

Comments on EU Public Service Principles

Submitted to the European Ombudsman

These comments on the EU Public Service Principles are submitted by Access Info Europe, a human rights organisation dedicated to promoting transparent, participatory and accountable governance across Europe and at the EU level.

Access Info Europe welcomes the development by the European Ombudsman of the EU Public Service Principles which we believe are a good starting point for promoting an ethical and open civil service which acts with the best interests of the wider public at heart.

We believe that the principles should be strengthened through some additional language and concepts which are proposed. These emphasise the role of EU civil servants in today's globalised world, the duty to consult with the public, the obligation to take into consideration human rights and environmental impacts, and the paramount need for transparency in the operation of the European Union administration.

We also believe that in places specific rules or mechanisms should either be included in the principles or referred to (for example systems for declarations of conflict of interest and whistleblower mechanisms). If these principles are directly linked to specific systems for promoting integrity, objectivity, and transparency, then they are likely to be far more effective.

We urge the European Ombudsman to promote the finalised principles through trainings and debates in order that they become part of the culture of the EU civil service.

Specific edits are made in track changes below and following each section we have added a comment which summarise the thinking behind the proposed changes.

Draft: Public service principles that should guide EU civil servants

1. Commitment to the European Union and its citizens

Civil servants should be conscious that the Union's institutions exist in order to serve the interests of the Union and of its citizens, whilst bearing in mind that EU policies have a global impact.

They should make recommendations and decisions only to serve the interests of the public, not for any other purpose.

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Civil servants should carry out their functions to the best of their abilities and should set a good example to others.

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Access Info Europe comment: It is important and positive that the EU's principles emphasise the rationale behind the role of EU civil servants. We suggest that the global impact of the EU's operations should be taken into consideration here: as the world's first true supranational state representing 500 million people, the EU needs to consider its role as a world player.

We also suggest that while it is true that EU civil servants serve both the Union and its citizens (which should be read to include also all residents) the primary role is to serve the

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public as there should be no distinction between the interests of the Union (which is after all a body representing its public) and the citizens/residents. Hence in the second indent we suggest change to "the public".

These principles should set clear standards and hence in the third indent we changed the word "aim" to simply stating that civil servants should set a good example.

2. Integrity

Civil servants should conduct themselves at all times in a manner that would bear the closest public scrutiny. This obligation is not fully discharged merely by acting within the law.

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.

In claiming expenses and allowances, civil servants should be guided by a sense of propriety, rather than seeking to maximise their benefits.

Access Info Europe comment: These are positive and important provisions. They remain, however, rather vague. What is the mechanism, for example, for declaring private interests? For how long after leaving office should civil servants be prohibited from engaging in activities which might constitute conflict of interest or be considered to be part of a "revolving door" type of employment pattern?

For these reasons, Access Info Europe recommends specifically:

- The principles should outline a specific mechanism by which EU public servants should declare their conflict of interests or should refer to such a mechanism;
- The principles should specify a time frame for the "cooling off period" necessary after civil servants leave office. Access Info would recommend that this be at least 18 months.

3. Objectivity

Civil servants should be open-minded and, guided by evidence, actively seeking, different viewpoints. They should strongly encourage citizen participation in decision-making and act always in the public interest. They should be ready to acknowledge and correct mistakes without hesitation.

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In procedures involving comparative evaluations, civil servants should base recommendations and decisions only on merit and any other factors expressly prescribed by law.

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.

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Access Info Europe comment: To ensure that civil servants are sufficiently well-informed to act objectively and in the public interest, they need to take active steps to receive information from and to engage with the public. Additional language has been suggested to emphasise this.

With regard to factors which might influence an EU civil servant, not only the liking or disliking of an individual but also attitudes towards and ties to people, associations, corporations, political parties, and governments (and indeed countries) may influence decision-making and behaviour and should be expressly guarded against.

4. Respect for others

Civil servants should act respectfully to each other and to the public. They should be polite, helpful, and co-operative. They should ensure that all EU policies take into account and minimise any negative impact on human rights or the environment both in Europe and globally.

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Access Info Europe comment: *Respect is about more than polite and cooperative behaviour between civil servants and towards the public. It is also about respect towards and consideration for the whole of human kind and the planet we live on. To that regard we have added language about EU civil servants acting to ensure that their decisions and policies avoid negative impacts on human rights or the environment.*

5. Transparency

Civil servants should remember that in case of doubt, transparency is the norm and secrecy the exception. They should proactively publish as much information about their functions, responsibilities and activities as possible, including on spending and meetings, both internal and external.

Civil servants should be willing to explain their activities and to give reasons for their actions. They should respond to citizens' queries, complaints and requests for access to information in a polite and timely manner. They should welcome public scrutiny of their conduct, including their compliance with public service principles.

Civil servants should alert their superiors and other competent bodies of violations of this code.

Access Info Europe comment: *Transparency is vital to good governance, as has been recognised since at least the 18th century when the word "transparency" to describe open government was used in the works of political philosophers such as Jean-Jacques Rousseau (1712-1778), who promoted transparency in his plans for the government of Poland in 1772, proposing that all public officeholders should operate "in the eyes of the public" and even wear a uniform so that they could never be anonymous.¹*

Transparency is not only a principle of government but it is a right, now enshrined in the Treaty of the Functioning of the EU (Article 15) and also recognised in the Charter of Fundamental Rights through Article 42 on freedom of expression and information, given that the European Court of Human Rights has interpreted the right of access to information as an inherent part of the right to freedom of expression, especially when the information held by public bodies cannot be obtained from another source ("information monopolies") and is needed to engage in public debate on matters of public importance.

The EU has rules on access to documents (Regulation 1049) but the letter of the law is not sufficient: a spirit of transparency should prevail through the EU's civil service. Hence Access Info Europe has added language to strengthen this provision, encouraging civil servants to develop a culture of transparency, not only through rapid responses to requests but also through the proactive publication of information.

¹ Christopher Hood, *What happens when transparency meets blame-avoidance?* Public Management Review, 9:2,191 — 210, to be found at: <http://www.informaworld.com/smpp/content-db=all?content=10.1080/14719030701340275>, page 193-194, last accessed 27 March 2010. Hood cites Rousseau (1772/1985: 72) and notes that philosophers Jeremy Bentham, Immanuel Kant, and earlier Baruch de Spinoza put forward similar ideas. It should be noted that these pre-twentieth century concepts of transparency also include the notion of government according to stable and known rules, as well as the notion of open government in the sense of public access to government documents.

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It is noted that as the right to information evolves globally, it is clear that both the reactive and proactive dimensions are essential aspects of this fundamental human right. Language has been suggested to that effect.

The EU's Regulation 1049 on Access to Documents should be taken as a starting point for transparent behaviour by public officials, who should work to promote the greatest possible access to information so that the public is informed about, able to follow, hold accountable, and to engage with the administration of the European Union.

The culture of public service and protection for whistleblowers: *it is essential the civil servants do not only adhere to this code themselves but also inform their superiors or appropriate oversight bodies when there are violations of this code by others. A positive culture of mutual reinforcement of the principles should be inculcated, with open debate about how they should be interpreted, in order to avoid creating a soviet-style informer state where civil servants live in fear of being reported on by others. At the same time, 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.*

Hence mechanisms should be established whereby EU civil servants can "blow the whistle" on violations of this code. It is imperative that these mechanisms afford all the necessary protections to the whistleblowers, including anonymity where necessary and protection from undue dismissal for raising concerns about workplace practices which are in violation of the principles set out here and/or of other rules, regulations, and norms governing the work of EU civil servants.

Whistleblowers should be provided with and encouraged to use internal mechanisms in the first instance but if these fail and if the whistleblower is forced to go public on matters which are of clear public interest, there should also be protection from sanction for doing so.

Comments prepared by Helen Darbishire, Pamela Bartlett, and Lydia Medland of Access Info Europe, Madrid.

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