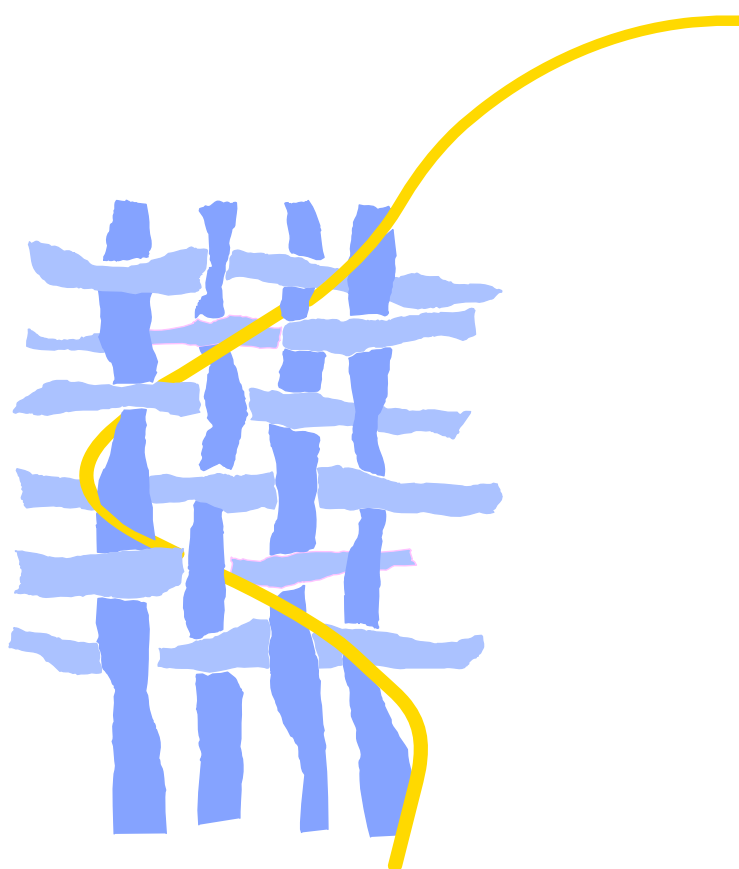


THE EUROPEAN OMBUDSMAN

CONSULTATION OF NATIONAL OMBUDSMEN

CONCERNING ETHICAL PRINCIPLES

FOR EU OFFICIALS



Strasbourg, 21 April 2010

1 Background

My experience as European Ombudsman leads me to believe that European citizens want people working with EU matters, at all levels of the Union, to behave in accordance with high ethical standards. For this reason, I suggested in February 2009¹ that it would be useful to draft a document that identifies, in a succinct and easily understandable form, the ethical principles that should apply to the handling of EU matters.

In April 2009², I informed national colleagues of my intention to draft a statement of ethical principles specifically for EU officials. I asked for help in ensuring that the future statement would take full account of best practice in the Member States. Colleagues kindly agreed to respond positively to a future request for information on national statements of ethical principles in public life and to discuss the subject at our meeting in Copenhagen in 2011.

2 Request for comments and information

The present consultation paper contains the results of my preliminary thinking on the scope and contents of a statement of ethical principles for EU officials.

Appendix 1 lists relevant documents produced by international organisations and by the European Commission.

I would be very grateful if colleagues would:

(a) comment on my suggestions as regards the scope and contents of a future statement of ethical principles, in particular as regards the key points in bold type; *and*

(b) inform me of any national documents, or additional international documents, which could provide inspiration during the drafting process. I would be grateful if you could send copies of and/or internet links to any material that you mention.

It would be helpful to have your reply by **30 June 2010**.

¹ At a Public Hearing on Problems and Prospects concerning European Citizenship, organised by the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament on 16 February 2009.

² At the Seventh Seminar of the National Ombudsmen of the EU Member States and Candidate Countries, held in Paphos, Cyprus, 5-7 April 2009.

3 Ethical principles for EU officials: scope and contents

The work of EU officials³ is governed by a general principle of public sector governance that is increasingly recognised throughout the European Union; that is to say, accountability. In what follows, I aim to:

- clarify how ethical principles relate to accountability;
- explain how such ethical principles would differ from existing texts (such as the Staff Regulations, the European Code of Good Administrative Behaviour and the Charter of Fundamental Rights);
- propose some guidelines for determining the contents of a statement of ethical principles.

Accountability

By “accountability”, I mean the obligation to explain and to justify one’s conduct, with the possibility of negative consequences if the account is considered unsatisfactory. The negative consequences may range from formal sanctions to informal criticism, depending on the relationship of accountability involved.

The role of the public sector is to formulate and carry out policies in the general interest and to provide services to citizens. In a democracy, this involves multiple, overlapping, relationships of accountability. For present purposes, it is sufficient to identify only three:

- (i) the accountability of civil servants⁴ to the public sector organisations for which they work;
- (ii) the accountability of civil servants to citizens;
- (iii) the accountability of elected officials to voters.

The first of these accountability relationships is typically embodied in law. In the case of EU officials, the relevant legal instruments are the Staff Regulations and the Financial Regulation. Failure to comply with these provisions can lead to disciplinary proceedings and formal sanctions.

The second accountability relationship is more diffuse and often involves public discussion and criticism, rather than formal sanctions. There

³ The term “officials” is here used broadly, to include all persons covered by the Union’s Staff Regulations, or by special rules applying to the employment of staff of certain institutions, such as the European Central Bank.

⁴ This term is here used broadly, to include all those working for public sector organisations.

are a number of pre-conditions for such accountability to exist and to be effective; most notably, freedom of the Press, freedom of expression and transparency. These are also, of course, pre-conditions for the third accountability relationship, i.e. the political accountability of elected officials to voters.

Although these three types of accountability relationship are different there are links between them and, in some cases, potential conflicts. For example, the framework for “whistleblowing” by civil servants needs to balance the needs of (i) above with those of (ii) and (iii).

In my view, ethical principles for EU civil servants should be formulated only in terms of the second of the above-mentioned accountability relationships; i.e., the accountability of civil servants to citizens. **The objective should be to set out the fundamental principles of conduct for officials, which accountability to citizens aims to uphold.**

The relationship of ethical principles to existing instruments

Public sector organisations and civil servants must, of course, respect the rights of individual citizens, including human rights and fundamental rights. This is an essential part of the rule of law. Individual rights include rights that derive from the application of administrative law principles, which regulate and limit the conduct of public bodies and officials, especially their exercise of discretionary powers. These principles include, for example, proportionality, non-discrimination and legitimate expectations. As regards the Union institutions, citizens also enjoy the fundamental right to good administration.

A number of legal instruments, such as the *European Convention on Human Rights* and the *Charter of Fundamental Rights of the European Union*, already contain general statements of human and fundamental rights. These legally-binding texts may be invoked by individuals in proceedings before the courts or before ombudsmen.

In addition, there are other instruments, which are not legally binding. These include codes of conduct, most notably the *European Code of Good Administrative Behaviour*. The latter code (like the Charter of Fundamental Rights) was drafted in such a way that it could be made legally binding in the future. In particular, the obligations it contains are formulated so as to correspond to concrete individual entitlements.

The instruments mentioned above are clearly relevant to the accountability of EU officials to citizens, even though the mechanisms of

accountability through which citizens can invoke their provisions are focused on institutions, rather than on individual officials.

The *Staff Regulations* and the *Financial Regulation* are primarily concerned with the accountability of EU officials to the institutions for which they work. The Staff Regulations, however, contain provisions which are also relevant, in substance, to the accountability of EU officials to citizens⁵.

A statement of ethical principles for EU officials would complement these other instruments because, unlike them, **it should neither be legally binding, nor drafted in such a way that it could be made legally binding in the future.**

It should focus on the spirit in which the law and other applicable rules should be understood and applied, as well as being the starting point for reflection when a situation appears not to be covered by the law or other applicable rules. This is useful because, whilst ethical principles include compliance with rules, they are not limited to such compliance. To be able truthfully to say “I broke no rule” is, therefore, a necessary, but not a sufficient, condition for ethical conduct.

The relevant question for an official considering a particular course of conduct should not, therefore, be: “am I doing the minimum necessary to comply with the ethical principles?”, but: “would a reasonable person think this is how an official should behave in the light of the ethical principles?”

Contents

As regards the substantive contents of ethical principles for EU officials, my preliminary thinking has been influenced by my conception of the European Ombudsman’s mission, which includes *building trust through dialogue between citizens and the European Union*.

Trust depends on a belief in the integrity of officials, who should therefore **conduct themselves in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged just by acting within the law.**

Trust also requires that **officials should make recommendations and decisions only to serve the interests of the Union and of its citizens, not in order to benefit themselves, their family, or their friends.**

⁵ In particular, Articles 11 to 13.

Moreover, *dialogue* implies that **officials should be willing to explain their activities, to give reasons for their actions and to accept public scrutiny of their conduct.**

It is worth noting that, taken together, the first and third of the above suggestions constitute a working definition of the accountability of officials to citizens. I would, however, prefer to avoid using the word “accountability” in the ethical principles, in view of the difficulties which arise in finding a satisfactory translation of it into a number of other languages.

In conclusion, I very much look forward to your contributions to the drafting of a statement of ethical principles for EU officials, which could, like the European Code of Good Administrative Behaviour, also provide inspiration to others.

Appendix 1: International codes and other material relating to ethical standards

United Nations

International Code of Conduct for Public Officials

United Nations General Assembly Resolution A/RES/51/59, 82nd plenary meeting, 12 December 1996 Annex to resolution 51/59: Action against corruption

<http://www.un.org/ga/documents/gares51/gar51-59.htm>

Council of Europe

Model code of conduct for public officials; Appendix to Recommendation No. R (2000) 10, adopted by the Committee of Ministers at its 106th Session on 11 May 2000

Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration.

Organisation for Security and Co-operation in Europe (OSCE)

Best practices in combating corruption, especially chapter 6 “Building and maintaining an ethical public administration”

http://www.osce.org/publications/eea/2004/05/13568_67_en.pdf

Organisation for Economic Co-operation and Development (OECD)

Recommendation on Improving Ethical Conduct in the Public Service, 23 April 1998, <http://www.oecd.org/dataoecd/60/13/1899138.pdf>

Recommendation on Guidelines for Managing Conflict of Interest in the Public Service, June 2003 <http://www.oecd.org/dataoecd/13/22/2957360.pdf>

European Commission

Communication from Vice-President Kallas to the Commission on enhancing the environment for professional ethics in the Commission (SEC(2008) 301 final, 5 March 2008)

http://ec.europa.eu/commission_barroso/kallas/doc/com2008_0305_ethic_en.pdf

Report on the implementation of the Ethics Action Plan with respect to the Statement of Principles of Professional Ethics (internal document available on the Commission’s Intranet)

Practical Guide to Staff Ethics and Conduct (internal document available on the Commission’s Intranet).