Conduct (setting minimum standards of conduct) applies to all employees of the core public service. An elaboration of these expectations is expressed in the Principles, Conventions and Practice Guidance Series (first published by the State Services Commission in 1995), a reference work for all public servants. Chief executives of government departments have responsibility for setting standards for their own employees, for issuing departmental codes of conduct, standard setting, discipline, and generally setting the tone to suit the nature of the department's business.

In most cases, these expectations specifically cover the following points:

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

There is a general code of minimum standards (the Public Service Code of Conduct), and guidance material (Principles, Conventions and Practice Guidance Series), and from time to time attention may be focused on specific issues, such as frequent aeroplane flyer bonus points but departments issue their own guidelines (about expected standards of conduct) and directions to staff.

There is no special guidance for public servants and political leaders working at the political/administrative interface, but the Cabinet Office Manual (issued and maintained by the Cabinet Office) provides a basis for such guidance, and the Principles, Conventions and Practice Guidance Series also serves as a reference in this area.

b) Unacceptable conduct for public officials according to the law

Apart from the normal criminal codes, the only offences that apply specifically to all public officials are contained in the Crimes Act 1961. These relate to:

- Judicial corruption (s.100).
- Bribery of a judicial officer (s.101).
- Corruption and bribery of a minister of the Crown (s.102).
- Corruption and bribery of a member of Parliament (s.103).
- Corruption and bribery of a law enforcement officer (s.104)
- Corruption and bribery of an official (s.105)
- Corrupt use of official information (s.105a)
- Use or disclosure of personal information disclosed in breach of s.105A (s.105B)

Corruption includes active, passive, direct, indirect and attempted corruption. The Public Finance Act 1989 (s.76) and the Public Finance Act 1977 (s.109) contain offence provisions related to the proper use of and management of public money. Some departmental officers (for instance, in the areas of inland revenue, defence, corrections, customs, and police) are subject to particular statutes.

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

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

These include:

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

It is not possible to specify how, or whether, ethical considerations are taken into account in the recruitment or the promotion processes. In the areas of police, customs, debt management, border control, and so forth, **special attention** is given to measures to avoid corruption and any possibility of corrupt practices developing.

b) Informing and training public servants on ethics issues

Some departments have induction programmes, but training and education on matters of ethics and ethics issues are mostly informal. Communication and transmission of public service ethical values and standards (as distinct from business-oriented values and standards) is rarely compulsory and not generalised. The tendency is for any attention in this area to be directed toward avoiding undesirable behaviour, rather than promoting desired behaviour. More attention is now being given to active promotion following some recent high public profile concerns.

The kind of guidance, advice, counselling or consultation available to public servants to resolve their work-related ethical problems and dilemmas varies. Mostly it involves reference to in-house persons (managers, legal staff and human resources personnel) for assistance. There are no designated ethics officers. Some organisations have help desk lines, but this is an exception rather than a rule. The State Services Commission is sometimes called on to provide advice, counselling, or guidance on ethics issues.

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

These include:

- Identification and reporting of conflict of interest situations, especially in areas of financial management, post public employment, receiving gifts or benefits such as fees, payments and entertainment.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.

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

There is no uniform or centrally driven promotional effort. Each department is free to develop its own ways of transmitting organisational values and standards and building organisational culture. The socialisation processes (including education and training) vary from department to department, and linkages between ethical conduct and performance management are sometimes not explicit. Because human resources management is the prerogative of departments, there is considerable variation in method and approach throughout the public service.

d) Disclosure policy

There is no requirement for all public employees to complete a declaration or make a statement of interests, pecuniary or otherwise. However, there is a responsibility (implied or otherwise) for employees to declare actual, potential or apparent conflicts of interest in a given situation. In some cases - such as for chief executives, very senior managers within the public service, and specialist occupations (e.g. debt management, contract management, etc.) - there is a requirement to make declarations of interest.

Ministers of the Crown are required to make annual declarations in a register of interests. Where a conflict may arise, all members of Parliament are expected to declare private and personal interests (make a public statement, or withdraw from debate or voting).

e) Procedures to report misconduct/suspected corruption

Internal rules define the procedure within each organisation across the public service. There is no whistleblower protection law for public servants who expose wrongdoing as such, but the principle of action in the public interest - as incorporated in employment law - provides protection against recrimination, victimisation, etc. **For the public**, special procedures are available to expose wrongdoing committed by public servants, including complaint procedures (specific to each department, rather than general), ombudsman, help desk and telephone line (in some cases only).

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

Internal control is in place to support the improvement of ethical conduct in the public service to a limited extent. The reinforcement of organisational culture - through codes, guidance material, leadership, modelling, example-setting, etc. - is the main internal control. Critics have suggested that many controls are directed at institutionalising norms rather than internalising them. Structure, division of responsibility, internal checks and audits, external reporting and external audits, and accounting systems all support the proper use of public resources and the management of public funds.

Internal control is required by general policy. Internal control reviews are made regularly and the reports of the reviews are available to the public. Follow-up mechanisms to implement recommended measures for systemic improvements are required through assessments and reviews (including self-reviews) by a central agency, by reports to a responsible minister, and more publicly through parliamentary committees.

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

Disciplinary measures range from reprimand to dismissal or disqualification from public office. The sources of these measures are legislation and agency documents. Legal redress is available to challenge the employer's decision.

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

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

- Central agencies, such as State Services Commission.
- The Auditor-General.
- The Serious Fraud Office.
- Police.
- Special bodies (such as commissions of inquiry) to investigate allegations of corruption or misuse of public office.

Principal bodies in place **prosecuting** misconduct and corruption in the public service:

- Serious Fraud Office.
- Police.

When they have established a prima facie case, certain investigative and/or prosecuting bodies are empowered to bring suspected cases of corruption directly to court.

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

These include:

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

The areas covered by external audit (audit by an independent organisation reporting to elected bodies such as Parliament) include the following: compliance and performance, accounting standards, financial reporting, management systems, matters of integrity, etc. External audits are made at least annually, and external audit reports are published routinely.

VI. Co-ordination and self-assessment

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

There is no institution assigned to co-ordinate and manage the implementation of the government ethics policy.

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

Agreed expectations and standards are assessed routinely as part of a wider assessment of departmental performance. This assessment is conducted by the State Services Commission and covers matters of organisational integrity. The assessment is not particularly concerned with individual conduct, which is a responsibility of each departmental chief executive. The frequency of assessments varies.

The New Zealand Public Service enjoys a low level of incidences of corruption. However, it is not possible to ascertain what influences are the most effective in maintaining relatively high levels of responsibility among public employees.

The increased autonomy of departments, greater decentralisation and devolution, and reliance on private sector partnerships and involvement (through contracting out and so forth) are factors which may place some strain on the low level of corruption in the public service.

NORWAY

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

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

- Allegations of "political appointments" to public offices (i.e. appointments made by the party in power) on the basis of political affiliations, often contrary to the nominations made by the public administration).
- The return to civil service positions of officials after serving in political positions (especially Minister or State Secretary) and the employment by private companies or organisations of former civil servants with key knowledge to the prejudice of the public interest.
- Lack of transparency: insufficient disclosure of documents.

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

Norway ratified the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on 18 December 1998. This convention has been implemented into Norwegian law by extending the already existing provisions in the General Civil Penal Code regarding bribery of public officials to also include bribery of foreign public officials and agents of foreign public enterprises.

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

With regard to the second point under I.a. above, there are plans to propose some restrictions, but at this point it is somewhat unclear what they will be. Although nothing is decided yet, they are not expected to be very far-reaching or drastic. In a more general way, there are plans to build an ethics infrastructure in line with the OECD Recommendation of 1998, and to develop a training programme for ethical problem solving.

II. Core values for the public service

a) Stating core values for the public service

The following values are listed in legal literature on administrative law and, on this basis, in an official report published in 1993 on public service ethics:

- Welfare and growth.

- Freedom.
- Equality and justice.
- Co-determination and co-influence.
- Security under the law.
- Efficiency.

In addition, the following set of values is found in a number of official documents, such as various kinds of official reports:

- Loyalty.
- Impartiality.
- Factuality/objectivity.
- Transparency.
- Legality.

As indicated above, the core values for the Norwegian public service are not expressly stated in legislation or quasi-legislation (regulations, codes of conduct, etc.), although the purpose of administrative legislation is often to promote or safeguard such values. The core values are taken for granted and referred to in various kinds of official documents (reports from the ministries to Parliament, annual reports of the Ombudsman, etc., and also in the background documents pertaining to legislation). Some directorates have issued value statements that are distributed among employees and to the public.

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

The following forms are used:

- Core values are automatically provided when someone joins the public service.
- They are provided when someone takes up a position in a different public service organisation.

Core values are normally communicated in these two ways, but there is no uniform way of doing so. Values are communicated in connection with various forms of training (induction training and other training), but usually in a cursory or *ad hoc* manner, i.e. there is seldom a special session devoted to values.

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

The Public Service Ethics Report of 1993 does not involve any revision in respect of core public service values. The report quotes a standard textbook on administrative law which lists and elaborates the values that the public service is expected to promote (see Section II.a. above). The list is not exhaustive, and the report emphasises that "it is not possible to provide a complete survey of the norms, objectives and values that can be associated with administrative activities". However, the report does touch upon some of the generally recognised public service values besides those mentioned above.

III. Standards of behaviour for the public service

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

Standards of behaviour expected of public servants are generally stated as requirements in the relevant legislation, regulations, circulars or other documents stressing or amplifying the following points:

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

Certain **minimum standards of behaviour** for the whole public service are laid down in the Public Administration Act (10 February 1967) relating to procedure in cases concerning the public administration.

Furthermore, there are **specific guidelines/requirements** for some groups, e.g. public procurement officials, tax and customs officials and health personnel. The Public Procurement Act of 1992 (which is currently being revised) is a codification of requirements of the Agreement on the European Economic Area regarding public procurement. In addition, there are various kinds of regulations containing ethical guidelines for central government procurement (whereas the Public Procurement Act applies to all public procurement). The Civil Service Act (Section 23) contains a legal basis for government agencies to lay down more specific rules in the form of regulations when needed. Such regulations are in place for the tax and customs officials. In addition to the legal provisions, the customs service has a set of ethical guidelines which is incorporated into a textbook that is used for training customs officials. For medical practitioners there is the Act of 1980 Relating to Medical Practitioners, and a new Act Relating to Health Personnel was recently passed in Parliament and is expected to enter into force in early 2001 (because extensive regulations must first be implemented).

b) Unacceptable conduct for public officials according to the law

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

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

Moreover, the Civil Service Act (4 March 1983) provides the legal framework for the employment of civil servants - appointed by a ministry, agency or other body - and senior civil servants – appointed by the King-. The Act lays down a number of non-criminal sanctions that apply to misconduct that is not classified as a criminal offence.

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

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

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.

- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.
- Taking ethical considerations into account in the recruitment process: certain virtues or qualities of candidates (e.g. teamwork spirit/co-operative attitude) regularly enter into the total assessment of their suitability for a position.
- Considering ethical behaviour in the performance appraisal. For example, Norway has a pay system for senior managers based on a performance appraisal that includes an interview every year, where ethical behaviour *may* be included, although it is not a compulsory part, and probably not very often made a part of the interview.

Special attention is given to officials in positions particularly susceptible to corruption in the areas of public procurement and tax administration:

- With regard to public procurement, the individual agency may give specific rules or guidelines regarding procurement beyond what is mentioned under III.a) above. This is done by many agencies, especially the larger ones with considerable costs involved. The Ministry of Labour and Government Administration is currently working on a common governmental policy regarding public procurement that will also include ethical guidelines.
- There are also specific regulations relating to tax officials aimed at avoiding corruption.

b) Informing and training public servants on ethics issues

As indicated above under II.b), public service core values are sometimes taught when people join the public service and when they take up a different position. Besides, ethics is a topic in some management training courses. As of today, there is no centrally organised or implemented ethics training, information or counselling. The Civil Service Handbook lays down that each agency (ministry or subordinate agency) is responsible for carrying out systematic development work aimed at strengthening the ethical consciousness and good administrative practice within its sphere of responsibility. However, it is not known to what extent this is done in each and every agency. The Directorate of Public Management (*Statskonsult*) offers an ethics course that agencies or individual civil servants may sign up for on a voluntary basis. Some agencies arrange their own ethics seminars or workshops, using their own personnel or external trainers or consultants. It is possible, however, that ethics work is not carried out fully to the extent that the Civil Service Handbook requires.

There is no specific central institution (office or the like) responsible for guidance, advice, counselling or consultation to help public servants resolve their work-related ethical problems and dilemmas. In line with the above-mentioned requirement in the Civil Service Handbook and in other relevant documents, it is considered a managerial responsibility to address ethical problems of this kind. Since public service ethics in general terms is the responsibility of the Ministry of Labour and Government Administration, this ministry has some responsibility for equipping managers to carry out their responsibility in the ethics field. In order to help the managers, the Ministry plans to build an ethics infrastructure and develop a training programme for ethical problem-solving.

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

These include:

- Identification and reporting of conflict of interest situations, especially in areas of receiving gifts or benefits such as fees, payments, entertainment.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness for responding to requests.
- Anti-corruption provisions in bids for public contract (e.g. companies found guilty of corruption are disqualified/suspended from future tenders/bids).
- Specific controls on public procurement procedures.

d) *Disclosure policy*

Disclosure of personal information (declaration of personal assets, financial interests) is required from public procurement and tax officials. The following information is required to be disclosed when these officials join the public service or when their relevant circumstances change:

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

The disclosed information is confidential; only the employer has access to it. The main purpose is to avoid conflicts of interest and detect illicit enrichment.

e) *Procedures to report misconduct/suspected corruption*

There is no special procedure or obligation for public servants to report misconduct or suspected corruption committed by public servants. Public servants who expose wrongdoing have no right to protection, but they may be granted anonymity pursuant to provisions in the Public Administration Act of 1967 and the Freedom of Information Act of 1970.

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

There is no specific institution within the Norwegian public service responsible for supporting the improvement of ethical conduct in the public service. However, Norway does have ordinary management control and financial control.

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

The following disciplinary measures are used in the public service:

- Written reprimand.
- Loss of seniority for a period from one month to two years.
- Demotion to a lower grade (permanently or temporarily).
- Summary discharge.
- Dismissal.

The disciplinary procedures are regulated by the Civil Service Act of 1983. Legal redress is available, firstly, in the form of appeal to the ministry concerned, or to the King in Council when the decision regarding the disciplinary measure was made by the ministry. The civil servants and senior civil servants may take the decision to court and the court will decide on the legality of the appeal body's decision.

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

The investigation and prosecution of corruption follow the rules generally applicable to criminal investigation and prosecution. The prosecuting authority is independent of the Government and Parliament, and has powers to initiate, suspend and terminate an investigation or prosecution. An investigation can be initiated where there are reasonable grounds to inquire whether a crime has been committed, and will normally be terminated or suspended where there is a lack of sufficient proof to indict.

Norway gives corruption high priority, and it is likely that cases related to corruption will be investigated and prosecuted on a case by case basis. The anti-corruption unit at ØKOKRIM (the National Authority for Investigation and Prosecution of Economic and Environmental Crime) consists of special investigators and a senior public official who are specialists in the field of international corruption.

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

These include:

- Parliament/Parliamentary committee.
- Independent/external auditors reporting to elected bodies such as Parliament.
- Ombudsman.
- Courts for judicial review: the National Insurance Court for national insurance cases.
- Directorate of Public Management.

Audits by the Office of the Auditor General cover both financial management - on an annual basis - and performance management on an *ad hoc* basis. The reports of the Office of the Auditor General are published routinely.

VI. Co-ordination and self-assessment

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

The Ministry of Labour and Government Administration is the central organisation responsible for co-ordinating and managing the government ethics policy. As indicated above, Norway gives a high priority to combating corruption and the establishment of ØKOKRIM (see above under V. a.) in 1989 bears witness to this. The Director General of Public Prosecutions has determined that corruption cases be given a high priority. Norway's measures in the ethics and anti-corruption fields are not so formalised and systematic. Norway has not developed a national corruption prevention plan/strategy in the sense of a wider government policy on anti-corruption.

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

There is no special procedure in place for assessing the effectiveness of measures promoting ethical conduct and preventing misconduct. Nevertheless, ØKOKRIM does examine critically its operations in connection with their corporate activity plan. Generally, corruption is not considered a major problem in the Norwegian public service and detection is regarded as the most successful instrument for corruption prevention. ØKOKRIM sees no major impediments to further reducing corruption in the public service

POLAND

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

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

In 1989, Poland began making very far-reaching changes to the political system. The introduction of democratic and market-oriented reforms and the decentralisation of State authority through the establishment of self-government made administrative tasks more difficult compared with the previous system. New phenomena have emerged in Poland such as unemployment, poverty, change in property ownership, economic restructuring, inefficiency and the necessity to reform social welfare, health care and its related social insurance system, the free market of goods and capital, freedom of international trade, etc. The co-ordination and completion of tasks now require that employees of public administration possess the skills to solve completely new problems. On the other hand, society focuses more and more attention on the officials who take decisions and settle the matters that should be governed by law and regulations, and who act in the public interest.

Radical changes - such as the abolition of the rules of central management, implementation of a multiparty system, development of the institutions for professional, local self-government - have put employees of public administration in Poland in a troublesome situation that is full of conflicts and for which they were not prepared.

In the discussions on public administration, such terms as “public interest”, “social justice”, “freedoms of citizens”, “public service” (civil service) are permanently used. Yet, the criteria for the establishment of new meanings for those terms have not been prepared either in legislation or in the judiciary. The activity of a public administration employee often oscillates between the requirements of four areas: law, morality, professionalism, and organisation. The requirements in those four areas often conflict in which case the public officials resolve the problems independently. Problems of loyalty, dilemmas of responsibility, conflicts of interest, requirements for transparency are still new issues for the majority of public officials. In addition, the low social prestige of public officials as a profession is the result of the communist regime period when public administration served for the party machine interest and not for the society. A further problem is the disproportion between the level of salaries in the public sector and the private sector.

In the past 18 months, the management of public affairs has been accorded special importance by the following:

- The set of values which characterise a democratic State were specified in the new Constitution of Poland (2 April 1997) which came into force on 17 October 1997.
- The set of legislation to implement the administrative reform came into force on 1 January 1999. This resulted in the devolution of certain tasks of the State for execution by the local self-

government bodies at regional (*voivodship*) and local (*poviat*) levels, following the constitutional principles of subsidiarity and social solidarity.

- The reform of systems for managing health care, social security and national education started after 1 January 1999.
- A modern and competent public administration corps is being established. Methods to achieve this include the new recruitment procedures for civil servants and assessment procedures for public officials which encourage and reward attitudes based on ethical values of a democratic society and professionalism approach according to civil service law came into force on 1 July 1999.

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

In the past ten years, the following actions were taken:

- For values defined in the Constitution (adopted on 2 April 1997): identification of basic values held by the civil service (Art. 153) and ban on combining political and administrative functions (Art. 103).
- For organisational solutions: separation of politically neutral central offices which report to Parliament and not to the Government (stated in the Constitution); specifying those positions in State administration the staffing of which is influenced by a change of the Government (Act on Organisation and Mode of Work of the Council of Ministers, 8 August 1996); appointing a Parliamentary Committee for Ethics by the *Sejm*, i.e., the lower Chamber of Parliament (*Sejm* Resolution of 17 July 1998); establishing police teams to counteract corruption in 1997; establishing an institutionalised control system at the ministry level on 1 January 1997, at the Ministry of Finance focused on fighting against misconduct of tax officials in co-operation with the public prosecutor's offices and police.
- In the sphere of **constitutional rights and freedoms of public servants**: limitations on freedom of economic activity by public officials (Act on Limitations on Engaging in Economic Activity of 25 July 1992, replaced by the Act on Limited Economic Activity of 21 August 1997); limitations on political rights (the right to go on strike, membership in political parties, manifesting political beliefs and following one's political beliefs while performing duties, all referred to in the Civil Service Act of 18 December 1998), limitations on the right to privacy (obligation to present property declarations, obligation to present information to be included into the open register of benefits, referred to in the Act on Limited Economic Activity); and limited freedom on practising a profession and pursuing professional activity including a ban on performing tasks contradictory to public service, a ban on taking up activities and tasks contradictory to public service (Civil Service Act), a ban on seeking employment for two years in units dealing with the same affairs as the office in question (Act on Limited Economic Activity), and a ban on nepotism (Local Self-government Staff Act of 22 March 1990; the Civil Service Act).
- In the sphere of administrative **procedures**: withdrawal of a civil servant during investigations which deal with his/her rights and duties, and withdrawing a given unit from an ongoing investigation, where property interests of its manager are involved (amendments to regulations dealing with withdrawing a civil servant or a unit from an ongoing administrative case, (Code of Administrative Procedures); securing impartiality and objectivity in selection of contractors for economic actions funded with public resources (Public Procurement Act, 10 June 1994).
- In the sphere of **law enforcement and penal procedures**: defining new types of acts as infringements (apart from accepting a bribe, protection fee and breach of service), namely profiting from money laundering, impeding or obstructing public tenders, abusing public trust (Penal Code, 6 June 1997); introducing into the procedure the institution of a witness incognito and a "crown" witness, a purchase and dispatch controllable by police in the course of an investigation against corruption; allowing access to information on balance and turnover records in bank accounts

owned by persons guilty of corrupt acts (Banking Law, 29 August 1997); introducing the legal protection of personal data of citizens (Personal Data Protection Act, 29 August 1998).

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

These include:

- Initiating work on the ethical code for customs services (by the Main Office of Customs).
- Initiating work on the code of ethics for employees in government administration (by the Office of Civil Service).

II. Core values for the public service

a) Stating core values for the public service

Principal civil service values are regulated by Article 153 of the Constitution (2 April 1997) and in Article 1 of the Civil Service Act (18 December 1998). They are:

- Professionalism.
- Honesty.
- Impartiality.
- Political neutrality.

Such values are phrased in other legal documents:

- Act on Employees in State Offices (16 December September 1982).
- Supreme Chamber of Control Act (23 December 1994).
- Act on Limited Economic Activity by Persons Performing Public Functions (21 August 1997).
- The Labour Code Act (26 June 1974, with later amendments), especially Part IV, Chapter II on employees' duties.
- Regulations concerning the work of the Chancellery of the *Sejm*, which constitute an Annex to Regulation no. 21 by the Head of the Chancellery of the *Sejm* (20 August 1996).

All the above regulations concern exclusively State civil servants at the central level and do not apply to local government staff. The Constitution clearly states that the values apply to the civil service corps. They do not bear the character of a declaration, nor are they included in the text of the oath spoken by persons who enter the civil service corps. The Local Self-government Staff Act (22 March 1990) requires that self-government officials comply with the law, keep State and official secrets, inform the organisations and citizens, and behave kindly and properly in the office and outside while on duty.

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

Core values are automatically provided when someone joins the public service. Before taking up employment, public servants are familiarised with the respective regulations contained in the legal acts referred to above, as well as the work regulations of the office where a given employee starts employment. In many offices (though not in all), employees must sign a declaration confirming their knowledge of regulations concerning all employees' duties, including those containing a list of ethical values. The

statement of core values is part of the employment contract/document only in the Supreme Chamber of Control (a supreme audit institution, reporting directly to Parliament). There are training courses (also training on the job) concerning core values related to employment in the public administration, as indicated in legal acts.

c) *Revisions of the statements on core public service values*

The statements on core public service values were last revised in 1994 (revision of the Supreme Chamber of Control Act), 1997 (the Constitution of the Republic of Poland) and 1996-98 (the Civil Service Act). The process of administrative reform in Poland has not been concluded yet. Since 1 January 1999, a particularly important role in the State administration system has been played by local self-government bodies, for which no official list of core values has been developed.

Taking into account the status of legal acts defining core values for public administration (the Constitution and the highest level legal Acts), the reformulation of such declarations involved Members of Parliament with some input from invited experts in different fields, including experts in ethical matters. The only way to involve the public in the process of formulating declarations on values was a common referendum on accepting or rejecting the draft of the new Constitution as a whole after it had been passed by Parliament. It is possible to say, then, that in practice no consultations with society as a whole took place in this case.

III. Standards of behaviour for the public service

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

In Poland there is no single document for all employees in the public services. Standards of behaviour for public servants are defined in three basic legal Acts, which regulate the status of employees in public administration:

- The Civil Service Act (18 December 1998).
- The Act on Employees in State Offices (16 September 1982).
- The Act on Limited Economic Activity by Persons Performing Public Functions (21 August 1997), referred to as the anti-corruption Act.

In addition, there are number of regulations dealing with particular groups of employees in the public services. They are contained in other Acts dealing with particular institutions or services (e.g., the Supreme Chamber of Control Act, the Customs Service Act, the State Security Office Act, etc.) and service support (i.e. regulations on organisation) for particular offices.

Some very general statements dealing with the issues related to ethical values are contained in the Commune Self-government Act (13 March 1990) and in the Local Self-government Staff Act (22 March 1990):

- Before assuming their responsibilities, Commune Deputies take an oath: "I solemnly swear as a Deputy to work for the benefit and well-being of the commune borough, always act in accordance with the law and interests of the commune borough and its inhabitants, honestly and with dignity represent my constituency, take proper care of their affairs and take all necessary efforts to fulfil the commune's borough tasks."
- Deputies cannot take additional employment or accept donations which might undermine their constituency's trust in their honesty while performing their duties.

- Deputies cannot engage in economic activity by themselves or jointly with other persons, use community property or manage any such activity or act as representatives or plenipotentiaries in the managing thereof; nor can they be members of managing, audit or review authorities; nor can they act as trade plenipotentiaries on behalf of companies of commercial law with participation of the commune legal persons, or economic entities, where such persons participate. Election or nomination of a Deputy to such positions of authority is illegal.
- Self-government officials are obliged to comply with the law, keep State and official secrets, inform properly the organisations and citizens, and behave kindly and properly in the office and outside while on duty.

The standards of behaviour expected of public servants cover the following points:

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

Specific guidelines/requirements (defined in service support) cover:

- Employees in State offices in management positions.
- Legal advisors (Principles of Ethics for Legal Advisors established by the National Council of Legal Advisors).
- Judges and prosecutors.
- Employees in customs services.
- State Security Office officers.
- Police officers.
- State Labour Inspection inspectors.
- Environmental Protection inspectors.
- Sanitary Control inspectors.
- Supreme Chamber of Control employees.
- Chief accountants and expert auditors.

Specific guidelines for public servants and political leaders working at the **political/administrative interface** concern persons holding top management positions (ministers and deputy ministers) and Members of Parliament (Limited Economic Activity by Persons Performing Public Functions of 21 August 1997, and Act on Performing the Parliamentary Deputies' and Senators' Duties of 9 May 1996). In addition, the State Tribunal Act (26 March 1982) allows for prosecution before the Tribunal of persons in those positions who abuse their responsibility or authority. From 1982 to 1990, the Act was not applied in practice; but after the change of the political system which occurred in 1990, the State Tribunal began to exercise its authority, and settled cases related to abuse of authority or responsibilities by ministers and officials holding top positions in administration. What is more, for some groups of employees who are not members of the civil service corps, there is an additional requirement to withdraw from party membership (e.g., the auditors).

In Poland there is no single document to cover all employees in public services. **Minimum standards of behaviour** for the public service are contained in a number of various legal Acts:

- The Civil Service Act (18 December 1998).
- The Act on Employees in State Offices (16 September 1982).

- The Act on Limited Economic Activity by Persons Performing Public Functions (21 August 1997).
- The Local Self-government Staff Act (22 March 1990).
- The Supreme Chamber of Control Act (23 December 1994).
- The Legal Advisors Act (6 July 1982). (It is different from the Principles of Ethics for Legal Advisors, which is internal regulation of the Legal Advisors Society).
- The State Security Office Act (6 June 1990)
- The Labour Code Act (26 June 1974, with later amendments), especially Part IV, Chapter II on employees' duties.
- Regulation by the Council of Ministers on the rights and duties of chief budget accountants, State budget units, State budget enterprises and supplementary domestic activity (2 May 1991).
- Regulations concerning the work of the chancellery of the *Sejm*, which constitutes an Annex to Regulation no.21 by the Head of the Chancellery of the *Sejm* (20 August 1996).

Comparison of standards of behaviour for employees in government administration and local self-government administration, as set forth in legislation:

Duties of public administration employees	Government Administration	Local Self-government Administration
Follow the Constitution and other legal regulations	X	X
Protect the interests of the State	X	
Protect human rights and citizens rights	X	
Take care of individual citizens' interests	X	X
Manage public resources efficiently	X	X
Perform tasks:		
• Impartially	X	X
• Honestly	X	X
• Efficiently	X	
• Rapidly	X	
• Conscientiously		X
Observe the obligation of State and business secrecy	X	X
Upgrade professional knowledge	X	
Behave with dignity on and off duty	X	X

b) Unacceptable conduct for public officials according to the law

Bans contained in legislation	Civil Servants ¹	State Administration Employees	Self-government Boards Members ²	Local Self-government Staff
Ban on evading or abusing the law	X	X	X	X
Ban on holding trade union positions	X			
Ban on establishing or participating in political parties	X			
Ban on combining employment in the civil service with a Deputy's mandate	X		X	
Ban on nepotism in employment	X	X	X	X

Ban on following political sympathies or interests	X	X	X	X
Ban on manifesting political beliefs	X	X		
Ban on participating in strikes or actions of protest	X	X		
Ban on accepting material profits in connection with performing official duties	X	X	X	X
Ban on taking up additional employment contradictory to basic duties or detrimental to trust	X	X	X	X
Ban on taking up employment outside the public service without seeking prior consent from manager	X	X	X	X
Ban on revealing State or business secrets	X	X	X	X
Ban on following individual or group interests	X	X	X	X
Ban on indecent behaviour in and out of the office	X	X	X	X

¹ Concerns persons holding management positions in the civil service

² Concerns persons holding management positions in local Self-government administration

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

- Active, passive, direct or indirect corruption of public officials/corruption committed by public officials.
- Partiality in official decision-making.
- Abuse of office or public trust.
- False statements or testimony.
- Impeding or obstructing public tenders.
- Profiting from money laundering.
- Failure to observe the obligation of State and business secrecy.

Further prohibitions and restrictions are imposed on public officials by other legislation. On the grounds of the Act on Limited Economic Activity by Persons Performing Public Functions (21 August 1997), civil servants holding management positions in government and local self-government administration are bound by the following bans on:

- Membership in internal bodies of companies.
- Seeking employment or performing other activities with companies which might evoke suspicion of partisan or interest-driven attitudes.
- Membership in internal bodies of co-operatives, except for governing boards of housing co-operatives.
- Membership in governing boards of foundations pursuing economic activity.
- Holding more than 10% of stocks or shares that would exceed 10% of initial capital in each of the companies concerned.
- Engaging in economic activity alone or jointly with other persons, or managing such activity. This ban does not cover production activity in agriculture (involving vegetable or animal production) generated by a family farm.
- Taking up employment with an entrepreneur within one year (in some cases two years) after the holding of a position in the public service, or performing a function that affected that entrepreneur, if a given public servant performing the function was involved in adjudicating individual cases concerning that entrepreneur.

On the grounds of the Act on Employees in State Offices (16 September 1982) public servants employed with the State administration are bound by the following bans on:

- Employing in a State office their own spouses or relatives up to the second degree, or relatives to the first degree of a State administration employee, in case a reporting relationship were to come to exist between them.
- Taking up additional employment without seeking prior consent from the manager.
- Participating in strikes or other actions which interfere with the normal functioning of the office or participating in actions contradictory to duties of a servant employed with the State administration.

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

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

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.
- Taking ethical considerations into account in the recruitment process: verifying honesty (checking that the person has never been convicted) by checking records in the Central Register of Convicted Persons.
- Considering ethical behaviour in the performance appraisal.

Special attention is given to officials in positions particularly susceptible to corruption, working in the following areas: public procurement, tax administration, customs administration, and audit of budget institutions and of public services. The measures used are the following: redeployment of employees, changing areas of activity and enhanced internal controls.

b) Informing and training public servants on ethics issues

The following kinds of training are given:

- In the civil service: Director generals of offices in government administration are trained on ethical ways to manage public affairs.
- At the Supreme Chamber of Control: regular training offered to all employees; obligatory training in ethics for all newly employed staff members.
- In the customs service: the basic obligatory training is adapted to deal with customs issues related to ethics (recognition of ethical and unethical conduct, building professional awareness).
- In the tax service: training incorporated into an offer developed by specialised providers (e.g. National School of Public Administration).

There is no single organisation specialised in guidance, advice, counselling or consultation targeted at public service employees. For all professional ethics-related matters, employees may address their managers, legal and organisational units, or personnel units. In addition, since mid-1997 the Civil Service

Bulletin provides information to all employees in public administration, among other, on ethics in the civil service, through articles, commentaries and interviews.

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

These include:

- Identifying and reporting conflict of interest situations in the area of receiving gifts or benefits such as fees, payments, entertainment.
- Audit reports of the supreme chamber of control.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards of timeliness for responding to requests.
- Anti-corruption provisions in bids for public contract.
- Specific controls on public procurement procedures.

d) *Disclosure policy*

Disclosure of personal information (declaration of personal assets, financial interests) is required from elected officials, senior public servants, all civil service corps members, Supreme Chamber of Control staff members and those involved in managing audits, and local self-government administration staff members.

Disclosure in the form of declarations signed by employees in public services concerns personal property and property covered by common ownership as a result of marriage. Employees must supply information on: possessed monetary assets, real estate, stocks and shares in Commercial Code companies as well as property acquired by way of tendering from the State Treasury or another State legal person, a commune or an association of communes. The declaration must also cover information on the running of economic activity and performing functions in companies or co-operatives. Such declarations are confidential in character and kept for six years.

Persons holding political positions of nominated in the government administration (members of the Council of Ministers, secretaries and under-secretaries of State, heads of central offices and *Voivodes* and vice-*Voivodes*, i.e., representatives of the Government administration at the regional level) are obliged to supply information for the open Register of Gains. The register includes information on all positions and commercial activities which entitle one to accept material gains, as well as on professional activity classified as self-employment, on facts of providing material support to a public activity run by the information provider, on donations the value of which exceeds 50% of the lowest pay, on domestic and foreign visits unconnected with currently performed duties, on other gains obtained and shares of foundations, companies and co-operatives, even if no monetary remuneration is involved. Such facts are communicated to the National Election Committee no later than 30 days after. Once a year the information quoted in the Register is made public in a separate publication.

Furthermore, there are more rigorous requirements concerning the disclosure of incomes and assets held which apply to tax services and the State security sector. This information is considered confidential.

The following information is required to be disclosed on an annual basis, when leaving the public service or when relevant circumstances change:

- Assets and liabilities.

- Loans.
- Sources and level of income.
- Gifts (only in the case of persons holding political position in the State administration).

The declaration is presented to the head of the office concerned (director general). The information contained therein is considered an official secret, except for the cases when the person submitting the declaration expresses, in writing, consent for disclosure. In very special cases (but not defined precisely in the law) the head of the office in question may disclose the information without authorisation by the declarer. The information is kept for six years. The head of the office analyses the data contained in the declaration and compares them to previous declarations. The analysis is aimed at detecting cases of illegal gain by public service employees.

e) Procedures to report misconduct/suspected corruption

Legal provisions define the procedure for exposing wrongdoing. No protection/safeguard is available to public servants who expose wrongdoing. For the public, special procedures are available, such as complaint procedures and an ombudsman to expose wrongdoing committed by public servants.

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

In the majority of organisations, there are internal control systems to check the correct functioning of all the units within bodies reporting directly to a minister (as the head of a given organisation) and to pass the information on findings to the organs authorised to make use of the information. For example, in the Customs Service, internal control deals among other things with checking the correctness of customs duties and the organisation of customs clearances; apart from internal disciplinary penalties (specified at section IV. g. of this chapter), it must notify prosecution units about suspected crimes. Institutionalised control system in the Ministry of Finance was established on 1 January 1997, and its scope of activity covers (among other things) preventing, disclosing and counteracting infringements on service duties, including crime and fraud committed by employees of the tax offices. Inspectors employed in this control system are obliged to co-operate with public prosecution units, the police and other offices. A special role is played by internal control systems dealing with public procurement and protection of secret information.

In the Ministry of Internal Affairs and Administration (MIAA), there is a Department of Control and Supervision. In particular services which report to the MIAA, inspectorates have been established whose activities are oriented at disclosing irregularities in the functioning of services and offices reporting to the MIAA located across the country, and then counteracting those irregularities. The police and border guards have units specialised in counteracting economic crime. Their task is to protect the economic interests of the State; a further operational aim is to recognise and disclose any phenomena that encourage corruption in public administration.

Furthermore, tasks classified under internal control are also performed by specialised organs of the State, acting within the government structures, such as the State Inspection of Trade, the State Inspection of Purchases and Processing of Agricultural Products, Sanitary Inspection, Tax Audit Offices, as well as inspection services which report to particular *Voivodes*. The tasks of the organs mentioned above are also defined in legal acts which provide the grounds for their functioning.

The supreme organ authorised to audit the financial activities pursued by other organs of the State administration and the enterprises which report to them, along with other structural units, is the Supreme Chamber of Control (SCC). It performs the external audit function, independently from the internal control structures functioning in institutions of the government administration. The SCC is also authorised

to audit the activity of other specialised organs of State audit. The SCC plays a superior role *vis-à-vis* all those bodies, since its conclusions and recommendations are obligatory and must be implemented by the audited bodies.

If irregularities and cases of fraud in public administration are disclosed through the actions of internal control units and services, it is possible for the managing staff of offices and public institutions to identify ambiguities and holes in legal or procedural regulations as well as imperfections in organisational arrangements. Follow-up action can include detailed recommendations on systemic improvements and legal amendments aimed at removing the irregularities disclosed. The head of an audited unit receives a report that contains conclusions and recommendations. The head is obliged to express an opinion on post-audit recommendations and to present information on actions to be taken to restore a correct state of affairs inside the audited unit. Implementation is obligatory and is subject to verification audit.

Internal control is required by law and by general policy. Internal control reviews are undertaken once a year, though sometimes more frequently depending on particular needs. The reports of the reviews are accessible to organs which supervise a unit audited, and in the case of SCC audit reports to Members of Parliament.

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

Disciplinary punishments applied to public administration staff:

Types of punishment	Civil Servants	Employees of the Governmental Administration	Local Self-government Employees ¹
Reprimand	X	X	X
Rebuke	X	X	X
Rebuke with a warning		X	X
Freeze on promotion for two years	X	X	X
Moving to a lower position / lowering of the service grade	X	X	X
Ban on applying for management positions	X		
Ban on holding management positions for 2 - 5 years	X		
Expulsion from employment in State administration	X	X	X

¹ Members of local self-government administration boards are not subject to disciplinary liability. They are politically accountable, similar to persons holding political positions in the Government administration.

The sources of the disciplinary measures are:

- The Civil Service Act (18 December 1998)
- The Act on Employees in State Offices (18 September 1982)
- The Local Self-government Staff Act (22 March 1990)
- The Labour Code Act (26 June 1974, with later amendments)

All disciplinary matters are adjudicated by disciplinary commissions of the first and second instance. For an employee, there is an appeals procedure to an appeals disciplinary commission or a body of higher instance. It is possible to appeal against expulsion from employment in State administration to the Supreme Administrative Tribunal.

V. Scrutinising misconduct in the public service

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

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

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

The institution whose audit competencies cover the whole public service is the **Supreme Chamber of Control** (SCC) which reports directly to Parliament. The SCC is authorised to audit incomes and expenditures, the activity of all organs of government administration, the National Bank of Poland, State legal persons and other State organisational units. It may also audit other economic entities if they are commissioned by State organs for the performance of tasks and are involved in public procurement procedures on behalf of the State or local self-government authorities. The SCC takes up audits on the recommendation of Parliament, or on its own initiative; the President or the Prime Minister may submit motions to carry out an audit, but the management of the SCC makes its own sovereign decision on whether and to what extent to take them into consideration. In its audit work, the SCC follows the criteria of legality and honesty, and in some cases also the criteria of effectiveness and economy. Information on audit findings is presented to the Parliament, while field representation offices of the SCC can present such information to the relevant *Voivodes* and local assemblies. In the case of a well-grounded suspicion that a crime or infringement is being committed, the SCC will notify the organ in charge of prosecuting infringements or crime, and inform the head of the audited unit, or its superior unit that such notification has been made. As of 1 July 1999, the SCC employs 1656 people in all units, including 1222 auditors. The legal basis for SCC activity is provided by the Constitution (Chapter IX - Organs of State Audit and Law Protection) and the Supreme Chamber of Control Act (23 December 1994).

Furthermore, in Poland the following institutions specialised in auditing selected areas of public administration activity are active at the national level:

The **State Labour Inspection** (SLI) provides oversight and control of labour law enforcement, and in particular the regulations and rules of labour health and safety, employment relations, remuneration for work and other benefits ensuing from such relations, working hours, annual leave, women's labour protection, employment for the young and the disabled, analysis of hazards at work and occupational diseases, and prosecution of infringements on employee's rights defined in the Labour Code. The SLI also handles as others issues connected with performing paid work, whenever required by law, and takes part in court action in certain cases, for example acting as a public prosecutor when a citizens group brings procedure concerning minor offences. The State labour inspectors performing their duties have the right to carry out their audit work without prior notification, at any time of day or night. The SLI reports directly to Parliament. Legal basis is provided by the State Labour Inspection Act of 6 March 1981.

The **Supreme Administrative Tribunal** (SAT) provides oversight of the activity of organs of the State administration (central organs of the State administration, field organs of government administration, organs of local self-government units as well as any other organs established by law to settle matters related to public administration). The SAT adjudicates grievances against administrative decisions, against decisions made in the course of administrative proceedings which can be subject to complaint, against decisions made in the course of administrative execution which can be subject to complaint, as well as other decisions or activities of public administration which consider allowing, confirming or recognising an authorisation or a duty ensuing from the provisions of the law, resolutions by self-government units and decisions by government administration units adopting provisions on the grounds of local law and the decisions of self-government units and associations thereof made in the sphere of public administration,

and decisions of oversight over the activity of self-government units. The SAT also settles complaints against action or negligence by a public administration organ, and provides answers to legal queries to be settled by the local self-government appeals councils. Legal basis is provided by the Supreme Administrative Tribunal Act of 11 May 1995.

The **General Inspector for the Protection of Personal Data** exercises supervision and control over the establishment of personal data registers by public administration institutions and controls the conformity of data processing with the regulations on personal data protection. The General Inspector reports to the Parliament. Legal basis is provided by the Personal Data Protection Act of 29 August 1998.

The **General Inspector of Tax Inspection** supervises the activity of tax inspectors. Tax inspection organs carry out audits. It audits efficiency, effectiveness and legality of expenditures made with budget resources and the correctness of calculation and use of budget allocations, studies the legality of use and decisions made regarding State property, and in particular reveals losses and other damages to this property. The general Inspector is authorised to audit those organs obliged to payments to the benefit of the State Treasury or State special purpose funds, making expenditures using resources provided by the State Treasury, those governing and managing State property, as well as Tax Offices and Chambers, taxpayers, collectors of taxes and other dues to who provisions on tax obligations apply. The General Inspector reports to the Ministry of Finance. Legal basis is provided by the Tax Audit Act of 28 September 1991.

In Poland there is no special system of organs whose task would be to **prosecute** corruption and other irregularities in public administration. In the structures which report to the Ministry of Justice and *Voivodship* Offices, there are sections specialised in counteracting organised crime. Organised criminal groups will often rely on corruption of employees in these public services, and for this reason inquiries of serious cases of corruption are often pursued by such sections. At Police Headquarters, which reports to the Ministry of Internal Affairs and Administration, a section for economic crime was established on 1 May 1998; a team to combat corruption was then established. The *Voivodship* police station sections dealing with economic crime, teams for combating corruption have been active since 1997.

Cases of particularly serious law infringements by public services are subject to prosecution by the State Security Office. The tasks of the State Security Office include, among other things, preventing and detecting crime that threaten the economic foundations of the State and prosecuting persons guilty thereof, examining and preventing cases of infringement on State secrecy, and developing information and analyses for the supreme organs of State authority and administration, important for the security of the State.

Certain investigative and/or prosecuting bodies are empowered to bring suspected cases of corruption directly to court: audit/inspection bodies may submit motions to prosecuting bodies (such as the Prosecutor's Office), while these could send their motions directly to the courts.

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

These include:

- Parliament/Parliamentary committee.
- Ombudsman.
- The Supreme Chamber of Control whose auditors act as external auditors. However, it is not an entirely independent audit institution, but it is an office, which is part of the State administration subordinated to Parliament. The management of the SCC is nominated for five years by the lower chamber of Parliament (*Sejm*) influencing the current political majority. The President of the SCC is obliged to present the audit reports to the Parliament (section V. a.).

- Procedures/mechanisms available to bring wrongdoing to the attention of bodies exercising independent scrutiny on public service activities include a motion to the prosecutor or a constitutional complaint to the Constitutional Court in accordance with Article 79 of the Constitution.

External audit covers the whole of the functioning of a given organ of public administration, and in particular State budget execution and implementation of acts and other legal regulations dealing with financial, economic and organisational administrative activity from the point of view of legality, economy, effectiveness and honesty. The criterion of effectiveness of public activity is not applied to local self-government units. For the study of budget execution, external audits are performed on an annual basis; in other areas, audits are performed according to an agreed audit plan or on an *ad hoc* basis by a motion from Parliament or from the Prime Minister. External audit reports are published routinely.

VI. Co-ordination and self-assessment

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

The Head of the Civil Service, together with the Office of Civil Service that reports to him, and the Civil Service Council (since 1 July 1999, i.e., since the date of effect of the Civil Service Act of 18 December 1998) - all institutions defined by legislation - have shared the task of developing a scheme of activities to enhance ethical attitudes among employees in the governmental administration, namely members of the civil service corps. Following the letter of the Act, the Head of the Civil Service is, among other things, responsible for observance of principles of ethics by civil servants. Both the Head of the Civil Service and the Civil Service Council report directly to the Prime Minister. As of 1 July 1999 the Office of Civil Service employed 88 people. In relation to other groups of State administration and self-government employees, there is no single institution at the moment in Poland in charge of co-ordinating actions in favour of professional ethics. So far no reports have appeared due to the fact that the Civil Service Act has only recently come into effect.

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

- Analysing systemic failures, trends in criminal and disciplinary cases.
- Providing national guidance and/or a checklist to develop prevention strategies in organisations.

In Poland there is no developed national ethics strategy in favour of ethical ways to manage public affairs or harmonising actions taken in the spheres of organisation, law, education and prosecution. There is no policy on how to report unethical actions. There is no permanent working body in charge of analysing organisational and legal weaknesses in public administration and improper actions by public services.

On 15 February 1999, Poland signed the Criminal Law Convention on Corruption adopted by the Council of Europe on 27 January 1999. The Convention will become binding in Poland after ratification by Parliament. It will be necessary to harmonise Polish administrative and penal law with European standards in the sphere of counteracting corruption, as well as develop a national strategy for counteracting corruption, among others, in public services.

Non-governmental organisations were involved in the preparation and implementation of government ethics strategy: Transparency International-Poland undertook research work on combating corruption, keeps the public opinion informed, and holds training courses and seminars.

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

Efforts to evaluate effectiveness of the existing mechanisms are made by the Ministry of Finance and the Ministry of Internal Affairs and Administration, yet opportunities in this sphere are limited. At the moment there is no unitary assessment system, nor a single centre to co-ordinate anti-corruption actions in all public administration institutions.

Assessment of the effectiveness of particular anti-corruption instruments and mechanisms is difficult due to the specific character of corruption as a criminal activity. The criterion of detectability does not apply to this type of crime, since there are only a few cases when corruption is revealed by the very persons involved in it, while external audits are of a limited scope. Furthermore, the total number of corruption cases in State administration offices is very difficult to estimate, thus it is not possible to compare and assess the effectiveness of particular mechanisms. In 1995, a plan to establish a special Parliamentary Committee for Corruption was placed before Parliament, but it was rejected by the deputies on the reasoning that the most effective and proper organs to pursue this type of activity are the courts. According to a commonly shared opinion, the regulations contained in the Penal Code and the activity of external and internal audit units, combined with actions taken by organs of prosecution and courts, seem to be the most effective in this sphere, in spite of their many deficiencies. A positive improvement is the possibility to perform a controlled action of handing in or accepting a material gain by organs of prosecution; but this is too recent and the effects of their application are still not tangible enough to make them subject of generalisations or assessment.

Following the opinion expressed by a special team in the Ministry of Internal Affairs and Administration involved in the development of a report dealing with corruption in State administration, significant factors which encourage corruption in Poland include:

- Ineffective control mechanisms.
- A considerable share of State-owned entities in economy.
- Excessive control over economic turnover.
- Improper staffing policy regarding the selection of employees for public services.
- Low level of remuneration in public services.

Corruption in Poland is also strengthened by the growth of organised crime groups, which is encouraged by the absence of advanced market mechanisms and the fact that legal solutions fail to keep pace with economic and social changes. Some of the leaders of such criminal groups strive to infiltrate areas of legal and official activity. An integral part of this process is winning influence over representatives of public administration in various fields. Apart from classical corruption or threatening, efforts are made to gain influence by way of charitable activity or offering monetary and material donations to units that make part of particular offices. The following corrupt practices are still not covered by the provisions of the Penal Code in Poland:

- Passive bribery involving foreign public officials (e.g. In connection with international trade transactions).
- Bribery of foreign public officials by legal persons.
- Passive bribery of top-level representatives of international organisations.
- Passive or active bribery in the private sector.
- Fraudulent book keeping aimed at concealing corrupt activities.

PORTUGAL

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

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

The enormous gap between the salaries in the public and private sectors has been the cause of the major ethical problem for the public administration in the last ten years. This is partly because the public administration has the monopoly for delivering public services in most areas, but also, although to a lesser extent, the gap is due to some difficulties in adjusting the salaries to the cost of living.

These factors have contributed to the situation in which civil servants and public employees seek additional employment in the private as well as public sector, as a means to supplement their incomes, sometimes at the risk of compromising the exemption and impartiality demanded from them. This additional employment may even jeopardize the public interest and the legally protected rights of the citizens.

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

Several pieces of legislation have been passed recently in the areas of Administrative and Criminal Law as well as on the civil service, as a means of promoting behaviour in line with the ethical code. This new legislation aims at further developing the civil service within the general principles stated in the Constitution of the Republic, namely:

- Civil servants and other employees of the State are exclusively at the service of the public interest.
- Accumulation of public posts is not allowed, except in the cases consented to by law.
- The law states the incompatibilities between holding public office and other activities.

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

II. Core values for the public service

a) Stating core values for the public service

The core values shaping the public service are held in the following principles:

- **Public** service as a means and reason for the existence of the public administration itself.
- **Legality** as a reference.
- Neutrality in politics, economic system and religious creed, as a guarantee of justice and impartiality.
- Responsibility and **competence** as professional qualities;
- **Integrity** of character, personal honesty and rigour as conditions of equality and loyalty.
- Collaboration **in good faith with** the public, aiming at fulfilling the community's interest in association with the administration's activity, bearing in mind the principles of information, quality and proportionality.

The primary source of these principles is the **Constitution** of the Republic which defines the ethics principles that shape the administration's services. A further specific source is the **Ethics Charter: Ten Ethical Principles for the Public Administration**, this document is the result of the discussions and consensus achieved by the government and labor unions that subscribed the Salary Agreement for 1996 and the Long and Medium Range Commitments Charter. The new Ethics Charter replaced the previous Ethics Code, that was approved by a Resolution of the Council of Ministers in 1993. The Ethics Charter is distributed to the services and organisations through booklets and posters published by the government.

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

The following forms are used:

- Core values are automatically provided when someone joins the public service.
- Core values, after revision, are distributed to all public servants.
- The Ethics Charter is a mandatory subject in the examinations for admission and career progression within the civil service.

c) The statement on core public service values was last revised in 1997

On 23 March 1997 the Ethics Charter replaced the Ethics Code published on 17 March 1993. The labour unions, representing a considerable part of the public administration personnel, disapproved of some of the matters included in the previous Ethics Code, and disagreed on the methods used for its approval. In concrete terms, the labour unions criticised the scarce participation of the employees' representatives in the preparation of the Code and the lack of public debate within the civil service. As a consequence the Ethics Code was revoked and the present Ethics Charter was developed. The text of the new Ethics Charter was widely discussed and agreed upon in meetings involving both the representatives of the labour unions and the government.

III. Standards of behaviour for the public service

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

In addition to the Ethics Charter, there are several Acts defining the criteria for any public servants to pursue their assigned tasks. The conduct of public servants is regulated by the Code of Administrative Procedure, the Disciplinary Act and a Decree on the general principles guiding the relationship between public services and the public in general, as well as the prevailing administrative procedures. There are also laws laying specific guidelines on the conflict of interests which may arise while holding public office.

Moreover, a special regime has been developed for senior civil servants in the public administration, as well as for political aides appointed by the Cabinet of Ministers. Members of Parliament and elected local officials also have specific legislation on this matter.

They cover the following issues:

- Receiving gifts and benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.

- The use of corporate credit cards is not regulated specifically, though their prohibition is implicit in the general regulations.
- Work outside the public service.
- Restrictions on employment after leaving the public service.
- Special conditions/permissions on movement from the public service to the for-profit sector.
- Involvement in political work.

Some professional ranks have **specific standards** on ethical behaviour within their professional statutes. This applies mainly to those directly related with the economy, justice administration, magistrates, court and notary officials, etc. Some professions have their own code of ethics, such as doctors, nurses, lawyers, etc., and their specific professional governing bodies enforce these codes.

In addition, **specific guidelines** for public servants and political leaders working at the **political/administrative interface** impose further restrictions concerning their ancillary activities. Holding these posts is incompatible with:

- Other professional public or private activities, whether they are remunerated or not.
- Holding executive positions in public corporations or in societies financed mainly by public funds or pursuing a public interest, or in banking institutions and insurance or real estate companies, or any other body that may be under contract to the State or other public entities.
- Any activity derived from a participation of more than 10% of the capital in a joint stock company that takes part in public tenders for the supply of goods or services to the State or other areas in the public sector.

The **minimum standards** of behaviour for the public service in the Code of Administrative Procedure and in the Decree on the general principles for the public service are to be observed when dealing with the public and when following administrative procedures.

b) Unacceptable conduct for public officials according to the law

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

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

Further prohibitions and restrictions imposed on public officials by the:

- Code of Administrative Procedure.
- Executive Public Office Holders Act.
- Legal Guidelines on Incompatibilities and Impediments.

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

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

These include:

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

Certain unethical behaviour that has previously been disciplined, is taken into consideration in recruitment or promotion to senior civil service ranks. Sanctions may entail a prohibition period banning admission into the public service or participation in state exams for promotion.

Special attention is given to certain professions which are more exposed to contact with sectors where economic interests are present, such as tax collection, auditing of economic activities, customs, court officials, magistrates and others. These professions have specific careers and receive better pay on the one hand and are submitted to regular inspections by special state agencies on the other.

b) Informing and training public servants on ethics issues

All candidates in state examinations to enter the civil service are required to have full knowledge of the standards of ethical behaviour which public servants are expected to follow. In some careers, where a probation period is required, specific courses provide information on ethical codes and the requested ethical behaviour.

The Public Servants Disciplinary Act establishes the rules of ethical behaviour for the public administration. Legal Offices at the working places, although not exclusively dedicated to these matters, may help to solve the cases presented to the services, and contribute to explaining the rules to be observed. In general the managers are responsible for pointing out irregularities in behaviour to subordinate staff.

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

These include:

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

d) Disclosure policy

Disclosure of personal information (declaration of personal assets, financial interests) is required from elected officials, senior public servants and the staff in Ministerial Cabinets. The latter are appointed on a

basis of trust, therefore they are obliged to present a declaration stating if there is any conflict of interests when they start their service and this declaration must hold until the conclusion of their assignment. The disclosure is more rigorous for Cabinet members, other government officials and Members of Parliament. A “Record of Participations” was created in the *Assembleia da República*, (Parliament) for senior ranking officials, including the Members of Parliament and Cabinet who must disclose information on the following issues:

- Public or private activities, including commercial and business interests as well as private occupations.
- The holding of positions in companies even if no financial retribution is received.
- Sponsoring or any sort of financial or material benefits received for the activities performed, namely from foreign entities. Entities for whom the official developed any form of paid work.
- Companies where the official holds stock, in her or his name or in the names of the spouse or children.

The disclosed information is public, and anybody can have access to it.

e) Procedures to report misconduct/suspected corruption

Legal provisions, namely the Disciplinary Act for the Public Service defines the procedure for exposing wrongdoing. Civil servants and agents of the State are obliged to report any offense to their superior officers. If there is reason to open an enquiry on the facts reported and the conclusion shows that it was a malicious report made to slander and damage the officials’ reputation, a new enquiry will be opened on the person who reported the offense.

For the public, special procedures are available to expose wrongdoing committed by public servants. The public may present cases to the Ombudsman and the Inspectorate-General for Public Administration. Furthermore, all central services of the public administration have a complaints book, in which the public may write down their complaints on the service that has just been delivered.

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

Internal control required by law takes the forms of financial and property control, and in some cases, management control. Internal financial control detects irregularities, supports institutional development to re-establish a proper system and states the sanctions for misconduct. The appropriate branch of the Directorate-General of Budget has access to the reports on the reviews.

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

The Act on the Financial Regime of the State Administration, the State Budget Law as well as the Executive Officers Act, determine the levels of responsibility for public servants arising from the lack of compliance with the provisions of the laws. The Disciplinary Act for the Public Service states the types of sanctions to be applied in accordance with the seriousness of the offense. These may go from a period of suspension from work and pay to dismissal from the civil service. There is always the possibility to appeal against the sanction through a request to the concerned member of government (hierarchical appeal) or to the courts of law (litigious appeal).

V. Scrutinising misconduct in the public service

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

There are different **external audit services** working closely with some ministerial departments. The officials from these services are empowered to audit all services within the Public Administration, such as the *Inspecção-Geral de Finanças* (Inspectorate-General of Finance), or all central administration, as the recently created *Inspecção-Geral da Administração Pública* (Inspectorate-General of Public Administration). The *Inspecção-Geral da Administração do Território* (Inspectorate-General for Territorial Administration) monitors the local governments.

Some ministerial cabinets have **private auditing services** aimed at specific departments, such as the Health Ministry and the *Inspecções-Gerais de Saúde* (Inspectorate-General for Health), the Home Office, the Ministries of Education, Fisheries and Agriculture or for Public Works. In these Ministries the auditing services are empowered to investigate each of their sectors.

The competent auditing services for the Judiciary is the *Conselho Superior da Magistratura* (High Judiciary Council), for the Public Prosecutors the *Conselho Superior do Ministério Público* (Public Prosecutor's High Council).

Finally the Attorney General's Office functions as an auditing service for the whole of the public administration. It can open enquiries on its own initiative, or by means of reported irregularities, or on other institutions demands.

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

These include:

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

The *Tribunal de Contas* (Court of Auditors) is the **supreme audit institution** which supervises the legality of State revenues and expenditure and checks that adequate financial management procedures are followed. The audit reviews ensure that sound legal practices are observed in the financial, property and human resources areas of public administration, and also evaluate the managerial efficiency and performance. It also determines responsibility for financial irregularities and supervises the whole public administration, as well as the institutions and businesses spending State funds.

Audit reviews are performed regularly. The auditing services draw up an annual plan of the departments to be inspected. Independently from this plan, they may intervene whenever the Government calls upon them to do so, or when any relevant reasons occur, as other departments are entitled to demand their services. The reports of the auditing services are public, and some are published in the Official Bulletin.

The *Tribunal de Contas* (Court of Auditors) is an independent service and its independence is guaranteed by its autonomous administration and by the fact that its judges are independent and cannot be removed from office, except in cases when the law itself allows it. Moreover, the budget of the Court of Auditors is provided by the State Budget but it also has its own revenue.

VI. Co-ordination and self-assessment

a) Co-ordination and management of government ethics policy

The Inspectorate-General for Public Administration was created by Decree-Law 220/98 of 17 July 1998 to co-ordinate the implementation of the government ethics policy. The law requires the Inspectorate-General to provide a report on the state of ethics in the public service for the Government.

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

- Analysing systemic failures, trends in criminal and disciplinary cases.
- Providing national guidance and/or a checklist to develop prevention strategies in organisations.

Other measures are the reports presented by the external auditors, the information in the *Registo de Interesses* (Record of Participations), the findings of the Inquiry Commissions in Parliament operating on an *ad hoc* basis - concerned with cases of suspected corruption - and also the Ethics' Commission which operates in Parliament. The regular follow-up reports on the Complaints' Books can also provide important elements for assessing compliance with the anti-corruption measures.

Although a national strategic plan on ethics and corruption prevention has not been developed the Government is seriously committed to fighting corruption and promoting integrity at national level. This is present in all legislation approved for the public administration. Moreover, labour unions and social partners (Guilds of producers, industrial associations, etc.) have been taking part in the labour negotiations for the public service, and some of them have agreed on a package of medium term initiatives where there are provisions on professional ethics.

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

Policy initiatives have been adapted to brief citizens on their fundamental rights and duties, the guarantees of respect by the State, the right to be informed on and participate in the decisions concerning the public administration. This policy aims at more information, more participation and better citizenship that requires a more transparent administration and hence are preventive and active measures in the struggle against corruption.

Legal measures have been enforced to promote civil servants' salaries and working conditions, as well as to assure the transparency and accuracy of procedures in public procurement. There have been improvements in the mechanisms assuring fair competition and equal opportunities for all candidates.

The above-mentioned policy initiatives and the pursuit of public management policies that make public managers more accountable and enable them to delegate more power to mid-level officials are considered as successful instruments for corruption prevention.

The red tape which still exists in some sectors, namely in the regulatory system, and the impossibility of harmonising salaries in the civil service with the salaries in the private sector are considered as the major impediments to further reducing corruption in the public service

SPAIN

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

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

In the past few years, Spanish public opinion has encountered numerous cases of conflict between the public interest and civil servants' private interests. The most serious cases constituted criminal conduct, punishable under criminal law, while the less serious were considered as an administrative infraction or at least subject to ethical reprimand.

There are many explanations for this situation. The most important one is, no doubt, the gradual convergence – i.e. inseparability -- of the general interest and the private interests of certain groups or persons entrusted with public resources. But this situation is aggravated by the intensive involvement of the administration in the private sector, reflected in some data as the percentage of GNP currently consumed by the public sector and by the proliferation of public or by the proliferation of instrumental entities of the public administration (public enterprises or State-owned corporations). These entities are ruled by private laws, which means that administrative control mechanisms are not so strict, but also make them more vulnerable to pressures from private groups.

The public airing of these conflicts of interests has caused a general deterioration of the image of the public administration, as well as a general belief that there has been a certain degree of ethical lassitude among civil servants. This clearly unfair vision of things made it necessary to adopt measures to restore the image of the public service, to foster ethical values, and to establish adequate control mechanisms.

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

The Government has adopted various measures to tackle the situation. Some were conceived for this sole objective, and others were developed for different purposes but appeared useful to restore the image of the public administration. Some of the measures are listed below:

- Intensification of training programmes for public employees that emphasise ethics, so as to promote essential public service values among the personnel of the public administration.
- Creation of a Special Anti-Corruption Prosecutor, reporting to the State Attorney General, with authority to pursue the most serious misconduct committed by civil servants against the public administration, and punishable under articles 401 to 445 of the Penal Code, approved by the Organic Act 10/1995 of 23 November 1995.
- Act 13/1995 on Public Administration Contracts established the need to fully guarantee the transparency of administrative contracting procedures as a way to ensure that objectivity and the principles of equality, non-discrimination and free competition are respected.

- Improving the professionalism of agency heads of the central administration. In this regard, Act 6/1997 of 14 April 1997 on the organisation and functioning of the central administration requires that all agency heads' offices of the central administration be filled by civil servants. This law also determines the professional, personal and direct responsibility for the activities that they carry out, as well as their submission to a system of control and evaluation by hierarchically superior agencies.
- Reorganisation and rationalisation of the management of the institutions that come under the central administration.
- The Cabinet Ministers Agreement of 17 July 1998 which calls for the general implementation of a performance assessment system pursues the following objectives: generate a result-oriented culture; increase efficiency and the level of consciousness about the cost of using public resources; contribute to improving the functioning of public services which ultimately should improve the provision of services to citizens. The Agreement foresees the creation of a Co-ordination Commission whose principal mission will be to inform the government regarding the evolution and breadth of the programme. Additionally, the Office of Inspection, Simplification and Quality of Services will provide technical and methodological support to agency heads.
- Approval by the Council of Ministers (25 June 1999) of the draft of the Public Service General Statute Act. Article 7 of the proposed law explicitly states, for the first time in the history of Spanish public service regulation, the ethical values of public service: integrity, neutrality, impartiality, transparency, responsiveness, professional responsibility and service to citizens. It also includes a commitment by the public administration to foster models of staff conduct integrating ethical values internally and in relations with citizens.

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

In addition to these decisions that have already been effectively adopted, the main future measures are the generalisation and intensification of ethical subjects both in the recruitment courses for recently hired civil servants and in training and improvement programmes for civil servants.

II. Core values for the public service

a) Stating core values for the public service

There is currently no systematic compilation in a single legal text of these ethical values in the same terms as in Article 7 of the draft Public Service General Statute Act. Nonetheless, these principles can be found in different legal texts.

Article 103 of the Constitution consecrates the neutrality of public administration in the name of the general interest. This principle requires the prohibition of arbitrariness in government (Article 9.3 of the Spanish Constitution) as well as the establishment of sufficient legal guarantees to ensure the impartiality of civil servants. The legislation has tried to guarantee the impartiality of civil servants through:

- Act 30/1984 of 2 August 1984 reforming the public service.
- Legislation regarding conflicts of interest provided in Act 12/1995 of 11 May 1995 regarding conflict of interest of members of the national government and senior officials in the central administration, and in Act 53/1984 of 26 December 1984 regarding conflict of interest of personnel working for the central administration.

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

Essential values are communicated to civil servants. The administration has tried to inculcate these values through training courses when entering the civil service, as well as throughout the professional life of civil servants.

c) *The statement on core public service values was last revised in 1995*

The regulations regarding ethical values were last revised in 1995. Act 12/1995 of 11 May 1995 established a new regulation regarding conflicts of interest of members of the national government and senior officials in the central administration. Civil servants were not involved in this revision but the public was involved through the approval of the reform by the *Cortes Generales* (Parliament).

III. Standards of behaviour for the public service**a) *Statements of the standards of behaviour expected of public servants***

These guidelines are not stated in a single text. However, they can be found in various regulations, the most important of which are the following:

- Act 12/1995 of 11 May 1995 regarding conflict of interest of members of the national government and senior officials of the central administration.
- Act 53/1984 of 26 December 1984 regarding conflicts of interest of personnel working for the central administration.
- Disciplinary regulation for civil servants of the central administration approved by Decree 33/1986 of 10 January 1986.

The provisions cover the following points:

- Receiving gifts or benefits.
- Use of official information.
- Work outside the public service.
- Restrictions on post-employment.

Certain groups, such as civil servants of the justice administration, are subject to **specific guidelines**. Moreover, there are special regulations for those working at the political/administrative interface, as set out in Act 12/1995 of 11 May 1995 regarding conflicts of interest of members of the national government and senior officials in the central administration (secretaries of State, under-secretaries, general secretaries, technical general secretaries, general directors). These regulations are more stringent than those applied to civil servants, given the special responsibility associated with the performance of these offices. The legal texts, from the Penal Code to the rest of the legislation enumerated above, are only a reflection of **minimum standards of conduct**.

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

Offences by civil servants can be against the administration or against individual rights. Furthermore, certain criminal conduct is more severely punished when committed by a civil servant. Every type of conduct mentioned below is penalised:

- Active or passive bribery.
- Prevarication (pronouncing an arbitrary decision on administrative matters, knowing its unfairness).
- Peddling.
- Embezzlement of public funds.
- Fraud or illegal exaction.
- Conduct of prohibited negotiations or activities.

Legislation on conflicts of interest is the one which puts the greatest restriction on civil servants and public officeholders, above all with regard to the simultaneous and unauthorised exercise of public duties with other public or private tasks. In addition, senior officials in the central administration who possess assets so as to avoid conflicts of interest should entrust their management to a fiduciary.

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

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

These measures include:

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

There is no central government policy to give special attention to public servants in positions particularly susceptible to corruption.

b) Informing and training public servants on ethics issues

The ethical training of civil servants is done exclusively through voluntary training courses. They are normally centralised in the INAP (the National Institute of Public Administration). Nevertheless, there are ongoing training programmes which are managed in a decentralised way in each department and which may occasionally include ethical subjects.

There is no pre-established mechanism for resolving ethical conflicts of civil servants. However, this is a function of the civil servant's hierarchical supervisor who, by his/her decision, takes responsibility for his/her subordinate.

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

These measures include:

- Identifying and reporting conflict of interest situations, especially with regard to senior civil servants of the central administration.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.

- Anti-corruption provisions in bids for public contract.
- Specific controls for tax collection procedures.

d) *Disclosure policy*

Only members of the government and senior officials of the central administration are required to make declarations of activity and assets, which are registered in various administrative records. The following information is required to be disclosed on an annual basis and when joining the public service:

- Assets and liabilities.
- Loans.
- Business activities that the public servant intends to exercise while in office or afterwards.

The registration of business activities, personal goods and assets of civil servants is made public, but access to the information in the register is reserved.

e) *Procedures to report misconduct/suspected corruption*

The law gives civil servants the right to denounce before the public administration or the courts facts that they believe constitute an administrative infraction or offence. Legal provisions define the procedure for exposing wrongdoing. There is no protection or safeguard for civil servants who expose wrongdoing. Special procedures are available for the public to expose wrongdoing committed by civil servants, such as the Ombudsman.

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

The promotion of ethical values is done through internal management control developed by the Office of Inspection, Simplification and Quality of Services. Internal control permits the detection of irregularities in the management of certain units and the identification of problems in operating procedures. The Office of Inspection, Simplification and Quality of Services will formulate recommendations aimed at avoiding these irregularities and, where necessary, will initiate the relevant disciplinary procedures.

Internal management control is required by Article 15.1.c) of Act 6/1997 of 14 April 1997 on the organisation and functioning of the central administration. The law orders the under-secretary to “Establish the inspection programmes for the services of the ministry, as well as to determine the initiatives necessary to improve the planning, management and organisation systems, and rationalise and simplify the work procedures and methods, within the framework defined by the Ministry for Public Administration”.

It is impossible to submit all the services of the central administration to internal management control. Thus, the administration resorts to an inspection system based on surveys by the Operative Inspection of Services (IOS). This is an ongoing control system, but as it is not from the same unit, it is difficult to establish its frequency. The results of the IOS are communicated to higher agencies and, when relevant, to the heads of the inspected departments. In any case, the *Cortes Generales* (Parliament), under its right to receive complete information regarding the government and the administration, may request the submission of these inspection results. Furthermore, every ministerial department has its own Services Inspectorate with responsibility, among others, for auditing the implementation of inspection programmes and the departmental subordinate bodies.

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

Non-compliance with the obligations inherent in public service are punishable when it is considered an administrative infraction under Article 31 of Act 30/1984 of 2 August 1984 on measures for public service reform (a very serious infraction) or under the disciplinary regulations for civil servants of the central administration.

The applicable disciplinary sanctions vary according to the gravity of the infraction: very serious infractions may be sanctioned with removal from service, while minor infractions will result merely in a warning. Other sanctions include removal from post, and transfer with a change of residence.

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

The authority to **investigate** violations of the law by civil servants depends on the type of infraction committed:

- In the case of penal infractions (offences), the relevant authority is the Special Anti-corruption Prosecutor, reporting to the State Attorney General.
- In the case of non-penal infractions (disciplinary), the investigation is handled by the person designated by the administrative agency with authority to impose the sanction, normally a Services Inspector from the department involved.

Criminal judges and courts are responsible for **sanctioning** the criminal conduct of civil servants. Under the express authorisation of Article 13.9 of Act 6/1997 of 14 April 1997 on the organisation and functioning of the central administration, ministers are responsible for prosecuting disciplinary infractions, except in decentralised or delegated administrations. Certain investigative or prosecuting bodies are empowered to bring suspected cases of corruption directly to court.

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

These include:

- Investigative committees of the Congress and the Senate.
- The Ombudsman, as commissioner of the *Cortes Generales* (Parliament).

Complaints can be made directly to the Ombudsman to bring wrongdoing to his/her attention, which will permit of investigation procedures to be initiated. The Ombudsman, as high commissioner of the Parliament, oversees and ensures the respect of fundamental rights by the public administration, including the central administration, the regional administrations and the military administration. When the complaints relate to the justice administration, the Ombudsman must refer them to the State Attorney General or the Judicial Council. The Ombudsman's office reports the results of its investigations to the Parliament in an annual report. However, when circumstances so demand, it can draft additional reports. The contents of the Ombudsman's reports are presented to the two chambers of the Parliament and are published.

VI. Co-ordination and self-assessment

a) Co-ordination and management of government ethics policy

Public service ethics is included within the modernisation and reform policy of the public sector, whose co-ordination and management are handled by the Ministry for Public Administration.

No national ethics or corruption prevention plan has been developed. There are private organisations that work to promote ethical values in society in general and in the public administration in particular. However, they are not formally involved in the ethical policies of the government.

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

Ethical values are legally established in various sets of regulations, which are not currently subject to periodic reviews.

The prevention of unethical conduct is achieved through the adequate communication of ethical values according to which public servants should act, and of the consequences of their violation. The instruments for communicating these values are:

- The training of public servants, which constitutes an effective instrument for inculcating ethical values.
- The extensive and detailed publication of sanctions applicable to unethical and illegal conduct.

Although the intensification of the administration's involvement in the private sector and resulting convergence of the general interest and the private interests of civil servants might lead to corrupt conduct among civil servants, there is a enough detailed regulation on disciplinary or criminal sanctions to reduce the cases of corruption. This form of prevention is based on the repressive effect of the threat of punishment.

The essential problem lies in the need to have an extensive administrative structure to guarantee the effective control of these types of illicit conduct in an organisation as vast as the public administration. To overcome this problem the following measures are proposed:

- Modify public administration's orientation in this area and push ahead in promoting ethical values in the public service. Better results will be achieved if, instead of repressing unethical conduct, appropriate ethical conduct is actively promoted.
- Implement flexible and effective systems for resolving the potential conflicts of interest that civil servants may face.

SWEDEN

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

a) The principal ethics-related issues which have confronted the public service in Sweden during the past 10 years, and especially within the past 18 months

In 1998 the Swedish Government presented a Bill in which the government defines the emphasis of forthcoming work on developing central government administration. The key words for the central government administration of the future are quality, service, skills and ethics.

During the last 20 years the Swedish government has changed its principles for management of central administration from detailed regulation to performance management. The agencies have gained great freedom of action to use their given resources to attain the government-defined objectives. The agencies have been entrusted with responsibility for making their own decisions. The government's assessment is that public servants have a key role to play, through their function of implementing the decisions of elected representatives. The government's view is that the best way to enhance awareness of the public servant's role and responsibility is to ensure that issues relating to ethics and the content of the public servant role be emphasised and continuously discussed in every agency, instead of having a "general ethical code" for the public service. However, it is the responsibility of each government organisation to form an opinion of the need for an ethical code for a particular action.

Questions have also arisen:

- Concerning work outside the public service, which may have a detrimental effect on the confidence between employer and employee.
- Concerning integrity in public procurement procedures.

b) Recent measures to improve ethical conduct and plans in preparation to address ethical issues in the Swedish public service

As a result of an ongoing public debate and preparatory enquiries into work outside the public service the Government has appointed a special committee to investigate on questions related to work outside the public service which may have a detrimental effect on the confidence between employer and employee. The investigation will examine and analyse rules on work outside the public service and suggest appropriate amendments – possibly towards more restrictions on work outside the public service. The committee will also examine if there is a need for special rules concerning certain categories of employees within the public sector, such as judges, and if it should be compulsory for public officials to report all types of work outside the public service.

A new agency, the National Council for Quality and Development, has recently been established. This agency will, among other things, be responsible for a basic training programme for public officials, including issues on ethics.

II. Core values for the public service

a) Stating core values for the public service

According to the Instrument of Government, public authorities and all employees who exercise public functions shall respect principles of:

- Equality.
- Objectivity.
- Impartiality.

The Administrative Procedure Act and the Swedish Code of Judicial Procedure contain rules on challengeability.

b) How stated core public service values are communicated to public servants

The government's view is that the best way of enhancing awareness of public servant's role and responsibility is to ensure that issues relating to ethics and the content of the public servant role be emphasised and continuously discussed in every agency, instead of having a "general ethical code" for the public service. It is the responsibility of each government organisation to form an opinion of the need for an ethical code for a particular action. The Freedom of Press Act regulates the right for all Swedish citizens to read public documents.

c) The statement on core public service values has not been revised in the last decade.

However, in 1998 the Swedish Government presented a Bill in which the government defines the emphasis of forthcoming work on developing central government administration. The key words for the central government administration of the future are quality, service, skills and ethics.

The government intends to embark on an action programme to develop central government administration. This programme should be focused primarily on the following three areas:

- Quality, skills and ethics.
- Control and management.
- Provision of information.

The government considers that more attention should be paid to issues relating to skills and education, in order to stimulate the agencies' supply of skills and promote quality work in central government administration. The government, therefore, has established a new special agency for quality development and skills provision in the administration, the National Council for Quality and Development. The new agency's work will focus on total quality management (TQM), ethics and development of public administration in strategically important areas (<http://www.kkr.se>).

III. Standards of behaviour for the public service

a) Statements of the standards of behaviour expected of public servants

There is no statement of the standards of behaviour expected of public servants. However, there are **specific guidelines/requirements** within the public service. For example, there is an old Code of Conduct for judges from the Middle Ages. This Code of Conduct does not have any official status, but is well known among judges in Sweden. Moreover, in the Swedish Code of Judicial Procedure, there is a mandatory requirement for judges to take an oath before practising. In this oath, the judges have to promise to respect principles of equality, impartiality, etc., and to avoid challengeability.

b) Unacceptable conduct for public officials according to the law

The following kinds of **specific misconduct** are defined for public officials by criminal legislation:

- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Partiality in official decision-making.
- Abuse of office or public trust.

In the Swedish Penal Code, there are provisions on breach of duty which cover all types of illegal activity by public officials in the course of their duties. **Further prohibitions** and **restrictions** are not directly imposed on public officials by other legislation, but according to the Tort Liability Act, the State is liable to pay damages for different kinds of damage caused by public employees' misconduct or negligence.

IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct

a) Measures used by human resources management to promote an ethical environment

The following measures are regulated by law:

- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by auditing/monitoring selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.

However, the responsibility for human resources management lies within each individual agency. The agencies have different ways of promoting an ethical environment. There is no central government policy to give **special attention** to officials in positions particularly susceptible to corruption, but individual agencies are responsible for this matter.

In addition to the above mentioned measures regulated in the Public Employment Act, the Permanent Tenure Act and the Employment Ordinance, there are also a number of laws applicable to the Swedish labour market in general as well as the public sector. Among these is the Act against Ethnic Discrimination and the Act Concerning Equality Between Men and Women which are of relevance for the human resources management.

b) Informing and training public servants on ethics issues

This is the responsibility of each individual agency.

c) Other measures to promote high standards of conduct and assist prevention

This is the responsibility of each individual agency.

d) Disclosure policy

According to the Administrative Act, public sector employees -- when they find themselves in a situation where the circumstances could be prejudicial or challengeable for them -- are obliged to report these circumstances to their authority, so that a decision can be made whether or not to take them off the case. Furthermore, the Swedish Insider Act and the Public Employment Act (PEA) regulates disclosure of personal information for certain public employees with insider status or because of outside employment.

Disclosure of personal information (declaration of the holdings of financial instruments) is regulated in the Swedish Insider Act. Disclosure is not confined to particular sectors – it may also be required by government decision from certain public servants in some agencies. The Government may decide that an authority should maintain a list of financial instruments held by members of the board, employees, assignment holders or other public servants – to be decided by the authority with regard to their specific insider status. A person whose name is listed should report the financial instruments he holds, and any changes to them, to the authority in writing. The disclosed information is confidential.

The Public Employment Act (PEA) contains a few special provisions for the public sector: article 7 of the Act stipulates that a civil servant must not have any additional employment, undertake a commission or carry out any other activity that could shake the confidence in his or any other civil servant's impartiality at work or injure the reputation of the authority. In addition to the Public Employment Act, the Government published the Employment Ordinance. This ordinance contains supplementary rules to the Public Employment Act. Article 11 of this ordinance stipulates that each state agency should inform its employees, in general, which additional activities, in its opinion, violate the rules as set out in Article 7 of the Act. However, each employee has the primary responsibility to judge whether the activity concerned violates the rules.

Furthermore, each employee has the right to get a written opinion from the agency on whether a specific activity, violates article 7 of the PEA. This rule is laid down in article 12 of the ordinance. The employee also has the right to complain about the agency's opinion and ask for the Government's opinion. The employee, however, is not obliged to conform to this opinion, in which case the agency might take disciplinary proceedings against him (her). Finally, the whole case could be tried by the Labour Court.

The Swedish Agency for Government Employers (SAGE) has published a leaflet *Bisysslor* (Additional Activities), *Arbetsgivarverkets cirkulär* 1996:A 15. In this leaflet, which is distributed to all agencies, extensive information is given on the legislation concerned. The leaflet also deals with rules in collective agreements concerning additional activities which are not detrimental to confidence (article 7 of PEA) but which might infringe upon the employee's performance in his/her daily work. The collective agreements also contain rules governing the right of an employee to undertake additional activities of the same kind as the agency carries out for a fee.

According to the collective Agreement Concerning the Salaries of the Most Senior Government Officials, the officials concerned are under an obligation to inform their employer whether, and to what extent, they

have additional activities or intend to undertake such activities. The Government or the employer must decide whether officials should give up their additional activity entirely or partly or whether they may undertake additional activities that impede the exercise of their duties. These rules are more far reaching than those applicable to other officials. In 1999 the government appointed a special committee to review the rules concerning additional activities.

e) Procedures to report misconduct/suspected corruption

There are no procedures or obligations for public servants to report misconduct/suspected corruption committed by public servants, and no protection/safeguard available to public servants who expose wrongdoing. For the public, special procedures are available, through the Parliamentary Ombudsman, to expose wrongdoing committed by public servants. The Parliamentary Ombudsman publishes reports on his/her investigations. Only the reports that are of general interest are published.

f) Internal control to support the improvement of ethical conduct in the public service

This is a matter for each individual agency as employer.

g) Disciplinary procedures in case of a breach of public service standards

In the Public Employment Act, there are provisions on disciplinary measures in the form of a warning or a salary reduction. These are only applicable for breaches which are significant. Misconduct or negligence may ultimately lead to notice of dismissal. Decisions on disciplinary measures and notices of dismissal may be challenged in court.

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

Bodies in place **investigating** misconduct and corruption in the public service include:

- The Parliamentary Ombudsmen supervise - as one branch of the Parliamentary control of the executive - the application of laws and other statutes in the public service.
- The Chancellor of Justice is a non-political civil servant appointed by the government. The main duties of the Chancellor are to act as the government's principal legal adviser, to represent the State as Solicitor General in cases affecting the State's interest, to exercise supervision on behalf of the State over all civil servants, including national as well as municipal officials, and to take action in case of abuse, and to ensure that the limits to the freedom of the press, which are established in the Freedom of the Press Act, are not transgressed.
- Public prosecutors investigate any actions by public employees which are considered to be criminal, in the same way as other crimes.
- Each individual agency internally investigates breaches of duty, which are not considered to be criminal.

Bodies in place **prosecuting** misconduct and corruption in the public service:

- Public prosecutors prosecute criminal actions committed by public employees before a public court in the same way as other crimes.
- Misconduct or negligence which are not considered as criminal are examined by a public official and brought before the managing directors of the agency involved (*personalansvarsnämnd*), the latter being appointed especially to decide on the matter.
- The Parliamentary Ombudsmen may in certain cases initiate legal proceedings against a state or local government official.
- The Chancellor of Justice acts as the only public prosecutor in cases regarding offences against the freedom of the press.

According to the general procedural rules, only public prosecutors are empowered to bring suspected cases of corruption directly to court.

b) Institutions in place to perform independent scrutiny of the administration

These include:

- The Parliamentary Ombudsmen.
- The Chancellor of Justice.
- Swedish National Audit Office.
- Parliamentary Auditors.

Anyone may report suspected crimes or breaches of duty. All public authorities are externally audited by the National Audit Office. External audit reports are routinely published.

VI. Co-ordination and self-assessment

a) Co-ordination and management of government ethics or anti-corruption policy

Active and passive bribery has been criminalised in the Swedish Penal Law for a long time. It is criminalised to receive, accept or demand a bribe or any other undue advantage. The receiver is defined as any employee. The legislation therefore covers corruption in the public sector as well as in the private sector. The Swedish anti-corruption legislation is also applicable to public officials other than employees, for example ministers, members of parliament and other public assemblies and any other person exercising public functions. The punishment for bribery is a fine or imprisonment for at most two years.

According to the government the laws in force; the Instrument of Government, the Administrative Procedure Act, the Public Employment Act, the Swedish Penal Code are sufficient as ethical values for government employees in their role as public servants.

The government recommends government agencies to enhance the effort to inform better and train the public servants in ethics.

There is no institution assigned to co-ordinate and manage the implementation of a government ethics policy. No national ethics or corruption prevention plan/strategy has been developed. However, each individual agency decides upon whom to involve in the preparation and implementation of its ethics policy.

b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct

Sweden has been spared from severe problems of corruption. It is a widespread opinion that the openness and transparency of the Swedish public administration have contributed to reduce the problems of corruption in the public sector. According to the Swedish Freedom of the Press Act, public documents are available to all Swedish citizens. This provides for an extensive control exercised by the citizens and even more by the mass media. Furthermore, two public institutions, the Chancellor of Justice and the Parliamentary Ombudsmen, supervise the public administration.

SWITZERLAND

I. The general context for managing ethics in the public service in Switzerland

a) The principal ethics-related which have confronted the public service in Switzerland during the past 10 years, and especially within the past 18 months

In Switzerland no obvious increase in corruption - at federal level - has been observed in the statistics; it should nevertheless be noted that the media and the public have been paying greater attention to this problem since the revelation of a number of bribery cases.

b) Recent measures to improve ethical conduct in the public service

General observation

It is not part of Switzerland's legal and administrative tradition to set up institutions specifically responsible for encouraging ethical conduct. Broadly speaking, ethics management is regarded as a task extending across a number of sectors and difficult to delegate. Tools aimed at promoting ethics as such (codes of conduct, ethics seminars, etc.) are little used. In Switzerland there is no real policy for ethics management. On the other hand, the following tools help to prevent corruption:

- Management principles and administrative practice: public-service processes and structures use various means (legal instruments, pay, terms of employment, rules for workplace procedures, reporting obligations, etc.) to encourage officials to develop the desired behaviour or, alternatively, to discourage misconduct.
- The body of legislation on public servants.

Parliamentary action

Various draft legislation has been tabled calling on the Federal Council to adopt anti-corruption measures in various fields:

96.3457 - Kurt Schüle's motion of 1 October 1996: bribery cases, legislative consequences.

The Federal Council was instructed to draw all the legislative conclusions from the bribery cases having occurred in public administration and modify the relevant provisions of the Swiss penal code in consequence.

99.3013 - Postulate of 22 February 1999 from the Committee for Economic Affairs and Taxes: OECD Convention on Combating Bribery of Public Officials.

The Federal Council was requested to begin the ratification procedure for the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Federal Council proposes to file this postulate.

99.026 - Federal Council subject matter. Penal code and military penal code: amendment (corruption).

Bill of 19 April 1999 concerning alteration of the Swiss penal code and military penal code (modification of criminal provisions applying to corruption) and accession of Switzerland to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (*Feuille fédérale* 1999).

Other draft legislation concerning specific areas such as public procurement and construction of main roads were tabled. The following bills are of particular interest:

98.3347 - Otto Zwygart's motion of 26 June 1998. Appointment of an ethics committee. Reply of Federal Council:

- Ethical values may be taken into account in various ways, for example by setting up ethics committees or using ethics specialists in committees and working groups. However, the Federal Council holds that creation of an ethics committee is not the right answer if the committee's remit is not confined to a specific and particularly complex field of ethics but covers all public problems currently arising.
- Various specialist committees already exist at federal level (or are being set up) in such diverse fields as women's issues, racialism, genetic engineering and medically assisted procreation. There is no point in setting up another committee, whose general remit would inevitably encroach on the work of these specialist committees.
- However, the Federal Council is willing to seek more frequent assistance from ethics specialists in areas in which it has not previously done so as well as in the committees and working groups which it sets up and to entrust examination of specific public problems to ethics committees wherever justified. To address basic issues of this kind the Federal Council has, moreover, established a senior forward-planning body within the federal administration which contains representatives from departments dealing with future social, territorial, environmental and economic issues in the course of their work.

93.3670 - Victor Ruffy's postulate of 17 December 1993. Corruption research. National research programme.

Generally speaking, parliamentary action is intended not so much to strengthen punitive measures as to reinforce prevention (by encouraging ethical conduct, for example).

Reactions within the Federal administration

Final report of the "Corruption and Safeguards" Working Group, Federal Department of Justice and Police (FDJP), 1996.

The increase in cases of public-servant bribery prompted the head of the FDJP to set up a working group (12.7.95). This group, chaired by the federal police, was instructed to assess the situation within Switzerland, determine what action was required, and propose a strategy. In particular it studied the question of safeguards and came to the following conclusions:

- The extent of corruption within the Federal administration offered no cause for alarm. Specific action should be taken on criminal legislation, fiscal law, competition law, internal and external public-service control, and the conduct of administrative procedures, which were often complicated.
- Proposed action: standard rules on receiving gifts; staffing increase for the Federal Audit Office (risk analysis); inclusion of corruption-related problems in management courses; more checks in high-risk areas (line managers).

On the basis of the FDJP report, the Federal Council conferred the following **three mandates** (decisions of 18 December 1996 and 15 January 1997):

1. To draft **standard rules on receiving gifts** [Federal Office of Personnel (FOP)/Federal Department of Finance (FDF)].
2. To analyse **corruption risks** and determine **safeguards** required in the federal administration [Federal Council's Administrative Control Service].
3. To strengthen **Penal Code** provisions relating to corruption [Federal Department of Justice and Police (FDJP)].

The following progress has been made:

1. There has been no attempt so far to draft **standard rules on receiving gifts**, since situations and requirements vary too much from one department to another.
2. The report from the Federal Council's Administrative Control Service on 26 March 1998 concerning **corruption risks** and **safeguards** within the Federal administration has been published. It contains a list of high-risk activities and recommendations (Federal Council order of 20 May 1998), including the following:
 - Departmental verification of safeguards.
 - Inclusion of corruption issues in management courses.
 - Drafting of a code of conduct to be used as both an instrument of prevention and a training tool.
 - Analysis of corruption risks and safeguards in connection with auditing of public-service work.

A working group of the Federal Office of Personnel (FOP) was instructed to prepare a code of conduct for 1999. This code will come within the framework of the Personnel Management Project (PMP) and will be published as two manuals, one for public-service managers and one for ordinary staff. It will be implemented more through development of a corporate culture than through use of criminal penalties. Some agencies already have a code of conduct (the Agency for Development and Co-operation, for example). Very often there is no code of conduct as such but rather guidelines on the behaviour to be adopted (towards outside partners during negotiations, towards customers, towards recipients of services, etc.). Ethics in itself is seldom dealt with explicitly, being instead considered an implicit part of a public servant's work. Adoption of appropriate behaviour is, in fact, inherent in the performance of work (specifically in staff assessment, seminars, management courses, etc.).

Recently it has been structural reforms (relating, in particular, to new public management and budgetary cuts) and a number of bribery cases which have been at the root of efforts to promote ethical conduct.

Various measures have been taken by departments and agencies:

- Training and development: management courses, training on specific subjects, induction courses for new staff.
- Establishment of a corporate culture in departments and agencies or redefinition of existing culture: open and transparent management styles and communication patterns (trust; clearly defined responsibilities); development of departmental and agency guidelines; management courses and directives; specific rules and standards of conduct; improved communication between departments and agencies; internal control systems (safeguards, sample surveys by internal and independent auditing services, management control (*controlling*), multiple checks, division of duties, additional security measures, etc.); reorganisation of structures and work processes.

Mention may here be made of the Federal Department of Environment, Transport, Energy and Communications (DETEC), with the decision to introduce mandatory emergency measures to prevent corruption (30 May 1997).

3. Modification of the **Penal Code** provisions on corruption and strengthening of the provisions relating to corruption of Swiss and foreign officials are preconditions for ratifying the OECD Convention on

Combating Bribery of Foreign Public Officials in International Business Transactions, signed by Switzerland and 32 other States on 17 December 1997.

Extracts from an FDJP press release of 20 January 1999:

"The Federal Council (...) has instructed the Federal Department of Justice and Police (...) to submit draft legislation in the next few months in order that Switzerland may implement the OECD Convention as soon as possible. However, modification of legislation on private-sector corruption will be separate from this act. It will be covered by a second package which will be dealt with later, upon ratification of the Criminal Law Convention on Corruption drawn up by the Council of Europe. (...) In the view of a large majority of the circles consulted, active bribery of public officials [must now be] punished as a serious indictable offence, the corresponding limitation period [must be] extended, and any money laundering of proceeds from active bribery must come under criminal law."

The proposal to prosecute "palm-greasing" practices (unspecified benefits conferred on a public servant for acting in his official capacity), which are at the root of a particularly dangerous form of systematic bribery, was also approved: "The new criminal provision governing active bribery of foreign public officials and Switzerland's accession to the OECD Convention [were] widely approved."

Action as part of the Confederation's personnel policy

Personnel policy guidelines have been issued by the Federal Office of Personnel (FOP) as part of the Personnel Management Project (PMP). These guidelines are a key instrument in reorienting the Confederation's personnel policy. They are due to be implemented in 1999.

Press release on reorientation of the Confederation's personnel policy

"The Federal Council intends to encourage staff openness to change and increase the leadership role of managers. This decision has been taken on the basis of the Personnel Management Project (PMP) report. The Swiss public administration ought consequently to remain an attractive employer and possess dedicated and flexible staff. The Federal Chancellery and individual departments will have greater responsibility for staff management and the federal agencies more room for manoeuvre when implementing decisions. Modernisation measures will be introduced from 1999. Modern and dynamic personnel management within the Swiss public service has three key objectives: to encourage strategic changes within the administration, facilitate economic working methods, and promote a learning culture. To be certain that the personnel policy is effective, personnel specialists will no longer be solely responsible for this field. In future more will be required of line managers to ensure that they assume their management role. This is particularly relevant to the Federal Council, which will be more involved in personnel policy in the role of a college. But staff themselves will also have greater responsibility for their own personal and professional development.

"In connection with the government and administrative reform, an interdepartmental drafting body under the Federal Office of Personnel (FOP) has made a detailed analysis of the personnel function in the course of the year. On this occasion a number of recommendations contained in the February 1998 report from the Control Committees of the Federal Chambers on the Confederation's personnel policy were also implemented. In particular, personnel policy guidelines were drawn up. These guidelines are binding, but their application will be reviewed in 2001 with the entry into force of the new Confederation Personnel Act.

"The new personnel policy grants greater management powers to departments and allows federal agencies greater room for manoeuvre in implementing decisions. Organisation units are therefore responsible for reviewing their personnel departments' structures and framework conditions. It would be possible to consider establishment of service centres and specialised centres run as service centres. They would define their own products under an agreement stipulating the quality and quantity of services required. Subsequently, these service centres could also invoice for their own services on certain conditions. It is

also essential to increase the professionalism of personnel specialists still further through various professional development and training measures. As the body responsible for federal personnel policy within the Federal Department of Finance and in charge of resources, the FOP takes responsibility for strategic management, training and guidance (amongst other things), supplies the foundation and instruments of personnel policy, and provides general co-ordination and staff information.

"Implementation of personnel policy implies new tools. To this end, the Federal Council has delegated the following tasks, among others:

- To develop a new and more flexible pay system taking better account of individual performance.
- To introduce management development, designed in particular to encourage managerial mobility and professionalism as well as to prepare the next generation.
- To extend the staff assessment system, especially for assessment of managers by their subordinates.
- To submit key personnel-policy figures regularly so that the Federal Council can play its role of employer more effectively (*controlling*).
- To strengthen marketing by taking steps to improve the public service's image and position on the labour market.
- To extend flexible working (calculation of working hours on an annual basis, phased retirement, sabbaticals).
- To draw up new rules on training.
- To appoint confidential advisers for public-service staff in Switzerland.
- To retain the time-recording principle for work in the public administration. However, individual departments may decide to lift this obligation for senior management.

"The conclusions of the PMP report confirm the validity of the reforms implemented in the Swiss public service. With its new approach, the Federal Council is underlining the role of personnel as a strategic success factor and a cultural mainstay of the modernisation process."

Action by the Control Committees (drawn from the Control Committees' annual report, May 1999)

Appointment of confidential advisers for federal administration staff

In their report of 9 July 1998 the Control Committees of both Chambers recommended the Federal Council to appoint one or more confidential advisers for federal administration staff, pointing out that restructuring resulted in greater pressure on the public administration and that it was important, in these circumstances, for public service staff to be able to consult independent "advisers". Although it would not be the latter's main role to prevent corruption, they could nevertheless exert a salutary influence in this area. On 18 November 1998 the Federal Council indicated that it shared the Control Committees' opinion on the usefulness of confidential staff advisers and instructed departments to appoint them in their respective fields.

Federal officials' secondary activities and former officials' occupations analysed in terms of conflict of interests

Statutory provisions concerning secondary activities are properly enforced. Federal departments generally evidence great discretion in granting permission for such activities, although implementation of these provisions varies greatly from one department to another (especially for teaching activities). No offences against criminal law have been recorded. Conflicts of interest may arise in a few rare cases and generally concern consultancy (legal advice, tax consultancy, wealth and trust management, etc.) or representation work. The committees in particular suggested developing discussion of ethics in the public service. They

instructed Parliament's Executive Supervision Board to decide what action was needed. In its report, the Board has shown that the steps taken are still at a fairly embryonic stage. Its conclusions are as follows:

- Generally speaking, the departments questioned noted a drop in public confidence in government administration (following various cases of misconduct).
- They nevertheless thought that core public service values (e.g. being at the service of the public, being accessible to customers, listening to members of the public, ensuring that the law was enforced, and ensuring that work was performed according to the rules) were generally respected without any special efforts to promote observance of ethical rules.
- Doubts concerning possible misconduct are explained mainly by mismanagement and recruitment errors as well as ill-defined powers. A model attitude on the part of public-service managers and the political authorities, together with clearly defined responsibilities, would be a more effective strategy for combating this type of misconduct.
- Hitherto, new public management has not had the effect of increasing the number of bribery cases. As long as the attendant conditions are modified accordingly, new public management presents no element of risk. It may even check corruption.
- The persons questioned thought that the preventive measures best suited to encouraging appropriate behaviour were the rules of conduct laid down in the personnel policy guidelines and those specified in the code of conduct being prepared. These measures have not yet been fully integrated into training and development. On the other hand, departments are working very actively to promote respect for ethics in the broadest sense of the word, for example by organising briefing sessions for new staff or seminars on how to treat public-service users. They are also endeavouring to modernise their "corporate culture" by establishing guidelines, defining new communication patterns, and training management staff. However, we cannot really talk of "ethics management" (in the OECD sense). Since the federal administration enjoys a satisfactory reputation, the introduction of such management is not a matter of urgency. Switzerland has preferred to include preventive measures in the new legislation on Confederation personnel, since ethics is regarded as part and parcel of the structure and management of administrative affairs. Ethical conduct is therefore governed by unspoken rules.

II. Core values for the public service

a) Stating core values for the public service

The following are core public-service values:

- Government administration as a public service (administration at the service of the public), a value set out in the legislation relating to public servants (Section 21 *et seqq.* of the Civil Service Act, Regulation 24 *et seqq.* of Staff Regulations, and the draft Confederation Personnel Act), in the personnel policy guidelines (see above) and in the Code of Conduct which came into operation at the end of 1999.
- Services geared to customer needs, with contract management and overall budgets (new public management).
- Services accessible to the public, with a militia system, federalism and direct democracy.
- Compliance with the rules of law as laid down in criminal-law provisions on bribery and the Financial Auditing Act.
- Proper performance of duties under the Financial Auditing Act.
- Management by objectives, under Section 36 of the Law on the Organisation of the Government and the Administration (LOGA), and Article 28 of the Order on the Organisation of the Government and the Administration (OLOGA).

- Staff information, a principle of the Federal Office of Personnel (FOP) and OLOGA Article 12.
- Efficient and rational management of administrative work, under reforms geared to results-oriented administrative management.

These values are stated in the following forms:

- Classified compilation of federal law (published in paper form and on the Internet): Civil Service Act, Staff Regulations, Penal Code, LOGA, etc.
- Instructions from the Federal Council, departments and agencies (paper form, Intranet and Internet), including management guidelines.
- Federal Council guidelines on personnel policy (sent by post to all employees).

b) How stated core public service values are communicated to public servants

The following methods are used:

- Manual containing core values is automatically circulated to anybody joining the public service.
- After each revision, manual containing core values is distributed to all public servants.
- Core values are communicated through new technology (such as the Internet).

c) The statement on core public service values was revised during the past ten years

The statement has been revised in the 1999 Confederation Personnel Act. A number of public servants from across the administration (since the body working on the act is a supra-departmental body) have been involved in the drafting of this act. Staff associations have been consulted. As part of the amendment procedure for this legislation on public servants, the public was also involved.

III. Standards of behaviour for the public service

a) Statements on the standards of behaviour expected of public servants

A code of conduct constituting a statement of the behaviour expected of public servants is being prepared (Federal Office of Personnel). It will cover the following specific issues:

- Receiving gifts and benefits such as fees, payments and entertainment.
- Use of official information.
- Use of official property/facilities.
- Work outside the public service.

There are also **specific requirements** in the form of instructions, guidelines and directives from departments (Federal Department of Foreign Affairs; Federal Department of Defence, Civil Protection and Sports; Federal Department of Justice and Police) and agencies. As for people working at the political/administrative interface, they are bound by the requirements relating to management and proper performance of duties by senior civil servants and the government under the law on relationships between senior bodies and under the terms of the Federal Assembly Manual.

Minimum standards of behaviour for the public service are specified in the following legislation:

- Civil Service Act (of 30 June 1927), which will be replaced by the Confederation Personnel Act (CPA).
- Staff Regulations: Regulations 24, 26 and 27 (prohibiting acceptance of gifts and other benefits) and Regulation 28 (confidentiality).
- Order concerning employment of federal officials in international organisations, Article 2 (officials' independence).
- Penal Code provisions relating to corruption.
- Financial Auditing Act.
- LOGA Section 36, and OLOGA Article 28 (management by objectives).
- OLOGA Article 12 (principles governing public service management, and personnel policy guidelines).

Since the situation varies greatly between one department and another, Switzerland does not have any rules dealing specifically with receiving gifts. However, the Code of Conduct makes reference to it, and departments may use the Code as a model when drawing up their own rules (departmental and agency instructions). Section 19 of the draft Confederation Personnel Act and Article 316 of the Penal Code regulate acceptance of gifts and other benefits.

b) Unacceptable conduct for public officials according to the law

The following **kinds of misconduct** by public officials are specified in criminal legislation:

- Active, passive and attempted bribery of/by public officials.
- Partiality in official decision-making.
- Abuse of office or public trust.

Other types of misconduct are identified in Articles 313 (misappropriation of public funds), 316 (receiving a benefit), 317 (official forgery of documents) and 319 (abetting avoidance) of the Penal Code.

The following **prohibitions and restrictions** are imposed on public officials by other legislation:

- "A public servant is not entitled to engage in a secondary activity which would compromise performance of his official duties or be incompatible with his office." (Civil Service Act, Section 15, secondary activities)
- "A public servant is prohibited from disclosing official matters which must remain confidential by virtue of their nature or on special instructions. The duty of discretion subsists even after termination of service." (Civil Service Act, Section 27, confidentiality)
- "Permission (to engage in a secondary activity) may be granted where there is no incompatibility and where there is no conflict of interests between official duties and the secondary activity." (Staff Regulations, Regulation 13, secondary activities)
- "They (the Chancellor and members of the Federal Council) may not hold office as director, manager or member of the board, supervisory body or control body of a business organisation." (LOGA, Section 60, incompatibility with duties).

IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct

a) Measures used by human resources management to promote an ethical environment

The following tools are used:

- Rules/guidelines/policies are provided for recruitment and promotion procedures.
- Recruitment and promotion are based on merit.
- Openness of selection procedures is ensured by publishing the recruitment rules/guidelines/policies, publicising vacancies, and evaluating selection procedures.
- Only published and appropriate selection criteria are considered in recruitment.
- Ethical considerations are taken into account in the recruitment process through job interviews, assessments and tests (handwriting analysis, for example).
- Ethical behaviour is taken into account in performance appraisals through annual interviews designed to assess employee performance.
- A pay policy has been approved by the Federal Council for the entire staff and certain positions, adjusted according to the economic situation.

Special attention is given to officials in positions particularly susceptible to corruption, with:

- The order of 20 January 1999 concerning security checks on individuals.
- Agency regulations for fields potentially open to corruption: public procurement and information technology. Anti-corruption measures include multiple checks, internal auditing services, and security checks.

b) Informing and training public servants on ethics issues

In departments and agencies, corruption is prevented by internal measures, for example the drafting of directives, guidelines and instructions. These measures are mainly the responsibility of the agency and, above it, the department (instructions and courses).

The Federal Department of Finance has prepared the Personnel Management Project (PMP). On 20 May 1998 the Federal Council instructed the Federal Department of Finance to draw up a code of conduct. This document is being prepared by a working group under the Federal Office of Personnel. It will lay down ethical standards and its content will be brought into line with the personnel policy guidelines. The code of conduct will be distributed and implemented in the same way as these guidelines (incorporated in manuals, given to new staff, etc.)¹⁹. It will be the foundation of the training and development offered by the Federal Office of Personnel, especially for management courses.

The question of the assistance available to public servants for resolving work-related ethical problems is broadly addressed in the principles governing public management. The first point of contact is the immediate superior, followed by the next department up and then the federal police. There is no counselling on the risks of corruption as such; guidance on the subject is incorporated in management and performance of duties, since particular attention is paid to perpetuating and further developing an everyday culture of trust. Until now, the possibility of setting up advice and mediation structures has been envisaged only in the case of sexual harassment (see 1998 Personnel Management Project (PMP) report of the Federal Department of Finance, Section 4.8 "Confidential Advisers and Social Consultation Unit").

19. In this connection, see PMP report, Section 4.14.2 "Code of Conduct".

c) Other measures to promote high standards of conduct and assist prevention

These measures include the following:

- Identification and reporting of conflicts of interest (Section 15 of Civil Service Act and Regulation 18 of Staff Regulations).
- Requiring reasons for administrative decisions.
- Redress against administrative decisions.
- Time limits for replying to user requests.
- Anti-corruption provisions in invitations to tender.
- Specific controls for public procurement procedures.
- Risk assessment for most sensitive areas.
- Clearly defined responsibilities in performance of duties, and transparent rules on decision-making procedures (especially for third parties).
- Management control (*controlling*).
- Double or multiple checks.
- Division of duties.
- Improved filing of documents relating to case-handling.
- Rotation of staff.

d) Disclosure policy

A personal declaration is required from public servants engaged in a secondary activity (order of 30 June 1987 on insured income from secondary activities and the obligation to file the said income, and Regulations 13 and 13a of the Staff Regulations). The disclosure obligation is confined to certain sectors: diplomats, border guards, customs officers, military personnel, and holders of State secrets.

The following information is required in annual declarations and in declarations made when joining the public service, when relevant circumstances change, when the permission referred to Regulation 13 of the Staff Regulations is granted, or in the circumstances specified in the order of 30 June 1987 on insured income from secondary activities and the obligation to file the said income:

- Source and amount of income.
- Outside activities.
- Gifts.

The disclosed information is used through official channels. In the case of permission to engage in a secondary activity, for example, the information is used in accordance with Regulation 13 of the Staff Regulations. The immediate superior has access to the information. If the official is suspected of having committed an offence against criminal law, the federal police use the information.

e) Procedures to report misconduct/suspected corruption

Legal provisions define the procedure for exposing wrongdoing, and internal rules define the procedure within each organisation across the public service. No protection is available to public servants who expose wrongdoing.

For the public there are specific procedures for exposing wrongdoing by public servants through the conventional possibility of appealing against a decision of an administrative authority under administrative procedure.

f) Internal control to support the improvement of ethical conduct in the public service

The following internal controls help to prevent corruption:

- An internal control system (ICS) in agencies and auditing services.
- Management control (*controlling*) by line managers.
- Monitoring by the Federal Audit Office.
- Special checks by the Federal Office of Information Technology (FOIT) and the Federal Department of Finance (FDF) in the field of information technology.
- Monitoring by departments.
- The Federal Council's Administrative Control Service.

These internal controls help to improve ethical conduct through direct contact between the Federal Audit Office and the relevant agencies and offices in the event of misconduct and through supervisory bodies such as the departments' auditing services and the Federal Council's Administrative Control Service. Monitoring of recommended measures occurs as part of the risk analysis conducted by the Federal Audit Office (definition of review priorities). Tracking of weaknesses is performed by general supervisory bodies.

This internal control, required by law, is carried out regularly. Management and decision-making and executive bodies at various levels, the parliamentary Control Committees and Finance Committees, and the parliamentary special committees (the committees of inquiry, for instance) have access to internal control reports.

g) Disciplinary procedures in case of a breach of public service standards

The following disciplinary measures are available:

- Measures laid down in the legislation relating to public servants (e.g. for refusal to obey instructions or breaches of rules of conduct, including failure to observe ethical rules), and penalties such as a warning/reprimand, suspension and dismissal (Civil Service Act, Sections 30 to 32, and Staff Regulations, Regulations 31 to 44).
- Measures laid down in Articles 312 to 317 (abuse of authority, misappropriation of public funds, dishonest management of public interests, passive bribery, receiving a benefit, forgery of documents by officials), Article 319 (abetting avoidance) and Article 320 (breach of official secrecy) of the Penal Code.

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

The following bodies exist to **investigate** misconduct and corruption in the public service:

- An investigative body with jurisdiction over the whole public service.
- An investigative body with exclusive jurisdiction over one body or a specific range of public service bodies.
- An investigative function within individual public-service agencies/departments.

Security checks on individuals are the responsibility of the federal police (FDJP). Financial auditing and risk analysis is the responsibility of the Federal Audit Office. As for the rest, the responsibility lies with

agency directors and heads of department. Investigative independence is not guaranteed. In specialist fields, the committees are responsible.

The following bodies exist to **prosecute** misconduct and corruption in the public service:

- For acts of corruption as defined in the Penal Code, the federal police (FDJP) is responsible.
- For wrongdoing revealed by the Federal Audit Office, it is the line managers who are primarily responsible (reports to agencies).

Some investigating or prosecuting bodies are empowered to bring suspected cases of corruption to court directly.

b) Institutions in place to perform independent scrutiny of the administration

These institutions include the following:

- Parliament/parliamentary committees.
- Independent/external auditors reporting to elected bodies such as Parliament.
- Courts for judicial review.
- Independent office of ethics.
- Media and public opinion.
- Non-parliamentary control bodies for the public service (Federal Council's Administrative Control Service; Federal Audit Office).

Procedures and mechanisms exist to bring wrongdoing to the attention of bodies exercising independent scrutiny of public-service activities; they include auditors' reports, performance reports, appeal bodies and objections.

External audits are conducted by the following:

- The Federal Audit Office, a semi-independent body between Parliament and the Federal Council, which checks that the accounts have been properly kept, in accordance with statutory provisions (all areas of government administration) and examines the risk areas identified by risk analysis.
- The Control Committees (depending on the problem).
- Other committees (the parliamentary committees of enquiry, for example).
- In some fields, total quality management is provided by external auditors (on the administration's own decision).

These external audits are carried out every year (sometimes several years apart), and the external audit reports are routinely published.

VI. Co-ordination and self-assessment

a) Co-ordination and management of government ethics or anti-corruption policy

The Federal Office of Personnel (Federal Department of Finance), an institution defined by law, is in charge of implementing the Federal Council's personnel policy. It is divided into the following sub-units: systems development, personnel law, guidance and co-ordination, and staff training/development. The Office does not produce a report.

The following actions are taken to ensure that the ethics and anti-corruption measures adopted by the government are consistent:

- Risk assessment to steer policy development, define priorities and sequence ethics measures.
- Analysis of systemic failures and of trends in criminal and disciplinary cases.

No ethics or anti-corruption plan has been developed.

b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct

There is no overall procedure for assessing the effectiveness of measures taken in the various sectors. The assessments made concern fields particularly susceptible to corruption (such as information technology).

The following tools are considered helpful in preventing corruption:

- General management principles.
- Internal and external public service auditing.
- Training and development to inform public servants and make them aware of corruption risks.
- Strengthening of criminal provisions relating to corruption in Switzerland and in cross-border business relations.
- Introduction of a more consistent personnel policy (modification of legislation relating to public servants).

The main impediments to more effective prevention of corruption in the public service are the following:

- Lack of time to achieve the requisite awareness, since government departments are very preoccupied by the new tasks assigned them and by current projects in the management and personnel fields.
- Various shortcomings in safeguards (see Proposal No. 30 of the Federal Council's Administrative Control Service, "Corruption risks and safeguards within the federal administration", *Annex 1*).
- Staff recruitment errors.
- Unsatisfactory working conditions (material and otherwise) and an unpleasant working environment (lack of motivation, distrust, anonymity, etc.).
- Lack of corporate culture in the Confederation's general administration. Also lacking are values common to all levels of the administration, from members of the Federal Council to officials in junior positions (see "The Confederation's Personnel Policy", a report by the Control Committees of the Federal Chambers for the Federal Council, 12 February 1998, Section 337 "Staff information").
- The status of the public service in society and the business world has changed (opening-up, decentralisation, and co-operation).

Federal Chancellery: Federal Council's Administrative Control Service**List of safeguards' possible weak points**

Safeguards	Possible weak points
Ladder of decision-making bodies	• Dispersal of powers between different levels with inadequate supervision • Shortcomings in the conferral of decision-making powers to the different levels • Too great a gulf between management and operations (business conducted through memoranda)
Regulation of decision-making process	• Those concerned are not properly aware of officials' powers or programme objectives (problem of insider information) • Shortcomings in rules governing responsibility for task performance • No new management instruments for delegation of decision-making powers • Wider margins of discretion for deregulated work (insufficient control of discretionary authority) • Delegation of decisions to "subordinate" project organisations
Decision-making criteria	• Incomplete compliance with directives on conduct of business, especially in the case of statutory authority coupled with a margin of discretion • Failures in determining and respecting objectives going beyond statutory authority and giving it concrete expression • Inadequate grounds for decisions with consequences for third parties

Safeguards	Possible weak points
Management control	• Failures in defining objectives which can be audited at the different levels • Interruptions in the information flow between the various management levels (inadequate contact) • No up-to-date auditing instruments in the new forms of public-service management (NPM, delegation of decision-making powers) • Inadequate auditing of task performance and quality assurance
Internal control	• Failures in defining and observing business control principles • Inadequate recording of business (checks on abuse of power) • Excessively long serial checks or checks performed without authority • Superficial checks made by overworked staff • Dropping of process auditing in favour of objective auditing • Lack of clarity or dispersal of responsibilities for auditing • Excessive formal auditing
Record of business conducted	• Inadequate rules on document filing and management (memoranda on telephone calls, minutes, etc.)
Dual-control principle	• No countersignatures for activities particularly open to corruption
Division of duties	• No division between planning, decision-making and implementation in sectors particularly at risk • No division of duties owing to staffing shortages in activities particularly at risk

Safeguards	Possible weak points
Departmental watchdog	• Complex watchdog rules • Inadequate monitoring by departmental watchdogs (problem relating to definition of responsibilities)
Involvement of other agencies	• Dispersal of powers between agencies (and concentration in some of them) • Lack of guidelines concerning scope of powers
Independent auditing of administration	• Inadequate supervision by Control Committees owing to lack of resources and problems relating to definition of responsibilities
Options for third-party appeal	• No checks in the event of lack of appeal on account of corruption • Subsequent checks (belated whistle-blowing)
Staff information and training	• Inadequate awareness of activities open to corruption (inability to detect problems and dubious situations) • Incomplete list of activities open to corruption • Insufficient information on management rules applicable to new forms of public-service management (NPM)
Checks on information and telecommunications systems	• Inadequate checking of data and compatibility of data-processing systems • Ill-defined responsibilities regarding use of on-line data banks
Staff rotation	• Staff rotation jeopardised by staffing shortages in activities particularly at risk

TURKEY

I. The general context for managing ethics in the public service in Turkey

a) The principal ethics-related issues which have confronted the public service in Turkey during the past 10 years, and especially within the past 18 months

Issues include the following:

- Corruption and partisanship in the public sector.
- Lack of objectivity in recruiting civil servants.
- Not maintaining the real value of public personnel wages.
- Misuse of public resources as a result of political pressure.
- Lack of defined public regulations and lack of standardisation.
- Out of proportioned allocation of authorities and accountabilities.
- Misapplication of promotion and punishment mechanisms, corruption in personnel management.

b) Recent measures to improve ethical conduct in the public service

There have been some laws enacted by the Turkish Grand National Assembly and new regulations enforced by the Government. These include:

- The Law on Disclosure of Assets and Combating Bribery and Corruption (No: 3628 – 19.4.1990).
- The Law on Banking Affairs (No: 4389 – 18.6.1999).
- The Law on Combating Organised Crime (No: 4422 – 30.7.1999).
- The Law on Prosecution Procedure for Public Servants (No:4483-02.12.1999).
- The Law on Ratifying the Agreement on Combating Bribery to Foreign Public Officers in International Trade Enterprises (4518-06.02.2000).
- The Decree of the Council of Ministers on the Central Examination System for Entering the Public Service (22.2.1999).
- The provisions concerned with combating corruption in the Government Programme and seventh National Five-Year Development Plan.

c) Plans to address ethical issues in the Turkish public service

In 1999, the Turkish Government regulated a new series of instructions related to hiring new personnel by centralised exam and requiring a special exam and training for promotion.

A reform of Personnel, General Health Insurance and Unemployment Insurance and legal arrangements concerning arbitration is being carried out by the State Personnel Presidency and the Commission of Personnel Management.

Studies related to the ombudsman are continuously carried out by the relevant institutions.

II. Core values for the public service

a) Stating core values for the public service

Core values are the following:

- Fidelity to the Constitution and Laws of the Turkish Republic.
- Impartiality and loyalty to the State.
- Fairness, honesty, equality and ethics.
- Legality (protection of public service by law and regulation of the missions of public officers by law).
- Obedience to austerity measures.
- Co-operation.

The values are stated in legal documents. The 1982 Constitution stated that public services are carried out by civil servants. The principles with which civil servants must comply while ensuring public services are indicated in article 128 of the 1982 Constitution and articles 1, 6, 7, 8, 9, 10, 11 of the Code of Civil Servants.

b) How stated core public service values are communicated to public servants

The following forms are used:

- Core values are automatically provided when someone joins the public service.
- They are provided when someone takes up a position in a different public service organisation.
- Any revision of core values is distributed to all public servants.
- All public servants take an oath when joining the public service.

c) The statement of core public service values has not been revised in the last decade

III. Standards of behaviour for the public service

a) Statements of the standards of behaviour expected of public servants

The standards of behaviour expected of public servants are identified by the Constitution, laws and other regulations. They are available for public servants, politicians and all citizens who are interested. They cover the following points:

- Receiving gifts or benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Use of corporate credit cards.

- Obtaining a second employment.
- Restrictions on post-employment.
- Special conditions/permissions on movement from the public service to the for-profit sector.
- Involvement in political work.

There are some **specific requirements** for some professional groups such as members of Parliament, ministers, judges, the personnel of the Turkish Armed Forces, lawyers, officers of security services, engineers and architects, etc. There are no specific guidelines for public servants working at the political/administrative interface. Minimum standards of behaviour for public servants are stated in Law No: 657 on Public Servants and Law No: 3628 on Disclosure of Assets and Combating Bribery and Corruption.

b) Unacceptable conduct for public officials according to the law

The following kinds of specific misconduct are defined for public officials by criminal legislation (by the Turkish Penal Code):

- Misuse of office.
- Neglect of official duty.
- Embezzlement.
- Bribery.
- Arbitrary conduct.
- Falsification of official documents.
- Illegal intervention on bidding.
- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Partiality in official decision-making.
- Abuse of office or public trust.

Further prohibitions and restrictions are imposed on public official by other legislation. Mainly, non-observance of the principles, which are stated as core values for the public service is considered as unacceptable. However, certain types of unacceptable conduct are identified in detail in article 125 of the Code of Civil Servants (Law No. 657), as follows:

- Receiving gifts more valuable than a certain amount (this amount varies according to salaries and wages).
- Performing commercial activities.
- Being a member of a political party.
- Discriminating in any way against race, language, religion, political opinion, sexuality, etc. in the course of public service.
- Going on strike.
- Disobeying obligations or legal orders.
- Using official properties for personal benefit.
- Behaving inappropriately with colleagues and citizens in the course of public service (e.g. disrespect to colleagues in action or words, humiliation, insults, interference in word or act, threats, physical attack, etc.).
- Performing collective actions (collective application or complaint).
- Taking personal advantage of any work relationships with any enterprises dealt with in the course of public service.

IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct

a) Measures used by human resources management to promote an ethical environment

The following measures are used:

- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies and publicising vacant positions.
- Taking ethical considerations into account in the recruitment process: those who have committed felonies are not recruited, and objectivity (equality) is sought by means of a central examination system for entering public service.
- Considering ethical behaviour in the performance appraisal, with ethical rules and regulations in the performance appraisal reports.

Special attention is given to officials in positions particularly susceptible to corruption, in the areas of public procurement, custom services and tax administration.

b) Informing and training public servants on ethics issues

The first year is a probation period for public servants. During this year they are trained and given information about public personnel law. Public servants apply to the State Personnel Presidency to resolve their work-related ethical problems and dilemmas.

c) Other measures to promote high standards of conduct and assist prevention

Measures include:

- Identifying and reporting conflict of interest situations, especially in areas of post public employment and receipt of gifts or benefits such as fees, payments, and entertainment.
- Requiring the release of internal information related to ethical conduct and possible transgressions.
- Specific controls on public procurement procedures.

d) Disclosure policy

Disclosure of personal information (declaration of personal assets, financial interests) is required from elected officials (except *muhtar*, the person who is elected by village people and who is responsible for carrying out the decisions of the village council and maintaining public services concerning the village), senior public servants (every five years) and all public servants. The following information is required to be disclosed when joining or leaving the public service, when the relevant circumstances change, and every five years:

- Assets and liabilities.
- Loans.
- Sources and level of income.
- If the amount exceeds five times the net monthly salary, all payments to a public servant in the first degree.

Disclosure is confidential. Disclosed information is used to prevent public personnel from obtaining property illicitly, to fight against bribery and corruption, and to support investigation in the public service.

e) Procedures to report misconduct/suspected corruption

Legal provisions define the procedure for exposing wrongdoing. Protection is not available to public servants who expose wrongdoing. For the public, special procedures are available to expose wrongdoing committed by public servants, such as complaint procedures, help desk, telephone line and various inspection groups.

f) Internal control to support the improvement of ethical conduct in the public service

Internal control supports corruption prevention efforts. Within the central administration, the head of each agency (minister, under-secretary, governor, sub-governor) enjoys hierarchical control, including disciplinary authority over the acts, actions and persons of subordinates, from the point of view of expediency, legality and ethics. These controls can be specified as financial control, management control, etc. These control mechanisms (for example, inspection boards, see below) punish wrongdoing and reward civil servants who are successful in their public duties. Similar control mechanisms exist in municipalities and functionally decentralised agencies. Control is exercised by the hierarchical head of each agency, e.g. mayor, general director, rector, dean.

Internal control is conducted by the head of each agency by means of **inspection boards** directly attached to them. There is an inspection board in each ministry and in some independent under-secretariats (like Treasury, Foreign Trade and Customs) which conduct internal control as a whole to achieve pre-determined goals as stated in laws, agency documents, national development plans, and the political agenda of the government.

Internal control provides reports which include recommendations to overcome irregularities, procedural problems, and inefficiencies and to reconfirm moral values in public administration. No follow-up is required to implement recommended measures for systemic improvements. Internal control is required by law and by general policy. Internal control reviews are performed on an annual basis, but if necessary they can be performed any time. Inspection boards, the heads of the public agencies (ministers, under-secretaries, general directors, etc.) and parliamentarians have access to the reports of the reviews.

g) Disciplinary procedures in case of a breach of public service standards

These disciplinary measures are as follows:

- Warning
- Condemnation.
- Deduction from salary.
- Freeze on promotion from one to three years.
- Disqualification from office.

Public officials have the right to make an objection to the higher disciplinary authorities (in all of the above-mentioned situations) within seven days and to bring their case to the administrative judgement courts within 60 days.

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

The bodies in place **investigating** misconduct and corruption in the public service include:

- An investigative body operates with jurisdiction over the whole public service (external audit).
- An investigative body operates with exclusive jurisdiction over one or a defined range of public service organisations (external audit).
- An investigative function exists inside individual public service agencies/departments (internal audit).

There are bodies in place **prosecuting** misconduct and corruption in the public service: public prosecutors can directly and independently bring corruption cases to court. Certain investigative or prosecuting bodies are empowered to bring suspected cases of corruption directly to court.

b) Institutions in place to perform independent scrutiny of the administration

These include:

- Independent external auditors reporting to elected bodies such as Parliament. This institution is called as “Supreme Council of Public Administration” and its responsibilities are to supervise the incomes, expenses, goods and accounts of the State on behalf of the Assembly.
- Courts for judicial review.
- The State Supervisory Council: the Constitution provides for a special agency, the State Supervisory Council, that is an external control board attached directly to the President of the Republic and whose members and chairmen are appointed by him. The scope of this control is far-reaching, including enquiry inspections launched upon the request of the President.
- The Prime Ministry Inspection Board by means of this board, the Prime Minister may inspect all public organisations, public economic enterprises, public professional organisations, associations, foundations, co-operatives, unions and private companies. The scope of this control encompasses investigations, inspection organisations, and also the duty of regulating and co-ordinating the inspection system in Turkey.
- The Prime Ministry High Auditing Board: this board inspects only public economic enterprises and prepares an annual financial report on them.
- Although Financial Inspection Board is included in the Ministry of Finance as regards to the organisational structure, it has an inspection power on all public management due to its extensive authorities given by various laws on financial issues.

External audit covers administrative, financial and legal areas. The frequency of external audits depends on the decision of the highest authority that the inspection board is responsible (this could be the President of the Republic, the Prime Minister, a Minister), but the Supreme Council of Public Administration conduct annual audits. External audit reports are not published routinely.

VI. Co-ordination and self-assessment

a) Co-ordination and management of government ethics or anti-corruption policy

There is no institution assigned to co-ordinate and manage the implementation of the government ethics policy. An analysis of systemic failures and trends in criminal and disciplinary cases ensures the consistency of the government ethics and anti-corruption measures. No national ethics or corruption prevention plans have been developed so far. Non-governmental organisations were involved in the preparation and implementation of ethics measures, through Chambers of Trade and Industry and through the press.

b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct

The following procedures are in place for assessing the effectiveness of measures promoting ethical conduct:

- The State Supervisory Council on the request of the President of the Republic.
- Judiciary procedures when confronted with a case. “The Law of Prosecution Procedure about Public Servants” is not applied to persons accused of corruption, bribery, embezzlement, smuggling during or due to term of office, misusing authority in public tenders and procurement, disclosing of confidential public information or being accomplice to the mentioned crime (except for the under secretaries, governors, of provinces and districts).
- Public Prosecutor has the authority to investigate the accused ones directly in person as soon as he finds about the mentioned crimes and to inform the highest authority to whom the accused person is responsible.
- Non-governmental organisations, when the measure is in contradiction with their own interests. The NGOs act in different ways (press, action, stating public opinion, etc.).

Prevention measures are reviewed and assessed whenever necessary by non-governmental organisations, and by the State Supervisory Council on the request of the President.

The following measures are considered as successful instruments to prevent corruption :

- Training.
- Satisfaction with wages and with the working environment.
- Legislative prevention.

The major impediments to further reducing corruption in the public service include:

- The real value of public personnel wages has declined over time, due to the inflation rate.
- The merit and career system is not implemented in an efficient way.
- The judiciary mechanism has lost its effectiveness over time.
- The level of education both generally and internally is lower than expected.

UNITED KINGDOM

I. The general context for managing ethics in the public service in the United Kingdom²⁰

a) The principal ethics-related issues which have confronted the public service in the United Kingdom during the past 10 years, and especially within the past 18 months

A wide range of issues was addressed in 1995/96, following the first reports of the Committee on Standards in Public Life, established in October 1994. That Committee reviewed questions of Parliamentary ethics (in particular, in managing declaration and conflicts of interest); and questions relating to Ministers (where they recommended certain changes to the framework set out in the Ministerial Code, and a check on appointments accepted by Ministers on leaving office); civil servants; public bodies (in particular, questions of political patronage); local government; and local spending bodies.

b) Recent measures to improve ethical conduct in the public service

There has been a major overhaul of various codes setting out the ethical framework in different areas of the public sector. The Ministerial Code has been revised, a new Civil Service Code was developed and promulgated (and has since been further revised); the guidance on management of conflicts and interests and other aspects of propriety for public bodies has been revised; and a new framework has been established for advice and investigation in relation to Parliamentary standards. The post of Commissioner for Public Appointments has been established, and the Commissioner has issued guidance on public appointments procedures. For local government, the Government brought forward proposals to introduce a new ethical framework. Details of this framework were set out in a discussion paper (Chapter 4. of “Local People, Local Choice” Cm. 4298) which also contained draft legislation to introduce the framework. The Government intends to introduce this legislation to Parliament at the earliest opportunity. Work within the Council of Europe on developing a model code of conduct for public officials is also relevant.

c) Plans in preparation to address ethical issues in the public service of the United Kingdom

The Committee on Standards in Public Life is currently reviewing implementation of its First Report (which addressed Parliamentary, Ministerial and Civil Service issues). A revised Civil Service Code has just been issued. A Local Government Code is in preparation. The Government is considering revised criminal offences of corruption and misuse of public office.

20. The first section covers all ethics issues related to public life and the rest of the chapter focuses on standards for the Civil Service, indicating where there are major differences for other areas of the public service.

II. Core values for the public service

a) Stating core values for the public service

The Civil Service Code sets out the core values for the Civil Service, such as integrity, honesty, impartiality and objectivity. The First Report of the Committee on Standards in Public Life lists the Seven Principles of Public Life which apply across all sectors:

- Selflessness.
- Integrity.
- Objectivity.
- Accountability.
- Openness.
- Honesty.
- Leadership.

The Civil Service Order in Council (which is a legal document) sets out the principles for recruitment and selection of civil servants and requires the production of a Civil Service Code. For local government, legislation (currently before the House) will also require production of a Code. For appointments to public bodies, the Order in Council which established the post of Commissioner of Public Appointments also required production of a Code. These and other Codes, including the Ministerial Code, are all published documents.

b) How stated core public service values are communicated to public servants

The following forms are used:

- Core values are automatically provided when someone joins the public service.
- They are provided when someone takes up a position in a different public service organisation.
- The statement of core values is part of the employment contract/document.
- Core values, after revision, are distributed to all public servants.
- Instruments of new technology, such as the Internet communicate core values.

c) The statement on core public service values was last revised in 1999

In order to reflect the devolution within the UK, amendments were made in May 1999. This most recent revision of the Civil Service Code focused on the need to reflect changed circumstances following devolution to Scotland and Wales. Civil servants in Scotland and Wales, and those in the Cabinet Office responsible for advising Ministers on the Code were closely involved, but all departments were consulted. In addition, the trade unions were consulted, and Ministers approved the final version of the Code. The public at large was not consulted as part of this latest revision of the Code. However, as noted above, trade unions were consulted, and the revised Code is a published document. Account will be taken of any representations received from members of the public. The Committee on Standards in Public Life will also comment on the revised version (and has itself consulted the public as part of its current work).

III. Standards of behaviour for the public service

a) Statements on the standards of behaviour expected of public servants

For the Civil Service, the Civil Service Management Code (particularly Chapter 4) sets out standards of conduct and core principles which must be reflected in departmental and agency handbooks. The Civil Service Management Code is in turn reflected in departmental handbooks, which form part of the contracts of employment of individual civil servants. These handbooks contain the detailed rules which reflect the particular needs and circumstances of the department or agency concerned. Similar documents exist for public body employees, local government etc. The standards of behaviour cover the following points:

- Receiving gifts and benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Use of corporate credit cards.
- Work outside the public service.
- Restrictions on post-employment.
- Special conditions/permissions on movement from the public service to the for-profit sector.
- Involvement in political work.

There are **specific guidelines** for members of the Government Information and Communication Service. Other groups such as Government Lawyers are given guidelines on, for instance, interaction between civil service and professional standards.

There are specific guidelines for those working at the **political/administrative interface**. The Ministerial Code includes paragraphs on relations with the civil service, including the requirement to maintain the political impartiality of the civil service [section 5 (paragraph 56) of the Ministerial Code]. Special Advisers, who are personal “political” appointments by Ministers, are appointed under a model contract, which sets out their duties and limitations on their political activity. In addition, specific guidance is issued to heads of government departments on relevant issues such as contacts between civil servants and opposition parties, links with think tanks known to be affiliated to a particular political party etc. This guidance is currently being revised for wider dissemination.

Minimum standards of behaviour for the public service are not stated in legislation. The only legislative framework specific to the civil service is the Civil Service Order in Council which requires recruitment via fair and open competition and selection on merit. For local government, there is a framework of legislation requiring non-political behaviour by officers.

b) Unacceptable conduct for public officials according to the law

At present, with the exception of the “surcharge” regime for local government (which applies to both elected members and appointed officers), there is no specific regime for public officials as opposed to the private sector. The law on corruption of course, covers all staff and elected members. Consideration is being given to a new offence of Misuse of Public Office (there is currently a common law offence, which has been rarely used).

The following kinds of specific misconduct are defined for public officials by **criminal legislation**: active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials. The Public Bodies Corrupt Practices Act of 1889 criminalises direct active and possible

corruption. Indirect corruption (using an intermediary) is covered by the reference to offering or receiving an inducement “for any other person” as well as by conspiracy legislation. The general law on attempt covers attempted corruption.

Partiality in official decision-making and abuse of office or public trust are the kind of behaviour covered by the current common law offence of misconduct in a public office. This area of the law is now under review.

Under the Prevention of Corruption Act 1916, it is an offence for any public servant to accept any gift or consideration as an inducement or reward for doing (or not doing) anything in his or her official capacity; or showing favour (or disfavour) to anyone in his or her official capacity.

Under the 1916 Act, the courts will assume that any money, gift or consideration which a public servant receives from a person or organisation which has obtained (or is trying to obtain) a Government contract has been received corruptly unless the officer proves otherwise.

Civil servants, along with other Crown servants, are also subject to the Official Secrets Act 1989. Under the Act, it is an offence to disclose official information in six specified categories without lawful authority and also if the disclosure is damaging to the national interest. The six categories are security and intelligence, defence, international relations, foreign confidences, information which might lead to the commission of crime and the special investigation powers under the Interception of Communications Act 1985 and the Security Services Act 1989.

IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct

a) Measures used by human resources management to promote an ethical environment

These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.
- Taking ethical considerations into account in the recruitment process: there is a legal requirement for recruitment to the civil service to follow the principle of selection on merit on the basis of fair and open competition.

Special checks are carried out in areas of particular sensitivity and apparent conflicts of interest would be explored as part of the recruitment/appointment process. All new civil servants receive training and courses for senior private sector entrants to the civil service focus on this area in particular.

b) Informing and training public servants on ethics issues

As mentioned above, training is given for all new civil servants, but courses for senior private sector entrants to the civil service focus on this area in particular. Departments provide induction material and

training, which should include the Civil Service Code and departmental ethics rules. Central training is also available.

There is a framework for discussion of ethics issues. In the first instance, civil servants should take these up with their line manager. If, however, there remains concern there is a route of appeal to the independent Civil Service Commissioners. Furthermore, Parliament has recently passed Public Interest Disclosure (whistleblowing) legislation which covers all public servants.

c) Other measures to promote high standards of conduct and assist prevention

These include:

- Identification and reporting of conflict of interest situations, especially in areas of financial management, post public employment, receiving gifts and benefits such as fees, payments or entertainment.
- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness of responding to requests.

d) Disclosure policy

Disclosure of personal information (declaration of personal assets, financial interests) is required from elected officials, senior public servants, and those appointed to public bodies. The conflict of interest rules for Ministers are more stringent than those for members of Parliament in general. Within government, disclosure requirements apply only to relevant interests. Requirements in, for example, the Department of Trade and Industry in relation to private business interests are therefore more stringent than in some other departments. The declaration is confidential.

Disclosure is required on an annual basis for members of Parliament, and when joining the public service or when the relevant circumstances change for public bodies, Ministers and civil servants. The following information is required to be disclosed:

- Assets and liabilities.
- Outside positions.
- Gifts.
- Ministers and civil servants (and members of their immediate family) must declare any interests where there is a risk of an actual or apparent conflict of interest with their official duties.

With the exception of disclosure by MPs and members of public bodies, all declaration is confidential. It is used as a basis for advice on managing any possible conflict of interest. Disclosure of gifts and hospitality is required in all sectors.

e) Procedures to report misconduct/suspected corruption

Internal rules define the procedure within each organisation across the public service. The Civil Service Code provides for civil servants to report matters including those that are illegal, improper or unethical. Legal protection is available to public servants who expose wrongdoing (Public Interest Disclosure Act 1999) in certain circumstances.

For the public, special procedures are available to expose wrongdoing committed by public servants, such as complaint procedures, ombudsman, help desk or telephone line.

f) Internal control to support the improvement of ethical conduct in the public service

Management is responsible for developing and implementing appropriate systems of internal control within the parameters set by central guidance such as “Government Accounting”. In central government corporate governance statements to deliver assurance about management review of the system of internal control have recently been introduced (currently restricted to review of internal financial control). All departments and other areas of the public sector have an internal audit function responsible for reviewing and reporting on the adequacy of the systems of internal control. In addition standards of ethics are overseen by the human resources function (e.g. rules in relation to conflicts of interest). Many departments are setting up Ethics Committees to oversee this area.

Internal control is required by general policy. The system of internal control operated by management should include preventative, detective, and corrective measures. Internal audit examines that system and makes recommendations on how to remedy weaknesses. An Audit Committee, which (depending on the nature of the organisation) will be comprised of members of senior management and/or non-executive members, often oversees the whole process.

Internal audit will follow-up recommendations they have made and report to senior management and/or an Audit Committee. Internal audit will normally prepare an audit needs assessment following an assessment of risk. If a formalised management risk assessment has been developed this may be the lead factor in determining internal audit activity. The frequency of review will reflect the perceived risk in a particular area. Heads of Internal Audit will normally deliver an annual overall opinion on the system of internal control. Departmental audit committees and equivalents, National Audit Office, which may include references to the work of internal audit in its reports to Parliament, have access to the reports of the reviews.

g) Disciplinary procedures in case of a breach of public service standards

Internal rules for civil service departments make clear that breaches of the organisation’s standards of conduct or other forms of misconduct, and any other circumstances which significantly disrupts or damages the performance or reputation of the organisation or the civil service, may be subject to the disciplinary procedures. The sanctions applied as a result of disciplinary proceedings are a matter for the department concerned in the light of the individual circumstances of each case. Public servants, along with all other employees who are dismissed, have the right in law to appeal to an Employment Tribunal provided they have a minimum of one year’s qualifying service.

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

Misconduct would usually be investigated, in the first instance, by the Government department (or local authority etc.) as employer. Depending on the nature of the misconduct, this might be led by the internal audit function or the human resources function. If, however, there is any question of criminal activity, the police would be involved and would take responsibility for both investigation and (in conjunction with the

Crown Prosecution Service) prosecution. If evidence of misconduct was identified by the National Audit Office, as part of their scrutiny of a department, they would obviously investigate the evidence themselves in a similar way. Misconduct which falls short of a criminal offence, but offends against disciplinary requirements, is the responsibility of the Head of Department, advised by the Principal Establishment and Finance Officer. The Civil Service Management Code sets out the detailed requirements, including appeal arrangements.

b) Institutions in place to perform independent scrutiny of the administration

These include:

- Parliament/Parliamentary committee.
- Independent/external auditors reporting to elected bodies such as Parliament.
- Ombudsman.
- Courts for judicial review.
- Civil Service Commissioners.
- Commissioner for Public Appointments.
- Civil Service Appeal Board.

The National Audit Office (in respect of central government) and the Audit Commission (in respect of local government) are responsible for certifying published accounts and will examine regularity, propriety and value for money in the course of the audit reviews. External audits are conducted on an annual basis and audit reports are published routinely. Moreover, every department and local authority will have an internal audit capacity. On questions of conflict of interest, support is usually provided by the human resource function.

There are procedures/mechanisms available to bring wrongdoing to the attention of bodies exercising independent scrutiny on public service activities, for example, value for money reports presented to Parliament by the National Audit Office, qualification of accounts notes to the certified accounts or *ad hoc* mechanisms like an annual fraud return.

VI. Co-ordination and self-assessment

a) Co-ordination and management of government ethics or anti-corruption policy

There is no single institution assigned to co-ordinate and manage the implementation of the government ethics policy, but the Committee on Standards in Public Life oversees and advises the Government on standards across the public sector. This Committee has provided several reports on the state of ethics in the public service for Parliament (various reports are published as Command papers and presented to Parliament), and for Government. The Committee reports both annually and on individual inquiries which it carries out.

Actions are taken to ensure the **consistency** of government ethics and anti-corruption measures. For the most part, Government departments develop and operate their own systems. The Treasury develops policies on professional standards for internal audit and the framework in which external audit is conducted. The Treasury and Cabinet Office collect information and disseminate guidance on good practice.

There is no national corruption prevention strategy as such, although individual public sector organisations may have their own internal arrangements. However, public officials are subject to two specific statutes, the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1916, as well as to the common law offence of bribery of a public official. This legislation is currently being reviewed with a view to reform and modernisation. This review is also taking account of the UK's international obligations, amongst which is the OECD Convention of Bribery of Foreign Public Officials in International Business Transactions. As for the involvement of the public in preparing the policy, the Committee on Standards in Public Life consults widely in preparing recommendations, inviting written evidence and holding public oral hearings.

b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct

The Committee on Standards in Public Life (established in 1994) has now reviewed the implementation of recommendations in its early reports and current ethical standards across most key areas. Internal reviews have also been completed. Openness, declaration of interests, and effective audit are considered the most successful instruments for corruption prevention.

UNITED STATES OF AMERICA

I. The general context for managing ethics in the public service in the United States

a) The principal ethics-related issues which have confronted the federal public service during the past 10 years, and especially within the past 18 months

Some developments in the past 10 years that have raised ethics-related issues for the federal public service have included the following:

- Privatisation of federal government operations or programmes.
- Contracting out services formerly provided by the federal government.
- Increased public-private sector interactions and partnerships, including co-sponsorships.
- Downsizing of staffing levels and tightening of budgets.
- Streamlining legal and regulatory requirements.

With regard to the senior level (politically appointed officials), there have been a number of high profile civil penalty actions and settlements involving alleged violations of the criminal conflict of interest statutes during the past six years. In addition, in the past several years there have been a number of independent counsel investigations into the activities of senior officials in the administration.

In terms of more recurring or perennial ethical misconduct issues, administrative enforcement actions most frequently have arisen in connection with:

- Misuse of official position.
- Misuse of government property.
- Acceptance of gifts from prohibited sources.
- Conflicting financial interests.
- Conflicting outside activities.

A number of significant ethics issues have arisen in connection with **recent judicial decisions**. In 1999, the Supreme Court issued a decision that interpreted the illegal gratuities statute as requiring proof of a direct link between a gift and some official act. The administrative prohibitions on acceptance of gifts from prohibited sources or because of official position were not at issue in the case. These administrative rules, issued by the Office of Government Ethics (OGE) in 1993, remain fully effective. In 1995, the Supreme Court held that a law prohibiting the acceptance of honoraria, even where the subject matter of the activity did not relate to an employee's official duties, was an unconstitutional infringement of free speech. In 1995, the Court of Appeals for the District of Columbia Circuit issued a decision which held that an administrative rule barring an executive branch employee from accepting reimbursement of travel expenses, incurred in connection with an unofficial speaking engagement in which the speech related to the employee's official duties, was an unconstitutional infringement of free speech.

b) Recent measures to improve ethical conduct in the public service

Several initiatives have been taken in the past 10 years to improve ethical conduct in the public service. On the legislative front, the **Ethics Reform Act of 1989** made significant changes in the legal framework of the executive branch ethics programme. The Reform Act:

- Amended the post-employment law and made other changes to the conflict of interest laws, including authority to enforce these criminal statutes through civil penalty actions.
- Provided a statutory basis for a confidential financial disclosure system.
- Authorised federal agencies to accept payment of travel expenses from private sources.
- Created a civil prohibition on acceptance of gifts from certain prohibited sources.
- Placed limitations on outside earned income and barred certain outside employment for certain senior non-career officials.
- Enacted an honoraria ban that was later found unconstitutional, in part, by the Supreme Court.

In addition, Executive Order 12674, issued in 1989, promulgated a statement of principles of ethical conduct, barred all outside earned income for certain full-time non-career Presidential appointees, and directed the Office of Government Ethics to undertake a number of major regulatory actions. The most significant of these implementing regulations was the issuance of a comprehensive, uniform code of conduct for executive branch employees that replaced a 1960s regulation on a scheme of conduct. This code became effective in 1993.

Other significant regulations issued by the OGE during the 1990s include:

- A regulation governing exemptions and waivers from the conflict of interest laws.
- A regulation setting forth requirements for ethics training for executive branch officials.
- A regulation governing the confidential financial disclosure system.
- A regulation implementing the tax deferral remedy afforded by the certificate of divestiture programme.

OGE also reviewed and concurred in agency requests for individual agency supplements to the uniform code of conduct. Finally, OGE issued regulations implementing the statutory provisions of the Ethics Reform Act dealing with outside earned income and outside employment. In 1993, President Clinton issued Executive Order 12843, which requires certain senior officials to take an ethics pledge regarding their post-employment activities.

c) Plans in preparation to address ethical issues in the federal public service

The Office of Government Ethics is evaluating the criminal conflict of interest laws to determine areas where technical improvements may be made through legislation. OGE is also currently developing a regulation to implement the revised post-employment statute and a regulation to implement the ban on supplementation of federal salary. OGE is developing new training materials to provide annual training to senior officials. Currently, there are also discussions among government officials and legislators regarding legislative alternatives to the statutory independent counsel system which recently lapsed.

II. Core values for the public service

a) Stating core values for the public service

The core values of public service are embodied in the statement of 14 ethical principles in section 101 of Executive Order 12674. These principles are restated in the Standards of Ethical Conduct for Employees of the Executive Branch and form the basis for the more specific standards embodied in that code of conduct. The core values are the following:

- Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.
- Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- Employees shall not engage in financial transactions using non-public government information or allow the improper use of such information to further any private interest.
- An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from doing business with, or conducting activities regulated by, the employee's agency, or whose interests may be substantially affected by the performance or non-performance of the employee's duties.
- Employees shall put forth honest effort in the performance of their duties.
- Employees shall not knowingly make unauthorised commitments or promises of any kind purporting to bind the government.
- Employees shall not use public office for private gain.
- Employees shall act impartially and not give preferential treatment to any private organisation or individual.
- Employees shall protect and conserve federal property and shall not use it for other than authorised activities.
- Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official government duties and responsibilities.
- Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those -- such as federal, state, or local taxes -- that are imposed by law.
- Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, colour, religion, sex, national origin, age, or handicap.
- Employees shall endeavour to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

The core public service values are printed on posters, in pamphlets and are available on the Internet as well.

b) How stated core public service values are communicated to public servants

The following forms are used:

- Core values are automatically provided when someone joins the public service.
- They are provided when someone takes up a position in a different public service organisation.

- The statement of core values is part of the employment contract/document.
- Core values are communicated by instruments of new technology, such as the Internet.

c) The statement on core public service values was last revised in 1989

The statement of core values as reflected in the principles of ethical conduct in Executive Order 12674 were issued on 12 April 1989. These principles were restated in the standards of conduct which became effective on 3 February 1993.

Public servants participated in the process of issuing new standards of conduct. A series of meetings were held with ethics officials in executive branch agencies during the drafting phase of the project. Their comments and suggestions were taken into account in the proposed regulation, which was published for public comment. During the comment period, any interested person, including executive branch employees, could comment on the proposed regulation. OGE received approximately 1200 comments, the vast majority of which were from persons or organisations in the private sector. Each of these comments was reviewed and those raising relevant issues were discussed in the preamble to the final rule. In many cases, suggested changes were incorporated in the final rule.

III. Standards of behaviour for the public service

a) Statements on the standards of behaviour expected of public servants

The Standards of Conduct comprise the statement of the standards of behaviour expected of public servants. The Standards are issued as regulations and are made available to all public servants and the public. They cover the following points:

- Receiving gifts and benefits such as fees, payments, entertainment.
- Use of official information.
- Use of official property/facilities.
- Official travel.
- Use of corporate credit cards.
- Work outside the public service.
- Restrictions on post-employment.
- Special conditions/permissions on movement from the public service to the for-profit sector.
- Involvement in political work.

Agencies, with OGE's concurrence, may issue special guidelines for specific groups.

b) Unacceptable conduct for public officials according to the law

Specific types of misconduct are defined by criminal legislation include the following:

- Active, passive, direct, indirect or attempted corruption of public officials/corruption committed by public officials.
- Partiality in official decision-making.

- Abuse of office or public trust.
- Bribery and illegal gratuities.
- Representational activities in matters affecting the government.
- Acts affecting a personal financial interest.
- Supplementation of salary.
- Fraud or false statements in a government matter.
- Acceptance or solicitation of anything of value to obtain appointive public office for another.
- Acting as an agent of a foreign principal.
- Contracting with a member of Congress.
- Embezzling, stealing, purloining, or converting public money, property, or records.
- Disclosure of classified, proprietary, and other confidential information.
- Lobbying with appropriated moneys.
- Failing to account for public money.
- Solicitation of political contributions under certain circumstances.
- Misuse of government-paid postage.
- Counterfeiting or forging transportation requests.
- Concealing, mutilating, or destroying a public record.
- Unauthorised use of documents relating to claims from or by the government.
- Interference with civil service examinations.
- Maintaining, disclosing, or requesting or obtaining certain personal records under certain circumstances.

Further prohibitions and restrictions imposed on public officials by other legislation include the following:

- Gifts to official superiors (conduct provisions of the law dealing with government organisation and employees).
- Solicitation or receipt of gifts from specified prohibited sources (conduct provisions of the law dealing with government organisation and employees).
- Outside earned income and outside activities restrictions (Ethics in Government Act, as amended).
- Contracting officials seeking private sector employment (procurement integrity provisions of the Federal Procurement Policy Act).
- Disloyalty and striking (suitability and conduct provisions of the law dealing with government organisation and employees).
- Excessive use of intoxicating beverages (suitability and conduct provisions of the law dealing with government organisation and employees).
- Prohibited personnel practices, such as discrimination on the basis of race, gender or religion (Civil Service Reform Act).
- Misuse of appropriated funds or government vehicles (appropriations law).
- Political activities (Hatch Act Reform Amendments).
- Retaliation against whistleblowers (Whistleblower Protection Act).
- Participation in the appointment or promotion of relatives (anti-nepotism statute).
- Arbitrary and capricious withholding of public records (Freedom of Information Act).

IV. Institutions and procedures to promote high standards of conduct, and to prevent and detect misconduct

a) Measures used by human resources management to promote an ethical environment

The following measures are used:

- Providing rules/guidelines/policies for recruitment and promotion procedures.
- Basing recruitment and promotion on merit.
- Ensuring the openness of selection procedures by publishing the recruitment rules/guidelines/policies, publicising vacant positions and auditing/monitoring the selection procedures.
- Ensuring that only published/appropriate selection criteria are considered in recruitment.
- Taking ethical considerations into account in the recruitment process by background investigations and reference checks and, in the case of some very high-level officials, the senate confirmation process.
- Considering ethical behaviour in the performance appraisal. However, there is no general requirement that ethical behaviour be specifically considered in performance appraisals, since lapses in ethical behaviour would more likely be dealt with through misconduct proceedings; nevertheless, ethical behaviour could be subsumed by the standards and elements by which an employee's performance is measured.
- Taking administrative disciplinary actions in cases of ethical misconduct.

Special attention is given to high-level officials, as well as other less senior employees involved in certain sensitive areas such as law enforcement, national security, and contracting. Such persons are subject to more intensive background investigations than other employees.

b) Informing and training public servants on ethics issues

Each agency has an ethics training programme, established under requirements set by the Office of Government Ethics. The programme is designed to ensure that all employees are aware of the federal conflict of interest statutes, the Principles of Ethical Conduct for Government Officers and Employees, the Standards of Ethical Conduct and any agency rules supplementing those executive branch-wide rules, and how to contact agency ethics officials when the employee needs advice concerning ethics issues. Under this programme, every new employee receives an initial ethics orientation. Some employees (including Presidential appointees, employees in the Executive Office of the President, financial disclosure report filers, and others whose particular official duties warrant it) receive annual ethics briefings thereafter. Ethics officials make announcements on ethics issues as the need arises. Every agency has one or more ethics officials who are available in person, over the telephone, or via e-mail to answer questions in this regard.

c) Other measures to promote high standards of conduct and assist prevention

Measures include:

- Identification and reporting of conflict of interest situations, especially in areas of financial management, post public employment, receiving gifts and benefits such as fees, payments and entertainment.

- Requiring reasons for administrative decisions.
- Providing redress against administrative decisions.
- Setting standards for timeliness of responses to requests.
- Anti-corruption provisions in bids for public contract.
- Specific controls on public procurement procedures.
- Risk assessment of the areas susceptible to misconduct.

d) Disclosure policy

Senior officials, specified in the following paragraph, file **public financial disclosure reports**. These reports are freely available to the public upon request and anyone may gain access to them. Approximately 20,000 such reports are filed in the executive branch each year (plus several thousand in the legislative branch). Certain middle-level managers, and other employees such as contracting and procurement officials within the military and the civil service in the executive branch, are required to file **confidential financial disclosure reports**. Unlike public reports, the confidential disclosures are not available to the public but are kept within the individual agencies where they are filed. Agencies may designate as confidential filers any employee whose duties have substantial economic effect outside the government. In 1998 approximately 280,000 public servants were required to file a confidential disclosure report out of 4.2 million employees within the military and civil service.

Disclosure requirements are more stringent for senior-level officials, who must file public disclosure statements. This group includes: the President; Vice President; Presidential appointees requiring Senate confirmation; officials above GS-15 or the equivalent and military officers holding flag or general rank; administrative law judges; the Director of OGE and each agency's primary ethics official; the Postmaster General; and certain other political appointees. Disclosure statements completed by these officials require more detail and information and they are subject to public scrutiny.

The following information is required to be disclosed on an annual basis and at the time of joining or leaving the public service or when the relevant circumstances change:

- Assets and liabilities.
- Loans.
- Sources and level of income.
- Outside positions.
- Gifts.
- Previous employment.

Additional public disclosure requirements include compensation in excess of \$5,000 from any one source, and both public and confidential filers must report reimbursements and travel expenses and agreements or arrangements with either a past or future employer.

Financial disclosure for both public and confidential filers is used as a preventive instrument to identify potential conflicts of interest. Ethics officials review the contents of each disclosure report to determine whether an employee's assets and holdings conflict with his official duties. When a potential conflict is identified, ethics officials work with the filer to resolve the matter and eliminate the conflict. Those employees who are required to file either public or confidential reports do so upon entry into the public service and on an annual basis, and public filers also submit a report upon termination of office.

e) Procedures to report misconduct/suspected corruption

There are established procedures for public servants to report misconduct/suspected corruption committed by public servants. Legal provisions define these procedures; moreover, the executive branch regulation on standards of conduct requires such reporting.

Public servants who expose wrongdoing are protected by the Whistleblower Protection Act. The Office of Special Counsel (OSC) administers the Act, which provides employees who expose corruption or misconduct with legal protection from unfair reprisals or retaliation by agency officials. OSC receives complaints of such unfair practices and investigates them. Once an investigation is complete, OSC has the power to delay or restrain agency actions, and can seek legal remedies to protect employees, including litigation before the Merit Systems Protection Board (MSPB).

For the public, special procedures are available to expose wrongdoing committed by public servants, such as complaint procedures, help desk and a telephone line.

f) Internal control to support the improvement of ethical conduct in the public service

Internal control, required by law and by general policy, is in place to support the improvement of ethical conduct in the public service. The distinction between internal and external control within the federal government is the following:

- Internal means entities that are either responsible to, or report to, the head of an agency.
- External covers entities that have no direct supervisory oversight by anyone in the agency, for that reason, OGE's government-wide review function will be treated as an external control.

Inspectors general (IG) are placed within each major agency and department. The IGs are responsible for investigating fraud, waste and abuse within the agencies. They perform regular audits and reviews of agency programmes, expenditures and internal controls. Audit findings are summarised in a final report delivered to Congress.

Ethics officials also perform internal control functions within their agencies by administering financial disclosure, conducting training and providing counselling and advice to employees on matters relating to ethical misconduct. Agency ethics programmes also serve a vital internal control function by working with public officials to resolve potential conflicts of interest and by providing training, advice and counsel so that employees can avoid wrongdoing.

IG internal control efforts support corruption prevention efforts by ensuring that agencies and employees are not committing fraud, waste and abuse in complying with their statutory responsibilities. IG audits uncover this type of misconduct and thus serve as a mechanism to ensure that agencies meet the highest standards of honesty and integrity. Audits may result in improved agency procedures, as well as individual prosecutions.

Agencies are obliged to respond to recommendations for improvement contained in IG audits. IG offices conduct follow-up reviews to monitor agency progress in implementing the recommendations and reports to Congress on their findings.

IG investigations are conducted as necessary when a complaint is made against an agency or evidence of misconduct is brought to light and merits further scrutiny. IG offices also conduct programme reviews on a regular basis depending on the nature of the agency and the different programmes being reviewed.

Likewise, OGE conducts agency ethics programme reviews on a regular basis throughout the executive branch.

IG reports are delivered to the agency head concerned and to Congress, and may ultimately become available to the public. OGE reports are delivered to the agency concerned, and are available to Congress and the public upon request.

g) Disciplinary procedures in case of a breach of public service standards

Disciplinary action – ranging from verbal admonishment, verbal or written reprimand, suspension, demotion, or removal – may be taken against civilian employees of the executive branch for conduct that violates administrative rules of ethical conduct, which may in some cases parallel the criminal code. Such administrative actions are authorised by law. Employees may challenge disciplinary actions taken against them administratively and in the courts. Certain high-level appointees may not be suspended, but may be removed by the President without any right of appeal.

The Office of Special Counsel (OSC) is authorised by statute to seek disciplinary action against federal officials who commit prohibited personnel practices, including removal from office, debarment from federal employment for up to five years, and a civil penalty of up to \$1,000 . OSC seeks disciplinary action by filing a petition against the individual with the Merit Systems Protection Board (MSPB). If the MSPB sustains the petition, the individual can seek review of the MSPB's order by the U.S. Court of Appeals for the Federal Circuit.

V. Scrutinising misconduct in the public service

a) Institutions and procedures to investigate and prosecute misconduct

The **principal investigative organisations** involved in anti-corruption efforts include:

The **Federal Bureau of Investigation** (FBI) is the principal investigative arm of the U.S. Department of Justice. It is charged with gathering and reporting facts, locating witnesses, and compiling evidence in cases involving the violation of federal law except for matters that are assigned by legislative enactment or otherwise to another federal agency. The FBI has approximately 10,100 special agents and 13,700 other employees.

Inspectors General (IG) are used by many agencies either by statute or by the agency's own administrative determination. In general, IGs conduct investigations of fraud, waste, and mismanagement pursuant to authority granted by a federal law. This law ensures the independence of action of IGs by providing for separate administrative authority, direct reporting to Congress, and protections against removal. An inspector general may investigate allegations of violation of ethics rules and laws as well as other federal statutes and regulations.

The **Office of Special Counsel** (OSC) functions as an independent investigative and prosecuting agency within the executive branch. OSC regulates political activity on the part of federal employees. OSC investigates and rules on allegations that employees have violated restrictions on political activity. In addition, OSC investigates allegations of prohibited personnel practices, especially cases of reprisal

for whistle-blowing (the activity of reporting fraud, waste, and abuse, either inside or outside an agency). OSC employs approximately 90 employees.

The **General Accounting Office** (GAO) is the investigative arm of the U.S. Congress and is charged with examining all matters relating to the receipt and disbursement of public funds. While not part of the executive branch, GAO conducts investigations and audits for Congress to help ensure the accountability of the executive branch to the legislative branch. It also issues opinions which deal with a wide range of ethics matters. GAO performs audits of federal programmes and publishes reports on its findings and recommendations. GAO has approximately 3,400 employees.

The responsibility of the Department of Justice for the prosecution of misconduct and corruption in the U.S. Government:

The Attorney General, appointed by the President with the advice and consent of the U.S. Senate, is the head of the Department of Justice (DOJ) and the chief law enforcement officer of the federal government. Specifically, the Criminal Division within DOJ develops, enforces, and supervises the application of all federal criminal laws, including those pertaining to anti-corruption. The Division and 93 U.S. Attorneys are responsible for overseeing criminal matters under more than 900 statutes. The President of the United States appoints U.S. Attorneys. Each has authority over a specific geographic district within the U.S. and may employ a number of investigators and staff members to fulfil their mission.

The Public Integrity Section (PIS), a part of the Criminal Division, oversees the federal effort to combat corruption through the prosecution of elected and appointed public officials at all levels of government. PIS has exclusive jurisdiction over allegations of criminal misconduct by federal judges, and also monitors the investigation and prosecution of crimes concerning the electoral process and conflict of interest. PIS tends to alleviate problems of local favouritism and prejudice that may arise when a U.S. Attorney or an elected state prosecutor is responsible for prosecuting a political enemy or ally. PIS is staffed by approximately 90 lawyers.

Prosecutions refer to criminal and civil actions; however, there is also a possibility of actions against employees for violations of administrative standards. Those actions would be taken by the agency with the advice and/or recommendation of the inspector general or the designated agency ethics official. Certain investigative and/or prosecuting bodies are empowered to bring suspected cases of corruption directly to court.

b) Institutions in place to perform independent scrutiny of the administration

These include:

- Congress/ Congressional committee.
- Independent/external auditors reporting to elected bodies such as Congress.
- Courts for judicial review.
- Independent office of ethics.

As a general rule, all executive agencies are required by law to refer to DOJ cases that involve possible violations of federal criminal law including those involving violations of anti-corruption laws. In addition, the ethics codes in the executive branch oblige executive branch employees to “disclose waste, fraud, abuse, and corruption to appropriate authorities.” Moreover, there are a number of avenues available, both

inside and outside executive branch agencies, for actually reporting wrongdoing. For example, IG offices operate complaint hotlines that government employees and citizens can use to report wrongdoing in government.

OSC provides a secure channel for federal workers to disclose information about various workplace improprieties, gross mismanagement, waste of funds, or abuses of authority. Although it is outside the executive branch, GAO also operates a hotline and receives calls from individuals alleging wrongdoing by employees of federal agencies.

Two of the principal agencies conducting external audits relating to anti-corruption efforts are the OGE and the General Accounting Office (GAO). OGE conducts regular on-site programme reviews of agency ethics programs. These reviews verify that agencies are complying with their statutory and regulatory responsibilities to administer all aspects of an ethics programme, including financial disclosure, ethics training, and counselling and advice. OGE audit teams also prepare a final report outlining programme deficiencies in an agency's ethics programme, and containing recommendations. OGE also conducts single-issue reviews to detect problem areas for agencies in implementing ethics regulations or in operating their ethics programmes. Additionally, the executive branch has other specialised audit offices located within different agencies and departments that conduct internal audits to promote the economy and efficiency of agency operations and programmes.

OGE performs ethics programme reviews in all federal agencies over a four-year cycle. OGE does not publish its ethics programme audit reports, but the reports may be obtained by anyone through a written request made to OGE under the provisions of a specific federal law permitting access to government records.

Congress may separately initiate its own audit/evaluation of an agency's programmes through its investigative arm, the GAO. GAO external audits and reviews are conducted as necessary and all components of agency programmes can be audited or evaluated. The majority of GAO audits and reviews are made in response to specific Congressional requests while some reviews are specifically required by law. However, some GAO audits are undertaken independently in accordance with GAO's basic legislative responsibilities.

GAO summarises its findings to Congress in the form of written reports, opinions, and oral testimony. All of GAO's unclassified reports are available to the public. Copies of GAO reports are also furnished to interested Congressional parties; federal, state, local, and foreign governments; members of the press; college faculty, students, and libraries; and non-profit organisations.

VI. Co-ordination and self-assessment

a) Co-ordination and management of government ethics or anti-corruption policy

In general, the Office of Government Ethics (OGE) is responsible for co-ordinating and managing the implementation of the government ethics policy in the executive branch. OGE is defined by legislation as a separate agency within the executive branch of the federal government. The President, with the advice and consent of the Senate, appoints its Director for a five-year term. OGE employs approximately 80 staff members and has an operating budget of approximately \$8 million.

In 1988, Congress required OGE by law to submit reports biennially to Congress, summarising actions taken during the previous two years and providing any information which the Director of OGE considered

necessary. In addition, each ethics official is required to submit an annual report (in survey form) and these reports comprise part of the biennial report to Congress.

The following actions are taken to ensure the consistency of the government ethics and anti-corruption measures:

- Analysing systemic failures and trends in criminal and disciplinary cases;
- Providing national guidance and/or a checklist to develop prevention strategies in organisations;
- Assigning a central office responsible for oversight of all ethics-related measures, including ensuring the consistency of legal regulations.

The President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) are two councils consisting of federal inspectors general and appropriate federal officers established by the President to co-ordinate and enhance governmental efforts to promote integrity and efficiency and to detect and prevent fraud, waste, and abuse in federal programmes.

Although there is no national guidance provided in this area, the Office of Government Ethics systemically evaluates failures and provides guidance for the executive branch of the federal government.

b) Assessment of the effectiveness of measures promoting ethical conduct and preventing misconduct

OGE regularly assesses the effectiveness of its measures and rules based on regular contacts with agency ethics offices and other bodies within the ethics community. OGE gains helpful insight into how the ethics programme are being implemented in the field and what sort of challenges the agencies are facing in fulfilling their missions. OGE then uses this information to evaluate how its programmes and policies can be changed to best meet these challenges. OGE is required to submit a biennial report to Congress summarising its activities during the two years prior to the report's submission. This report provides the opportunity for OGE officials to evaluate and change, as necessary, the performance elements which guide and structure its ethics initiatives. Additionally, OGE is required by law to complete an annual performance plan. This process gives OGE an opportunity to identify measurable goals that it will accomplish in fulfilling its mission of promoting ethical conduct and preventing misconduct.

There is no established time period for reviewing and assessing the prevention measures. The measures are reviewed as deemed necessary and when pertinent information arises indicating a need to re-evaluate current measures. As noted earlier, OGE is required to complete an annual performance plan that necessitates some degree of assessment. This requirement is governed by the Government Performance and Results Act (GPRA) and is evaluated by both the Office of Management and Budget and Congress.

Financial disclosure is generally considered to be one of the **most effective means** of preventing conflict of interest and promoting transparency in the public service. However, without a clear and enforceable set of standards of conduct, effective use of financial disclosure would be impossible. Furthermore, these standards of conduct are the central element that allow meaningful counselling and training. Systems for detecting and punishing government employees for wrongdoing (including administrative actions such as reprimand, suspension, and termination) serve as another important tool for deterring corruption and reinforcing behavioural norms.

Lastly, ongoing agency programme on ethics training and counselling and advice play an important complementary role to financial disclosure by instructing government employees on what is expected of them and the rules they must adhere to in fulfilling their official duties. All of these programme elements together help to create an environment where corruption is not tolerated or condoned and one where executive branch employees are aware of their ethical responsibilities to avoid corrupt conduct.

