



European Ombudsman

# Results

## of the public consultation (February-June 2011)

**Public service principles for EU  
civil servants**

**November 2011**

**EN**



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## Foreword

My experience of dealing with complaints and my contacts with the EU institutions and their staff, with citizens, and with civil society organisations, led me to conclude that civil servants and the public would benefit from a straightforward and concise statement of public service principles for EU civil servants. I announced my intention to draft such a statement in April 2009, at the seventh seminar of national ombudsmen of the European Union.

After consulting the national ombudsmen in the European Network of Ombudsmen in order to take account of best practice in the Member States, I prepared a draft consisting of five principles: commitment, integrity, objectivity, respect and transparency. A public consultation on the draft was launched in February 2011.

The present document analyses the responses to the public consultation. It looks first at what people said about the overall proposal and then at the comments and suggestions that were made about what principles to include and how these should be drafted. At the end of each sub-section, I give my reaction to the comments and suggestions mentioned in the preceding analysis.

A document of this kind is necessarily selective. Not every point made by every contributor can be mentioned, particularly as regards detailed questions of drafting. I believe, however, that the present document fairly reflects all the comments made, including those that criticised the initiative.

I would like to extend my sincere gratitude to all the institutions, organisations and individuals who responded to the public consultation. Their input will make a real difference to the final version of the principles.

The next step will be to consider carefully how best to communicate the final version of the public service principles to the public, civil servants, the EU institutions and other stakeholders. As some contributors rightly pointed out, the principles themselves should be accompanied by an explanatory introduction.

One point that will be emphasised in the introduction is that the public service principles themselves are neither the first nor the last word about the ethical standards that apply to the EU civil service. As the consultation documents made clear, the Staff Regulations, the Financial Regulation, and the European Code of Good Administrative Behaviour already embody such standards, explicitly and implicitly.

Furthermore, the idea of producing a statement of public service principles is not to develop *new* ethical standards, but to make clear the existing expectations of civil servants and citizens. The added value of making these standards explicit, as I see it, is to help generate and focus an on-going constructive discussion among civil servants, and between civil servants and the public, about what behaviour is ethically appropriate. The public consultation itself has demonstrated, I believe, the value of such debate.

The final version of the principles will, therefore, remain a high-level declaration of the ethical standards that all civil servants already expect, and are expected, to observe. It will not seek to duplicate existing instruments, or to be a substitute for revising and supplementing those instruments where that may be necessary. I shall also resist calls to include elements that would, in my



view, apply mainly to civil servants with leadership responsibilities, or which should be regarded as obligations of the institutions, rather than of every individual civil servant.

These elements constitute, however, a rich source of ideas, on which the Ombudsman will draw in working with the institutions, bodies, offices and agencies of the Union, in the future, in order to encourage and nurture an institutional culture that makes the public service principles a living reality.

I hope that everyone who reads this report will agree that a statement of public service principles, and the public consultation on such principles, constitute a significant contribution to fulfilling the European Ombudsman's mission as defined in the Strategy that I adopted in September 2010:

*The European Ombudsman seeks fair outcomes to complaints against European Union institutions, encourages transparency and promotes an administrative culture of service. He aims to build trust through dialogue between citizens and the European Union and to foster the highest standards of behaviour in the Union's institutions.*

P. Nikiforos Diamandouros



## 1. The consultation process

On 24 February 2011, the European Ombudsman launched a public consultation on a draft statement of five public service principles for EU civil servants.

The consultation document was published in all 23 official languages.

The original deadline for contributions was 15 May 2011. Following requests from a number of organisations, the deadline was extended by one month, to 15 June 2011.

In total, 56 responses to the consultation were received: 27 were in English, 21 in French, three in Spanish, two in German and one in Greek.

As mentioned in the consultation paper, the list of the contributors who did not ask for their name to remain confidential was published on the Ombudsman's website. The contributions themselves were also published on the website, following a request for public access to them.

One civil servant requested that his name not be published. The Ombudsman agreed to this request. The Ombudsman also decided not to publish another contribution because it contained allegations against third parties. Neither contribution led the Ombudsman to consider revising the draft principles.

Section 2 below lists the 54 contributors whose contributions were published on the website.

During the consultation period, the Ombudsman sent individual replies to two contributors, the Union of European Federalists and the Council Staff Committee. These replies are published on the website, alongside the relevant contributions. The Ombudsman also had meetings with delegations from Solidarité européenne, a Staff Union, and the Commission Central Staff Committee, on 30 May and 31 May 2011 respectively.



## 2. List of contributors

Below, in alphabetical order, is a list of the individuals and organisations that sent a written response to the public consultation.

- Access Info Europe - Helen Darbshire, Pamela Bartlett, and Lydia Medland
- Adriaen, Charlotte
- Alexakis, Georgios
- Allgeier, Timo
- ALTER-EU - Koen Roovers, Coalition coordinator
- Anti-Fraud Office of Catalonia - Xavier Sisternas, Director of Prevention Department
- Association Inscire - Françoise Schein et Katia de Radiguès
- Banneux, Dominique
- Bartholomé, Etienne
- BEUC-European Consumers Organization - Ilaria Passarani, Senior policy officer
- Birbeck, Vaughan
- Bordes, Arnaud
- Casana, Francois
- Cerchez, Marius
- Chaouch, Dhikra
- Cleary, Gottlieb, Steen & Hamilton LLP - John Temple Lang
- Comité central du personnel de la Commission - Cristiano Sebastiani, Président
- Comité du personnel du Conseil de l'UE - Catherine Bony-Brandt, Présidente
- Docherty, Michael
- Domm, Rory
- Dumont du Voitel, Rainer
- Euclid Network - Luisa De Amicis, Projects and Policy Officer
- Eulaerts, Olivier
- EU Agencies Network- Geert Dancet, Chairperson of the Network, Executive Director, European Chemicals Agency
- European Commission - José Manuel Barroso, President
- European Court of Auditors - Vítor Caldeira, President
- European Medicines Agency - Frances Nuttall, Head of Human Resources
- European Parliament - Jerzy Buzek, President
- European Police College - Detlef Schröder, Deputy Director
- European University Association- Lesley Wilson, Secretary General
- Gargaro, Vittorio
- Gesamtverbandes der Deutschen Versicherungswirtschaft - Stephan Schweda
- Hermans, Barbara
- House of Lords, European Union Committee - Lord John Roper, Chairman
- Ibáñez García, Isaac
- Jones, Alice
- Lacerda, Antonio
- Lefavrais, Thibaut
- Lemoigne, Brigitte
- Mauro, Massimo



- N'Dong, Stéphane
- Noriega Guerra, Alberto
- Ratel, Christine
- Robertson, Colin
- Romera Agüero, Lidia Maria
- Sanchez Amillategui, Fernando
- Society of European Affairs Professionals (SEAP) - Gary Hills, Secretary General
- Solidarité Européenne - Luigia Dricot Daniele, Secrétaire politique
- Strack, Guido
- Syndicat des fonctionnaires internationaux et européens - Pilar Antelo,  
Présidente
- Talacchi, Alessandro
- Talevska, Snezana
- Union of European Federalists - Andrew Duff, MEP
- Wellens, Ingrid



## 3. Analysis of the responses to the consultation

### 3.1. What people said about the overall proposal

#### 3.1.1 General reactions

Different views were expressed about the usefulness of the Ombudsman's initiative.

Many contributors (for example, Access Info Europe, the European Universities Association, the Council Staff Committee, the EU Agencies Network and the German Insurance Association) welcomed the initiative. Some contributors (in particular, Access info Europe, ALTER-EU and Cleary, Gottlieb, Steen & Hamilton) drew attention to specific areas of concern, to which they believed the principles could be particularly relevant. These included the handling of conflicts of interest, relations with lobbyists, the phenomenon of "revolving doors" and changes in the composition of the EU civil service.

#### EU Agencies Network

Agencies indeed agree that it is important to determine the common principles related to all public servants in the EU, which should reflect the values of modern public administration, such as transparency, impartiality, accountability and efficiency.

On the other hand, some contributors (for example, the Commission's Central Staff Committee and one of the staff unions, *Solidarité européenne*) pointed to a risk that the initiative might prove counter-productive. If the initiative were misunderstood as implying that existing instruments, such as the Staff Regulations, were insufficient, citizens' trust in the EU civil service could be weakened rather than strengthened.

The Union of European Federalists, writing through its President, Mr Andrew Duff MEP, mentioned disquiet as to the exact message emitted by the consultation and pointed to the risk that the initiative might have a demoralising effect on civil servants.

Furthermore, a number of individual civil servants sent responses questioning the need for a statement of principles and, in some cases, the Ombudsman's competence to launch such an initiative and/or his motives in doing so.

The response from the Council's Staff Committee drew attention to a problem with the French version of the principles, which used the verb "devraient" to translate the English verb "should". According to the Committee, the use of this form had negative implications and it recommended that the present indicative be used instead. In subsequent meetings with delegations from the Commission's Central Staff Committee and *Solidarité européenne*, held at their request, the same point was raised.



## Comité du personnel du Conseil de l'UE/Council Staff Committee

Or, bien que l'intention de la déclaration soit constructive, sa rédaction pourrait, au lieu d'accroître la confiance des citoyens dans le service public européen, mettre sérieusement en doute l'intégrité même de celui-ci.

Chaque phrase contient notamment le mot "devraient", ce qui a une connotation d'accusation très forte. Ce conditionnel donne l'impression que la fonction publique européenne fait preuve d'une gestion administrative des plus mauvaises, ce qui n'est de toute évidence pas le cas. C'est pourquoi il nous semble que la rédaction du projet pourrait être sensiblement améliorée en supprimant ce verbe "devraient" et en mettant la totalité du texte au présent de l'indicatif<sup>1</sup>.

In the meetings with the Commission's Central Staff Committee and *Solidarité européenne*, it was suggested that communication issues should be carefully studied and that the final version of the principles should be accompanied by an introduction explaining their purpose and, in particular, acknowledging that civil servants currently observe the principles.

The written contribution from the European Court of Auditors also suggested adding an introduction to the statement recalling why the EU was set up and what its core values are. The Court of Auditors suggested taking inspiration from the Schuman Declaration and Article 2 of the Treaty on European Union, which refers to the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights.

Euclid also drew attention to the need for the principles to be accompanied by an introduction.

### The Ombudsman's view

As mentioned in the consultation document, the main objective of drafting a straightforward and concise statement of public service principles is to promote citizens' trust in the European civil service and the EU institutions that it serves.

There was never any intention to suggest that the principles are not already observed and applied by EU civil servants.

The Ombudsman has gratefully accepted the positive and constructive suggestion made by the Council's Staff Committee, the Commission's Central Staff Committee and *Solidarité européenne* for an improved French version of the principles, which helps avoid misunderstanding.

As regards the English version, the Ombudsman considers that the word "should" is appropriate to express existing obligations, which is the intention of the statement of public service principles.

<sup>1</sup> However, although the declaration is intended to be constructive, its wording could, instead of increasing citizens' trust in the European public service, raise serious doubts about the latter's integrity. In particular, each sentence contains the word "should", which has a very strong accusatory connotation. The use of the conditional gives the impression that the European public service demonstrates administrative management at its worst, which is obviously not the case. This is why we consider that the drafting could be significantly improved by removing the verb "should" and putting the entire text in the present indicative tense. (*Translation by the Ombudsman's services*).



The Ombudsman will ensure that the other language versions are reviewed with this point in mind.

The Ombudsman also fully agrees on the importance of communicating the final version of the public service principles effectively and appropriately and that an explanatory introduction will be essential for this purpose.

### **3.1.2 Relationship with existing rules, codes and processes**

Many contributors drew attention to the relevance of other instruments and processes for putting the public service principles into effect.

The European Parliament drew attention to its code of conduct for staff (Guide to the Obligations of Officials and Other Servants of the European Parliament) adopted by its Bureau on 7 July 2008, the introduction to which explains that the European civil service is bound by its own code of ethics.

The European Commission recalled that, over the past years, it has taken action to raise the awareness of its staff and encourage implementation of the rules and principles contained in the Staff Regulations and its Code of Good Administrative Behaviour, which it adopted on 17 October 2000.

Two responses from individuals drew the Ombudsman's attention to the 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) and the Commission's Practical Guide to Staff Ethics and Conduct (which is available on the Commission's intranet).

Cleary, Gottlieb, Steen & Hamilton LLP mentioned that the Commission's DG Competition has its own ethical code<sup>2</sup> and recommended that the Commission consider adopting similar codes, adapted to the circumstances of other DGs.

A staff union, the *Syndicat des fonctionnaires internationaux et européens* (SFIE) identified a number of areas in which it considered the application of the Staff Regulations to be unsatisfactory and invited the Ombudsman to formulate proposals in the framework of the changes to the Staff Regulations foreseen for 2012.

The European Consumers Organization (BEUC) highlighted the Commission's Impact Assessment process<sup>3</sup> as a source of information and evidence to ensure objectivity in policy-making and emphasised the need for impartiality in the commissioning and design of research to support impact assessments. BEUC also called for the institutions to reconsider their procedures for consultation, in order to ensure balance between different interests and stakeholders.

A personal response from an official working for the Fundamental Rights Agency suggested that every EU institution, body, office and agency should have an "ethics officer", who would provide information and training on ethical matters, make proposals for improving ethical conduct, be available for

<sup>2</sup> DG Competition's Annual Activity Report 2010  
[http://ec.europa.eu/atwork/synthesis/aar/doc/comp\\_aar.pdf](http://ec.europa.eu/atwork/synthesis/aar/doc/comp_aar.pdf)  
mentions this Code. See especially p.20.

<sup>3</sup> The Commission explains Impact Assessment as a process that prepares evidence for political decision-makers on the advantages and disadvantages of possible policy options by assessing their potential impact: [http://ec.europa.eu/governance/impact/index\\_en.htm](http://ec.europa.eu/governance/impact/index_en.htm)



consultation by staff and act as a warning mechanism. A platform or network for sharing information and ideas among the different ethics officers should also be developed. Other contributors also emphasised the importance of the institutions' providing training for their staff in ethical matters.

#### The Ombudsman's view

The Ombudsman recognises the importance of the above points and is grateful to the contributors who made them.

In a speech to the European Parliament's Committee on Budgetary Control on 22 September 2011, the Ombudsman referred to the Commission's important initiatives in nominating "ethics correspondents" and developing training programmes on ethics. He suggested that this work could be given an inter-institutional dimension and offered to help in that process. In this context, the Ombudsman will examine closely the valuable suggestion for the appointment of ethics officers.

In the Ombudsman's view, the points considered in this section do not require changes to the draft public service principles.

### **3.1.3 Enforcement and sanctions**

An individual contributor asked who will monitor civil servants' compliance with the principles, who will decide whether the principles have been contravened in the event of a dispute or allegation and whether there will be sanctions for those who contravene the principles. The Society of European Affairs Professionals (SEAP) also wanted to know what happens when a civil servant fails to meet the principles and whether the Ombudsman would regard failure to meet a principle as a reason to uphold a complaint.

#### The Ombudsman's view

The public service principles are not intended to impose legal or disciplinary obligations on civil servants.

Furthermore, they have been drafted with an eye to expressing the highest aspirations for the conduct of civil servants, rather than to defining, detecting, or punishing misbehaviour.

They could provide a useful point of reference as regards the spirit in which to interpret and apply the rules and codes containing specific obligations that give effect to the public service principles.

The Ombudsman will have regard to the public service principles in fulfilling his mandate and will expect the EU institutions to do the same. However, the Ombudsman recalls that his inquiries concern maladministration in the activities of the EU institutions, not the conduct of individual civil servants from a disciplinary point of view.

### **3.1.4 Scope of application of the principles**

Two contributors referred to the footnote to the title of the principles, which explains that the term "civil servant" refers to the staff of the EU institutions, bodies, offices and agencies, who are formally known as "officials and other servants".



One contributor (SEAP) asked whether Commissioners are included and if not, wished this fact to be made clear.

The other contributor, an individual, recommended stating explicitly, in the interests of transparency, that Members of the Commission, Judges of the Court of Justice and Members of the European Parliament are not EU civil servants and that they are either appointed by the Member States of the Union, or elected.

#### The Ombudsman's view

The Ombudsman agrees that it is important to make clear that Members of the Commission, Judges of the Court of Justice and Members of the European Parliament are not “officials or other servants” of the European Union in the sense of the Staff Regulations<sup>4</sup>. Furthermore, their obligations are not defined by the Staff Regulations. The term “civil servants” as used in the public service principles does not, therefore, include them.

The Staff Regulations do, however, define a category of “special adviser”<sup>5</sup>, to whom certain provisions of the Staff Regulations apply.

The Ombudsman considers that it would be appropriate to include the relevant explanations in the introduction that will accompany the principles, rather than in a footnote.

## 3.2. What people said about the draft principles

### 3.2.1 Proposals for additional principles and themes

#### The rational use of resources/austerity

The Anti-Fraud Office of Catalonia suggested, as an additional principle (“*austerity*”), that civil servants should manage public resources with prudence and pursue economy, efficiency and effectiveness. The Office pointed out that a United Nations Resolution<sup>6</sup> on an international code of conduct for public officials already mentions this principle: “[p]ublic officials shall ensure that they perform their duties and functions efficiently, effectively and with integrity, in accordance with laws or administrative policies. 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.”

A similar proposal from Euclid was to state that “EU officials should show a positive attitude in pursuing the principles of efficiency, effectiveness, transparency, accountability, consistency, risk-taking, and cutting red tape (including reducing administrative costs)”<sup>7</sup>.

<sup>4</sup> Formally, the *Staff Regulations and Conditions of Employment of Other Servants of the European Union*. The Commission makes a consolidated version available on the Europa website: [http://ec.europa.eu/civil\\_service/docs/toc100\\_en.pdf](http://ec.europa.eu/civil_service/docs/toc100_en.pdf).

<sup>5</sup> “A person who, by reason of his special qualifications and notwithstanding gainful employment in some other capacity, is engaged to assist one of the institutions of the European Union either regularly or for a specified period and who is paid from the total appropriations for the purpose under the section of the budget relating to the institution which he serves.” (Article 5 of the *Conditions of Employment of Other Servants*).

<sup>6</sup> A/RES/51/59, 28 January 1997.

<sup>7</sup> Euclid proposed this wording as an addition to Principle 1 (“commitment”). It seems appropriate, however, to deal with it here.



An individual proposed that civil servants should bring malfunctioning or defects in the administration to the attention of their superiors. In particular, they should make proposals to increase productivity and to reduce bureaucracy, administrative costs and public spending.

On the same theme, the Court of Auditors underlined, in its general remarks, the importance of the rational use of public resources by EU officials.

The Court also mentioned that the principle of merit should guide the appointment and promotion of EU officials.

#### Accountability

The Anti-Fraud Office of Catalonia suggested that the principle of *accountability* can be inferred from the text as a whole and should be separately identified. In the view of the Office, readiness to acknowledge and correct mistakes (which the consultation document includes as part of the principle of objectivity) could form part of this principle.

#### Flexibility and innovation

Euclid suggested identifying *flexibility* and a *focus on innovation* as principles. In summary, these principles would state that civil servants should adapt institutional rules to meet the needs and aspirations of citizens, be forward-thinking and promote innovation and good practices.

These two principles should also, in Euclid's view, make reference to empowering citizens, enabling citizens to contribute, and fostering a participatory approach.

#### Whistleblowing

##### Access Info Europe

... it is essential that civil servants do not tolerate corrupt practices, bias in favour of private interests, lack of integrity and transparency, or failure to act in a respectful and ethical manner.

The contribution from Access Info Europe proposed that the principles should explicitly include, or refer to, both the protection of whistleblowers and the obligation on civil servants to "blow the whistle".

A contribution from an individual also regretted the omission of a clear statement of how civil servants should react "if they become aware of any misconduct that is being covered up by an institution".

#### The Ombudsman's view

The Ombudsman agrees that the rational use of public resources and the pursuit of economy, efficiency and effectiveness are of fundamental importance for the EU institutions and the EU civil service. The same point was made during the earlier consultation with the European Network of Ombudsmen.

The Ombudsman also recognises the importance of the issue of whistleblowing.



Detailed legal and institutional arrangements for whistleblowing and careful handling of public resources should be, and are, contained in instruments such as the Staff Regulations and the Financial Regulation, as well as in various codes.

The Ombudsman does not exclude that additional instruments and/or the revision of existing instruments may be appropriate in the light of the principles, and in order to give full effect to them.

The Ombudsman sees the public service principles as a high-level declaration of ethical standards that apply to all civil servants. Consistent with this approach, it is not appropriate to include elements that would apply mainly to civil servants with leadership responsibilities, or which should be regarded primarily as obligations of the institutions, rather than of every individual civil servant.

It is true that every civil servant has the opportunity to contribute to the avoidance of waste. However, the primary responsibility for the rational use of public resources rests with institutions and managers.

In the case of whistleblowing, the Staff Regulations do impose an obligation on all civil servants to report misconduct<sup>8</sup>. Moreover, the Ombudsman has no doubt that civil servants should not turn a blind eye to misconduct by others. The Ombudsman also notes, however, that international practice is not uniform as regards the imposition of a specific legal obligation on civil servants to blow the whistle.

For the above reasons, the Ombudsman considers that the addition of a reference to *public trust* in the first principle (*commitment* - see the discussion below) taken together with the first paragraph of the second principle (*integrity*)<sup>9</sup>, addresses these issues in a way that is appropriate and sufficient, given the high-level nature of the principles.

The Ombudsman takes the view that creating the institutional conditions that give all civil servants the opportunity to be flexible and innovative is the responsibility of institutions and their management. As a universal obligation, it is felt that these concepts are sufficiently encompassed by the reference in the third principle (objectivity) to civil servants being “open-minded”.

The Ombudsman takes a similar view as regards responsibility for: empowering citizens; fostering citizen participation; and using merit as the criterion for appointment to, and careers within, the public administration. Insofar as these responsibilities imply obligations for every civil servant, they are sufficiently expressed by the principles of *commitment* (in particular by the additional reference to public trust - see below) and *integrity*.

On a related point, some contributors used the term “proactivity” and the Ombudsman considered whether to include it in the principles. Since it is unclear, however, whether a single equivalent term exists in other languages, it seems best not to do so. (For the same reason, the principles do not use the term “accountability”). As revised, the third and fourth paragraphs of the first

<sup>8</sup> See Article 22a.

<sup>9</sup> “Civil servants should conduct themselves at all times in a manner that would bear the closest public scrutiny.”



principle (commitment) imply a proactive approach and the introduction to the principles will emphasise this point.

### 3.2.2 Principle 1 - Commitment to the European Union and its citizens

The Court of Auditors considered that it would be appropriate to add a reference to the competence of EU staff, requiring that EU civil servants conduct themselves in a professional manner at all times and apply the highest professional standards in carrying out their work, so as to enable them to perform their duties competently and impartially.

The Court also suggested mentioning the need for EU officials to maintain their independence from outside interest groups and their political neutrality. Several other contributors made similar points.

The Society of European Affairs Professionals (SEAP) suggested splitting the third paragraph<sup>10</sup> into two, since it contains two different concepts. This would also provide the opportunity to link “setting a good example” with “trust”, a word that does not otherwise appear in the principles, though it is mentioned in the consultation document.

ALTER-EU pointed out that the Lisbon Treaty includes global commitments. Access Info Europe made the same point and also suggested stating that civil servants should “set a good example to others”, rather than merely “aim to” do so.

#### ALTER-EU

... the Lisbon Treaty makes a commitment to sustainable development and implies a clear responsibility for protecting the interests of people and the environment around the world.

On behalf of the Union of European Federalists, Andrew Duff MEP suggested an addition to the first sentence of the first principle so that it would read “... *serve the interests of the Union and of its citizens in fulfilling the objectives of the Treaties.*”

The Anti-Fraud Office of Catalonia expressed the view that the first principle sets out the duty of loyalty of civil servants to the European Union and to the citizens the EU serves and suggested that it be re-named accordingly.

According to the Office, this principle should also expressly mention the registration and safekeeping of documents, as well as their subsequent transmission to those who take over responsibility for the matter.

#### The Ombudsman’s view

The Ombudsman agrees with the Court of Auditors' suggestions. In order to implement them, the first principle will be amended to include reference to “**the highest professional standards**”.

<sup>10</sup> “Civil servants should carry out their functions to the best of their abilities and aim to set a good example to others.”



As regards independence from outside interest groups and their political neutrality, the Ombudsman will add a reference to "impartiality" in the third principle (*objectivity*), as suggested by the EU Agencies Network.

The Ombudsman agrees with SEAP's suggestion to deal separately with "abilities" and "setting a good example". Moreover, the word "trust" will be introduced in the latter context and the words "aim to" will be dropped.

The Ombudsman also accepts the point made by ALTER-EU and Access Info Europe concerning the global role of the EU. Indeed, Article 3 (5) of the Treaty on European Union reads as follows:

*"In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter."*

The Ombudsman takes the view that the additional wording suggested by the Union of European Federalists, which refers to **the objectives of the Treaties**, adequately meets this point and that it is not appropriate for the public service principles to highlight certain specific objectives.

As regards the suggestion to re-name the first principle as "loyalty", the Ombudsman recalls that one of the points made during the earlier consultation with the European Network of Ombudsmen was that civil servants are accountable to, and owe a duty of loyalty to, the institutions for which they work. The first principle, whilst entirely consistent with institutional loyalty, is intended to convey a different and broader idea, which is appropriately expressed by the word "commitment".

The Ombudsman agrees with the suggestion by the Anti-Fraud Office of Catalonia that the principles should include the keeping of adequate records. The European Committee of the House of Lords (UK) made a similar suggestion in relation to the second principle (*integrity*). In the Ombudsman's view, the keeping of adequate records serves multiple purposes. The Ombudsman will include it as an aspect of the fifth principle (*transparency*).

The Ombudsman will also delete the phrase "not for any other purpose" in the second paragraph. This negative formulation is unnecessary, given that the first part of the sentence includes the word "only".

### **3.2.3 Principle 2 - Integrity**

This principle received the most comments from contributors. Two main themes emerge from the comments. First, many contributors wish to see the wording of the principle strengthened. Second, some contributors, especially individual civil servants, are dissatisfied with the wording of the fourth paragraph, which refers specifically to allowances.

The EU Agencies Network proposed to reformulate the first paragraph along the following lines; "conduct themselves at all times according to the highest standards of probity, impartiality etc." The Network also suggested stating that



civil servants should “avoid” conflicts of interest, rather than that they should “take steps” to do so.

Access Info Europe said the provisions are positive and important, but too vague. It recommended adding to the principles by outlining, or referring to, a specific mechanism by which EU public servants should declare conflicts of interest. It also recommended specifying a “cooling off period” of at least 18 months after leaving office before engaging in activities that might constitute a conflict of interest, or be part of a “revolving door” type of employment pattern.

SEAP recommended strengthening the wording of the principle by adding that civil servants should disclose conflicts of interest when they occur and take swift action to resolve them. SEAP also suggested specifying a period of one year between leaving office and taking up a paid activity that may involve a conflict of interest, or the appearance of such a conflict.

ALTER-EU strongly supported this principle and proposed to add an additional paragraph stating that civil servants should refrain from moving into jobs that create conflicts of interest for a period of several years and under no circumstances enter negotiations about such jobs while still in public office.

The European Committee of the House of Lords (UK) proposed additional wording to say that civil servants should neither misuse information, nor accept gifts.

#### The fourth paragraph<sup>11</sup>

The Commission’s Central Staff Committee found it shocking to consider that civil servants seek to profit to the maximum from their rights. According to the Committee, the administration finds either that the civil servant has an entitlement, or that the civil servant does not have an entitlement. The Staff Regulations make provision to deal with cases of attempted fraud and the Commission has a zero-tolerance policy, which has existed for many years.

The Council’s Staff Committee suggested adding “accuracy” (*justesse*) to the wording of the fourth paragraph, in order to make clear that civil servants are not being asked to make gifts to the institutions, but to limit their requests for reimbursement to the costs incurred in the exercise of their duties.

An individual stated his understanding that the fourth paragraph refers only to disbursements incurred while on business travel and suggested that the word “allowances” could give rise to confusion, because it also refers to some parts of the general remuneration package, such as the household allowance. He proposed therefore, that the paragraph should refer to “disbursements”.

#### The Ombudsman’s view

The Ombudsman agrees that it would be appropriate to strengthen the second principle by adding references to:

- **the receipt of gifts** (second paragraph)

<sup>11</sup> “In claiming expenses and allowances, civil servants should be guided by a sense of propriety, rather than seeking to maximise their benefits.”



- **promptness** in declaring private interests (second paragraph)
- **swift** action to resolve conflicts of interest (third paragraph).

The Ombudsman prefers to retain the formulation that civil servants should "take steps to avoid" conflicts of interest because it signals the need to be proactive, rather than simply reacting to situations as they arise.

The Ombudsman understands the concerns of contributors who highlighted the issue of "revolving doors" and called for a mandatory "cooling-off" period. The Ombudsman also agrees that the question of what civil servants may do after they leave public service is only part of the issue. At least as important, if not more important, is to avoid any risk that their conduct while in office might be affected, or appear to be affected, by the prospect of future employment outside the public service. However, the Ombudsman does not consider that a high-level declaration, such as the public service principles, is the right instrument to regulate these matters in detail.

As regards the suggestion to add that civil servants "should not misuse information", the Ombudsman considers that this is adequately covered by the addition to the first principle (commitment) that civil servants should strive to meet **the highest professional standards** at all times.

As regards the fourth paragraph, which mentions "allowances", the Ombudsman's intention was to refer to expenses, benefits and allowances.

The Ombudsman agrees that civil servants are not expected to make gifts to the institutions and that, in accordance with the applicable rules, they are fully entitled to seek reimbursement of expenses incurred in the exercise of their duties.

The Ombudsman is not convinced, however, by the argument that an entitlement either exists or does not exist. The rules governing benefits, allowances and expenses are complex, their meaning is not always clear and their interpretation and application can sometimes produce surprising and unintended results.

The Ombudsman has, on numerous occasions, sought to persuade the administrations of EU institutions to apply common sense and to be guided by the principle of fairness in the interpretation and application of financial rules to specific cases. The Ombudsman remains of the view that, in claiming benefits, allowances and expenses from the administration, civil servants should likewise adopt a reasonable, rather than a maximalist, approach.

The Ombudsman accepts, however, that the wording of the fourth paragraph could give the impression that its target is fraud, which is not the case.

Furthermore, the Ombudsman considers, on reflection, that it is inappropriate for a high-level declaration of principles to focus on the specific area of benefits, allowances and expenses and that doing so could give the impression that the Ombudsman thinks there is a widespread problem in this area, which is not the case either.

The fourth paragraph will, therefore, be deleted and the reference to being guided by "a sense of propriety" will instead be included in the first paragraph.



### 3.2.4 Principle 3 - Objectivity

The EU Agencies Network suggested that the principle of objectivity should specifically mention impartiality and non-discrimination. The European Union Committee of the House of Lords also proposed stating explicitly that civil servants should not discriminate, while the German insurance Association and the European Medicines Agency recommended adding a specific reference to impartiality.

Cleary, Gottlieb, Steen & Hamilton LLP focused especially on the Commission's DG Competition. Their comments expressed the view that objectivity requires adequate experience and training. They also pointed to the risks of “confirmation bias” (i.e., the tendency to give greater weight to arguments and evidence that support views already provisionally reached and to minimize or disregard the significance of arguments and evidence that seem inconsistent with those views).

ALTER-EU drew attention to the dangers of “regulatory capture” (i.e., a regulatory authority acting for the benefit of those whom it is supposed to regulate rather than in the public interest) and privileged access to decision-making. It proposed to mention the proactive consultation of a diverse range of viewpoints and interests, as well as the active defence of public interest concerns in the face of lobbying.

Access Info Europe also wished to add a proactive element by stating that civil servants should actively seek different viewpoints and strongly encourage citizen participation in decision-making. This organisation also wished to expand the third paragraph so that it would say that civil servants should not allow the fact that they like, dislike or have ties with, a particular person, association or corporation, political party or government to influence their professional conduct.

#### The Ombudsman's view

The Ombudsman agrees that it would be appropriate to strengthen the third principle by adding references to:

- **impartiality** (first paragraph)
- **non-discrimination** (third paragraph).

As regards non-discrimination, the Ombudsman will emphasise in the explanatory introduction to the public service principles that, according to settled case law, the principle of equal treatment or non-discrimination has two branches:

- (i) comparable situations must not be treated differently and
  - (ii) different situations must not be treated in the same way,
- unless, in either case, such treatment is objectively justified.

The second element, which is of particular importance in administrative contexts, often tends to be neglected. Indeed, the Ombudsman's experience includes many cases where civil servants appear to have assumed that the



principle of equality always requires them to treat everyone the same and to disregard differences in their situation.

As regards the suggestion to add that civil servants should not allow “ties with” a particular association or corporation, political party or government to influence their professional conduct, the Ombudsman understands its intended objective. However, the wording proposed could be understood to imply that it is acceptable for civil servants to have such ties in the first place, which is not normally the case.

The importance of training in ethical matters has already been noted (see above, the section entitled “The relationship with existing rules, codes and processes”). The Ombudsman agrees that appropriate initial and in-service training could also help to reduce the risks of “regulatory capture” and “confirmation bias”.

The Ombudsman also agrees on the importance of adopting a proactive approach to consultation and citizen participation. Indeed, as amended by the Lisbon Treaty, the Treaty on European Union requires all the institutions to maintain an open, transparent and regular dialogue with representative associations and civil society. The Commission in particular must carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent<sup>12</sup>.

However, in the Ombudsman’s view, these points concerning training and proactivity do not require changes to the draft public service principles because they concern the responsibilities of the institutions, rather than of every individual civil servant.

### 3.2.5 Principle 4 - Respect for others

Euclid and the European Union Committee of the House of Lords both suggested mentioning **timeliness** as an aspect of this principle. The European Consumers Organization (BEUC) made a similar proposal to state that civil servants should respond to letters and requests from the public “within a reasonable period of time”.

The EU Agencies Network suggested that diversity could be mentioned, in order to recognise the cultural dimension of respect.

Access Info Europe recommended adding **timeliness** in replying to citizens’ requests, queries and complaints to the fifth principle (*transparency*). SEAP made a similar suggestion.

The Anti-Fraud Office of Catalonia suggested adding a paragraph to the fifth principle (*transparency*) to the effect that civil servants should express themselves in a way that facilitates understanding by the citizens.

#### The Ombudsman’s view

The Ombudsman welcomes the valuable suggestion from several contributors that the public service principles should mention timeliness.

<sup>12</sup> See Article 11 (2) and (3).



The Ombudsman agrees that timeliness is particularly important in relation to transparency. Indeed, many complaints to the Ombudsman concern unjustified delay in dealing with applications for access to documents. However, the Ombudsman is persuaded that, as a general individual responsibility, timeliness belongs conceptually to the principle of respect for others. The word “timely” will, therefore, be added to the first paragraph of this principle so that it reads: “Civil servants should act respectfully to each other and to citizens. They should be polite, helpful, **timely** and co-operative.”

The Ombudsman also welcomes the valuable suggestion by the Anti-Fraud Office of Catalonia for the public service principles to make clear that civil servants should express themselves in a way that facilitates understanding by the citizens. The Ombudsman agrees that this responsibility could form part of the principle of transparency. Conceptually, however, it also constitutes part of the principle of respect for others, particularly if combined with the requirement to make efforts to understand what others are saying. With this addition, indeed, it expresses the idea of *dialogue*. The Ombudsman will, therefore, add a second paragraph to the principle of respect for others, as follows: “**They should make genuine efforts to understand what others are saying and express themselves clearly, using plain language**”.

The Ombudsman agrees that appreciation of cultural diversity is an important aspect of the principle of respect for others. Indeed, the motto of the European Union is “united in diversity”.<sup>13</sup> However, the concept of respect for diversity is complex and requires explanation. In the Ombudsman’s judgement, it is preferable, therefore, to include it in the introduction to the principles.

### 3.2.6 Principle 5 - Transparency

The Court of Auditors suggested clarifying that this principle is without prejudice to professional secrecy and to the right of protection of personal data.

Euclid proposed the addition of a further paragraph that would read, “[i]n order to be accountable to the citizens, they should be more accessible and promote a system to monitor their performances and results”.

ALTER-EU also proposed an additional paragraph saying that civil servants should report on the “legislative footprint” of a proposal so that the public can understand who has tried to influence legislation, which specific inputs civil servants considered valuable (or not) and why.

As noted above, the proposal by Access Info Europe to add timeliness to this principle was taken up under the fourth principle (*respect for others*).

The same organisation also proposed to refer to proactivity, by stating that civil servants should proactively publish as much information about their functions, responsibilities and activities as possible, including on spending and meetings, both internal and external.

#### The Ombudsman’s view

As mentioned above in the discussion of comments on the first principle (*commitment*), the suggestion made by the Anti-Fraud Office of Catalonia and

<sup>13</sup> [http://europa.eu/abc/symbols/motto/index\\_en.htm](http://europa.eu/abc/symbols/motto/index_en.htm)



the European Committee of the House of Lords (UK) to mention the keeping of adequate records will be taken up as an aspect of transparency. The second paragraph of the principle will therefore read: “They should **keep proper records and** welcome public scrutiny of their conduct, including their compliance with these<sup>14</sup> public service principles”.

The suggestion from the Court of Auditors to clarify that the principle of transparency is “without prejudice to professional secrecy” is similar to the proposal made by the EU Committee of the House of Lords in relation to the second principle (*integrity*) that civil servants “should not misuse information”. In the Ombudsman’s view, this aspect is adequately covered by the wording added to the first principle (*commitment*) that civil servants should strive to meet **the highest professional standards** at all times.

The protection of personal data, like the right of access to documents, is included in the Charter of Fundamental Rights and the Treaty on the Functioning of the European Union<sup>15</sup>. The Ombudsman does not think it would be appropriate for the public service principles to refer specifically to either of these rights. In this regard, it is useful to point out that, as a public service principle, transparency is not derived from the individual right of access to documents. Rather it is a precondition for good governance and accountability.

As regards the suggestions to include *proactivity* and *accountability*, it has already been explained that the public service principles avoid these words because of possible difficulties of translation into other languages.

The suggestions to mention accessibility, promotion of a system to monitor performances and results and “legislative footprints” raise important subjects. However, the Ombudsman considers that they relate to the responsibilities of institutions and senior civil servants, rather than being matters for all civil servants. For this reason, the Ombudsman does not consider it appropriate to incorporate them into the public service principles.

## 4. Conclusion

This report will be translated into all the official languages and made available on the Ombudsman's website. The English version will be put on the website immediately and the other language versions will follow, as soon as the translations become available.

The Ombudsman intends to publish the final version of the principles, together with an explanatory introduction, in all the languages, in the first part of 2012.

<sup>14</sup> The word “these” has also been inserted for the sake of clarity.

<sup>15</sup> See Articles 8 and 42 of the Charter and Articles 15 (3) and 16 TFEU.