



PUBLIC CONSULTATION ON THE PUBLIC SERVICE PRINCIPLES FOR EU CIVIL SERVANTS

The comments on this Draft statement have been made by the Anti-Fraud Office of Catalonia, parliamentary institution of control and prevention of corruption, created by Law of the Parliament of Catalonia 14/2008, of November 5th (www.antifrau.cat).

Preliminary considerations

In consideration of the statement of motives that comes with the present Draft statement of principles declaration, the aim of this new instrument is to complement other existing instruments in the EU sphere in relation to the public function, and in particular: *Staff regulations, Financial regulation and the European Code of Good Administrative Behaviour.*

The European Ombudsman explains that, according to the aims of his mission, he has arrived to the conclusion that *civil servants and the public would benefit from a straightforward and concise statement of public service principles for EU civil servants.*

Logically, this declaration has to be something differentiated from the three already existing instruments that are mentioned above.

At the same time, the new declaration of principles have to be something complementing those, integrating as a whole a body or a legal *acquis* regarding public function.

In the previous consultation carried out with the different national Ombudsmen and that brought to the Light the *Report on the Consultation of national Ombudsman on ethical principles for civil servants* of 14 January 2011, it was highlighted that, even if there was an agreement that the declaration should consist of principles with an intrinsic ethical value, the words ethics or ethical should be avoided, given the abstract connotations that Could lead to confusion. It was then recommended to name the document the alternative of *public service principles* that aims to be a practical guide, using broad terminology: in conclusion, a high level declaration.



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From our perspective, the Draft statement submitted to public consultation has to address the following three criteria:

1. Subjective criteria. It gravitates around the expected conduct of the officials and other servants of the EU.
2. Hermeneutic function. Aims to constitute an interpretative tool.
3. Tool of good administration

As principles we should understand those Tools or fundamental ideas that govern the conduct, in this case of civil servants (officials and other agents) of the EU.

Those principles have to respond to the regulation structure of the law itself but also have to tend to a *plus of demand*, integrating an intrinsically ethic component. The civil servants should not only act strictly within the law but their conduct has to go beyond that, avoiding conducts that, even if they are not illegal, would be contrary to the ethical or conduct model of the EU.

Principle of loyalty¹ to the EU and its citizens

The way this principle is formulated, it sets out the duty of loyalty of civil servants with the same European Union and with the citizens the EU serves.

We suggest that the principle passes to be denominated <<**loyalty to the European Union and its citizens**>>.

That way, from our point of view, the principle greater reinforces what is expected from the civil servant: that he/her is loyal in every action undertaken. Loyalty implies fidelity and therefore, excludes implicitly all behaviour that, betraying it, deviates from the aims that justifies the power attributed to the EU.

From our point of view, the principle respect for others-or of courtesy, if it is preferred- can reasonably derive from this principle of loyalty. In consequence, we suggest that the principle of *respect for others* set out in the declaration moves to this section losing its own entity as a principle.

We propose that the loyalty principle adds the following paragraph:

¹ As it is laid down in the Consultation, this principle receives the denomination of *Compromise*.



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<< Carry out the powers conferred to them following the principles of good faith and dedication to the public service>>.

The following paragraph could also be added to this principle:

<< They should guarantee the perseverance and permanence of the documents for their transmission and delivery to its later responsables>>.

Principle of integrity

This principle is foreseen in the Consultation as a duty in which, in order to be complied with, the civil servant should not only act within the law but its behaviour or conduct should *bear the closest public scrutiny*.

Here is introduced the idea of a third observer that would submit hypothetically the civil servant to an "integrity test", that is, a detailed scrutiny² that obliges him/her to bear in mind that there is "something else" other than merely complying with the law that is required.

However, this *extra*, this "something else" in order to offer guarantees to the civil servant has to be objectivised in the most reasonable manner possible.

The figure of a third observer has already been introduced previously by the Court of Justice of the European Union, in its judgement T-89/01 case Claude Willeme vs. Commission. In this case, in which certain regulation of the EU on conflict of interests is interpreted by the Court (namely, article 14 of the Staff Regulations of the EU) the Second Chamber establishes that taking into consideration the objectives of **independence** and **integrity** pursued by this disposition [...]its application sphere covers all circumstance in which the civil servant has to resolve on an affair, he/her should reasonably understand that [this circumstance] is of a such nature that can appear, **in the eyes of a third [person]**, as a possible source of affectation of independence in the issue.

On the basis of what is has previously been exposed, we suggest to reformulate the first paragraph of the integrity principle, in this sense:

<<Civil servants shall proceed at all times with the maximum rectitude and probity. In performing their actions they should not only respect the law and the values of the European

² From the latin *scrutinium*, *scrutari*, to examine something. The *Royal Academy of the Spanish Language* defines the scrutiny as an <<exam and enquiry conducted in an exact and diligent manner that is carried out from something in order to form an opinion of it.>>



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society³ but, furthermore, they will attempt, in the eyes of a reasonable observer, to perform those actions in an irreproachable manner >>.

With regards to the second and third paragraphs, the Draft statement subject to Consultation establishes that:

<< Civil servants should not place themselves under any financial or other obligation that might influence them in the performance of their functions. They should declare any private interests relating to their functions

Civil servants should take steps to avoid conflicts of interest and the appearance of such conflicts. This obligation continues after leaving office>>.

The consultation introduces in this point three ideas linked to the integrity principle:

- Conflict of interests.
- Declaration of interests in order to prevent a potential conflict.
- *Revolving door or pantouflage.*

As we have already mentioned above, it is established in the public consultation under the rubric *The reasons for proposing a statement of public service principles* that the Draft statement aims to complement already existing legal instruments. The regulation on conflict of interests is already spread in the different legal instruments that govern for the civil servants of the EU.

As an example, article 8.2 of the European Code of Good Administrative Behaviour states that << The conduct of the official shall never be guided by personal, family or national interest or by political pressure. The official shall not take part in a decision in which he or she, or any close member of his or her family, has a financial interest>>.

For this reason, we suggest a new wording of the second and third paragraphs of the integrity principle, at a more generic level, gathering the idea of loyalty, in which the public interest has to be above the private or particular interest of the civil servants in the performance of their functions. The rephrasing could be as follows:

³ *Vid* second recital of the Treaty of Lisbon's Preamble: <<DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law>> and also its article 1 a <<The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.>>



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<<Civil servants should act by putting the public interest before their private interest, whichever is their nature. Likewise, they should adopt all necessary measures to avoid the interference, real or apparent, of the public interests with their private ones. This obligation shall persist even after leaving office >>.

The final paragraph of the integrity principle establishes that *in claiming expenses and allowances, civil servants should be guided by a sense of propriety, rather than seeking to maximise their benefits.*

This idea could be interpreted under the prism of honesty in the use of public resources.

From our point of view it would better adapt to a declaration of high-level principles a formula that, without entering in a case by case approach, would be more generic, like for example:

<<Civil servants should guide themselves with a sense of correctness and honesty in the use of goods, resources and services that the EU brings to their disposal, respecting the aim that justify its assignment. In no case, will they orient their conduct to obtain a private advantage or benefit >>.

Principles of objectivity

In its current phrasing the third paragraph of this principle states that:

Civil servants should not allow the fact that they like, or dislike, a particular person to influence their professional conduct.

In our opinion, this same idea will be better phrased if it did not refer to a particular person and had a broader character.

Because of this, we consider that an alternative working could be as follows:

<<They should give a fair and objective treatment base don the neutrality of their actions and the decisions derived, with independence from their personal, familiar, corporate, clientelist or whichever others>>.



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We suggest that the expression *they should be ready to acknowledge and correct mistakes* that is currently under the principle of objectivity passes to the (new) principle of accountability that will be enunciated further down.

Principle of austerity

Even if austerity is not expressly included in the text submitted to Public Consultation, from the Anti-Fraud Office of Catalonia we consider that it would be an important orienting principle in the conduct of EU civil servants.

Civil servants should always bear in mind that public resources assigned to them are of a limited nature.

It is a principle that is already anticipated in the United Nations Resolution A/RES/51/59 of 28 January 1997 that approves an International Code of Conduct for public officials and its article 2 establishes that <<They shall at all times seek to ensure that public resources for which they are responsible are administered in the most effective and efficient manner. >>.

In this line, the ORDER APU/516/2005, of 3rd of March, that published the Agreement of the Council of Ministers of 18 of February 2005 by which a Code of Good Governance for the members of the Government and High Public Officials is approved (BOE⁴ num.56 of 7/03/2005) established under the title of *principles of conduct* that <<they will manage public resources with austerity and will avoid actions that could diminish the dignity with which the public office has to be exerted>>.

Therefore, the inclusion of a principle that gathers the idea of austerity could offer the following wording:

<<The civil servants should manage public resources with prudence and measure in furtherance of efficiency, efficacy and economy>>.

Principle of transparency

We suggest adding a paragraph in the sense of the duty of civil servants to use a language (expression) that results in accessibility in order to facilitate the understanding by the citizens.

⁴ Boletín Oficial del Estado (Spanish Official Gazette).



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Principle of accountability

As we put forward when commenting on the principle of objectivity, we suggest that the expression *they should be ready to acknowledge and correct mistakes* that is currently under the principle of objectivity is moved to a principle that the consultation does not contemplate but that, from our point of view, could be inferred from the text as a whole: the principle of accountability.

Such accountability is at the same time linked to the requirements derived from the planning and evaluation to which public Management has to be submitted to.

Therefore, we understand that the principle could be introduced with the following wording:

<<Civil servants should be fully conscious of the responsibility they assume in the decision-making process and every action they carry out>>.

Barcelona, 15 of May 2011