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SURVEY

**FOR THE 42nd MEETING OF THE DIRECTORS-GENERAL OF
THE PUBLIC SERVICE OF THE EUROPEAN UNION MEMBER
STATES**

(Dublin, Ireland, 27-28 May 2004)

**“ETHICS IN THE PUBLIC SERVICES OF THE EUROPEAN UNION
MEMBER STATES”**

COLLABORATION BETWEEN THE IRISH AND DUTCH PRESIDENCIES



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**“ETHICS IN THE PUBLIC SERVICES OF THE EUROPEAN UNION
MEMBER STATES”**

*European Institute of Public Administration (NL) in cooperation with
the Irish Ministry of Finance and the Irish Presidency*

January to June 2004

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ETHICS IN THE PUBLIC SERVICES OF THE EU MEMBER STATES

EXECUTIVE SUMMARY

1. Our present understanding of ethics seems paradoxical: on the one hand unethical behaviour has never been the focus of such attention. On the other hand, there is very little statistical evidence regarding the development of unethical behaviour in general.
2. The focus in national public administrations and the media is on corruption, fraud and conflicts of interest, but much less on unethical behaviour in general, e.g. using official resources for private purposes.
3. The topic of ethics is strongly linked to the issue of individual and organisational performance. In the future, more attention should be placed on the relationship between unethical behaviour and individual and organisational poor performance.
4. Despite the increasing public attention (particularly with respect to corruption, fraud and conflicts of interest), there is an overall feeling among the public that too little is being done to combat unethical behaviour. The answers given during our study cannot confirm this, at least in the short-term. In our survey, almost all countries reported that they see fighting unethical behaviour as one of their priorities for the coming years.
5. In contrast to public perceptions, a significant number of Member States indicated in the questionnaire that levels of corruption and unethical behaviour in national public services are quite low or even very low.
6. The contradiction between government responses to the questionnaire and the general perception may be due to the fact that media attention and public sensitivity to unethical behaviour is increasing. In addition, as a result of the increased openness and transparency of procedures and processes, more cases of unethical behaviour are being made public and reaching the media. Despite this positive development, it does not necessarily follow that unethical behaviour is increasing as such. Unethical behaviour may be low in official statistics, but the real problems may be greater.
7. Consequently, one may also conclude that public and private discussions about the development of ethical behaviour have insufficient basis and often consist of speculation rather than evidence.
8. Statistical evidence is almost totally lacking as regards unethical behaviour in general, e.g. bullying and sexual intimidation. If statistics about these forms of unethical behaviour exist, they are only available to certain organisations, and not to national public services as a whole. At the same time, bullying and sexual harassment are not rare, they are common throughout the European Union.

9. A growing number of citizens believe that values and norms are losing ground in our societies. Consequently, people believe that criminality, corruption, fraud and other forms of unethical behaviour are increasing. Correspondingly, confidence in the public sector is decreasing.
10. As regards ethics, the focus in the public discussion is clearly negative. Media and politics focus on fraud and corruption. This concentration on negative aspects has one important consequence: media coverage about the work of the public service is mainly negative, too. Consequently, very little attention is placed on the quality, performance and the good work done by the vast majority of civil servants. For the future, it is also necessary to present the positive impact of civil service ethics and behaviour, e.g. less bullying than in some private sector organisations, to the public.
11. More citizens are longing for a solid moral base in order to halt the seemingly unstoppable cultural and ethical decline in our societies. In contrast, this study shows that unethical behaviour and corruption is not tolerated to a great degree by the population. Moreover, our survey provides no evidence that values are decreasing. On the contrary, societal values, e.g. democracy, are still strong.
12. Several countries responded to the questionnaire by saying that there is a clear link between the image of the civil service and ethical behaviour. For example, according to the Italian contribution to this survey “this link is bilateral: high ethical standards improve the image of public administration and employment and the diffusion of a good image stimulates higher ethical performance”. European citizens do not have very much confidence in national civil services. This is even more so in most of the accession states – Lithuania, Poland, the Czech Republic and Slovenia are having to face up to considerable lack of confidence in national civil services.
13. In Europe, perceptions about values differ. In addition, ethical behaviour is not confined to one type. Rather, from a European point of view, there are different national and regional perceptions with respect to different types of unethical behaviour.
14. The differences in perception with respect to unethical behaviour must be taken into account when thinking about a – possible – European Code of Ethics, e.g. a European Code of Ethics for the police. For example, it may be difficult to establish legally binding common European standards if national perceptions differ too much. However, this should not prevent Member States from discussing the issue, exchanging information and experience and establishing benchmarks and good practices in their efforts to combat unethical behaviour. Furthermore, the establishment of a voluntary non-legally binding European code of ethics may contribute to greater awareness of the issue. Nowadays, almost all countries have adopted codes of ethics or are in the process of doing so.
15. Despite the differences in general ethical perceptions, the obligations of civil servants regarding ethical behaviour are surprisingly similar in all 25 national public services of the enlarged European Union. This also applies to the ethical requirements as laid down in laws and disciplinary legislation. Moreover, the traditional values of national civil services

(neutrality, respecting the rule of law, confidentiality, impartiality, avoiding conflicts of interest, etc.) are very stable and have survived all changes within the last decades.

16. Surprisingly little is known about the impact, effects and reform of traditional civil service principles on the individual behaviour of civil servants. On the other hand, scant evidence exists of the effects of organisational and human resource management reforms on civil service ethics. Our survey revealed that thirteen countries believe that new public administration reform measures (improving mobility between the public and private sectors, decentralisation of responsibilities, etc.) will increase the risk of unethical behaviour. This is a surprisingly high number since very little is known about the effects of ongoing reforms. Accordingly, there is little information regarding the alignment of working conditions and regulations to those reforms applied in the private sector, as well as their impact on ethical or unethical behaviour.
17. General and ethical obligations as well as ethical guidelines are often rather theoretical and abstract. In addition, they do not always offer assistance to or provide useful guidelines for civil servants. However, the crucial point is that civil servants often face dilemmas when they have to make decisions regarding issues where different values are contradictory, e.g. the rule of law versus efficiency. In this respect, the importance of dilemma training should be emphasised.
18. Today, the alignment with the private sector raises questions about possible threats to the traditional ethos. The boundaries between public and private services are increasingly difficult to define, and the picture is made more complex by the emergence of new types of public-private partnerships. During our survey, a number of Member States raised concerns about the increased contacts between the public and private sector and the impact on unethical behaviour.
19. The national public services are significant breeding grounds for corruption. The most sensitive sector in this respect is public procurement.
20. In most cases, corruption is rife when two parties (the party offering bribes and the party accepting) have a close personal relationship and when the civil servant has been working for a longer period in the same position. Civil servants in leading position are often the targets of corruption but also the initiators of unethical behaviour. Encouraging job rotation is an obvious means of fighting these forms of corruption.
21. Most forms of corruption start with gifts or other perks, e.g. cash or free travel.
22. Incorruptible behaviour in the public sector does not depend on one single instrument such as effective disciplinary legislation, the setting-up of efficient control and monitoring bodies or an attractive code of conduct, but on the existence of an overall national integrity system (Transparency International), a multi-pronged anti-corruption strategy (World Bank), or a multi-dimensional ethics infrastructure (OECD). The main characteristic of such a multi-dimensional approach is that ethics is considered a key principle of good

governance. It is also influenced by the characteristics and interaction of the political and legal context, as well as by economic policy.

23. One of the main assumptions of this survey is that unethical behaviour is the result of horizontal policy and an ethical public sector with a low level of corruption depends not only on the introduction of effective punitive measures but more widely on guidance, prevention and greater awareness. Consequently, the main task of effective instruments is not just to penalise wrongdoings, but to prevent such occurrences and to promote incorruptible behaviour by guidance and awareness measures, such as training and the introduction of codes of conduct.
24. Whereas some years ago, codes of ethics and policies on whistleblower protection were almost non-existent, today there are hardly any countries that are not willing to invest in these new instruments. However, codes of conducts and whistleblower instruments differ from country to country, from organisation to organisation and from culture to culture. The concept of whistleblowing, in particular, is interpreted very differently in various countries.
25. Despite their popularity, codes of ethics make little sense unless they are accepted by the personnel, and maintained, cultivated and implemented with vigour. In addition, codes of ethics are useless if staff are not reminded of them on a regular basis and given continuous training on ethics. Codes are only effective if they are impressed upon the hearts and minds of employees.
26. With respect to the various instruments, a certain consensus exists throughout Europe regarding the significance of punitive measures to combat wrongdoings. Most Member States believe that punitive instruments are vital in the fight against unethical behaviour. Nonetheless, it is interesting to note that 9 states believe that punitive measures are not always the most efficient instruments. In this context, it is interesting to note that among the 26 States and the European Commission, no state believes that punitive measures alone are sufficient to counteract wrongdoings. The overall majority has a strong preference for a combination of three or four different instruments.¹ Among these different instruments, training was considered by 22 states as being crucial for fostering integrity, commitment by political leadership by 19 states and working conditions by 16 states.
27. There is considerable evidence that unethical behaviour is primarily an elitist problem associated with leadership. Consequently, there is a need to focus on the role of senior officials in the context of the ethics debate. This is particularly important bearing in mind that human resource management reforms in the Member States concern the role, nomination and status of senior officials. However, due to the different correlation between integrity violations and management styles, the EU Member States (including Bulgaria) and the European Commission would need different styles of leadership.
28. As it happens, the survey clearly shows that the accession states are very concerned about the impact of low salaries on ethical behaviour in their national public services. The

¹ The proposed instruments included punitive measures, codes of conduct, training, commitment by political leadership, working conditions and suspension by independent bodies.

responses to this question reveal a very clear East-West/South/North division. In a number of accession countries, poor salaries below the minimum wage lie at the heart of corruption. Any suggestion that the personal rewards offered by the ethos should be seen as a recompense for low pay and poor working conditions should be rejected. In addition, the public service ethos should never be offered as an excuse for treating public service workers less well than others.

29. On the other hand, it would be false to assume that the problem can be solved by increasing salaries. Given the evidence, it is doubtful whether increasing public sector wages will result in a fall in corruption.
30. Another interesting aspect with respect to human resource management is the widespread perception regarding the significance of training. The overall majority (22 states) mentioned training as being among the most efficient instruments to combat wrongdoings, while 16 states thought the same applied to working conditions. In addition to decent salaries, sufficient training and good leadership, there are other measures in the field of human resource management that promote integrity in the public sector, e.g. motivating civil servants with respect to their work and career development policies.
31. Other key instruments which may minimise the risks of unethical behaviour include: fair selection and recruitment procedures, objective promotion criteria, job rotation and job enrichment opportunities, clear description of tasks, transparent division of responsibilities, separation of competencies, screening of staff and sharing responsibilities among staff members.
32. As regards conflicts of interest management, the survey reveals that the extent of the interest to be disclosed differs from country to country. It may range from a pecuniary interest to a personal non-pecuniary interest, such as membership of different organisations or charities. The difficulty lies in defining an interest which may raise an ethical problem. Declaring private interests in a register is a new mechanism for dealing with conflicts of interest, which may soon become common. "The popularity of this mechanism seems due in part of the ease of implementation and the clear message it sends of a commitment to transparency in government"². This mechanism requires the periodic declaration of all prescribed interests in a register of interests. In Ireland, for example, a number of public officials are required to declare any income (also of his/her family) in a register or to undertake a tax clearance obligation (for the Attorney-General and senior officials)³. However, registers of interests are not accepted everywhere. For instance, some countries believe that registers are in conflict with fundamental rights (privacy, personal rights, family rights, etc.).
33. In addition, it is helpful to make a distinction between accepting gifts, etc. and accepting additional activities.

² Transparency International (TI), Gerard Carney, Working Paper: Conflict of Interest: Legislators, Ministers and Public Officials, on the webpage of TI.

³ Standards in Public Office Commission, Guidelines on Compliance with the Provisions of the Ethics in Public Office Acts, 1995 and 2001, Dublin, January 2003

34. As regards the acceptance of gifts, etc. the relevant legal provisions vary in the different states⁴. In a large group of states – Cyprus, United Kingdom, Italy⁵, Bulgaria, Ireland, Finland, Lithuania, Austria, Slovakia, Germany, Estonia, Slovenia, Malta, Hungary, UK, Poland, Belgium, Latvia, the Netherlands, as well as in the European Commission – it is strictly forbidden to accept gifts and invitations. In Ireland for instance, central government civil servants are not allowed to accept gifts where there is a possibility or even a suggestion of a conflict of interest or corruption occurring.⁶ In Greece, accepting any material favour or consideration from a person under review, now or in the future, is considered a breach of discipline in accordance with Article 107 of the Civil Servants' Code (Law 2683/99). In Finland, a civil servant may not demand, accept or receive any financial or other advantage, if this prejudices confidence in him or her or in an authority.
35. In some states (Cyprus, UK, Lithuania, Austria, Germany, Slovenia, Latvia, the Netherlands, as well as in the European Commission), accepting gifts and invitations must be disclosed.
36. In France, the Czech Republic, Luxembourg, Portugal, Spain, Finland and Sweden, there are no regulations with respect to accepting gifts. In Denmark, there are no general rules (at least until the new code of ethics is adopted), but within certain sectors/areas specific rules may apply, e.g. to certain posts within the Ministry of Foreign Affairs.
37. As regards conflict of interest management and the acceptance of other jobs/activities, almost all Member States oblige civil servants to request permission from their superiors before taking up an additional post. Additional activities are generally not allowed when linked to the civil servant's duties within the administration, e.g. a tax official may not work as a tax consultant. With respect to additional activities, etc., civil servants in all countries are required to concentrate on one position only in the public sector, and additional activities must remain secondary. In most countries, public officials are required to focus all their professional activity on the tasks entrusted to them.
38. In most countries, civil servants who leave the administration are prohibited for a certain amount of time from accepting a position or work in a business similar to that of their previous public service job. Luxembourg, Slovakia, Spain, Greece and France go even further by prohibiting public officials from engaging in activities in which their families have a private interest. Some countries also forbid the spouse and children of civil servants from holding shares in firms that have a connection with the civil service branch for which they work. Furthermore, in certain states, civil servants are strictly forbidden to carry out private activities related to the position which they hold within the public service. In Spain, for instance, civil servants are not allowed to sit on the boards of private companies whose activities are directly related to those of the organisation for whom the civil servant works. Moreover, civil servants are prohibited from holding positions in companies that have been awarded licenses or contracts for public works or companies that provide public sector

⁴ In most of the states, provisions are also contained in the codes of ethics.

⁵ According to a Ministerial Decree of 28 November 2000, Art. 3.

⁶ Paragraph 8 of circular 15/79 refers.

services. They are also forbidden to hold more than a 10% share in the capital of any of the above categories of companies.

39. The above provisions relating to conflict of interest management seem increasingly incompatible with the reform measures in a growing number of Member States, which aim to increase mobility between the public and private sectors. In this respect, it is interesting to note that a large number of Member States see the increasing contacts between the public and private sectors as decisive with regard to the impact on ethical behaviour.
40. Codes of ethics differ from country to country. They may be useful instruments for fighting unethical behaviour. However, these instruments are more effective when they constitute an integral part of the organisation. This requires continuous awareness of the content of these codes. In order to create optimal acceptance among employees, it is useful to involve staff in drafting and developing such codes. Finally, this survey emphasises the need for training and heightened awareness, also with respect to the interpretation and importance of ethical codes.

I. GENERAL REMARKS

1. Introduction

In early 2004, the Irish Presidency proposed contributing to the work of the European Public Administration Network by commissioning the European Institute of Public Administration to carry out research into ethics in the public sector. The Presidency of the EU thought that the research would be of interest to the current EU Member States and the new acceding countries in their own right and would help to focus the work of EUPAN over the medium-term in dealing with issues concerning ethics.

There is indeed a growing recognition in governments all over Europe that integrity in the public service has become an important issue of good governance. At times, Member States are confronted by incidents in the public sector which involve breaches of integrity. This lack of integrity undermines the confidence that people have in the administration and institutions of the EU and affects their authority. However, the informal EU discussions about what constitutes the best and most effective strategy in order to combat unethical behaviour are only at the early stages.

Discussions about ethical behaviour require answers to some very simple but fundamental questions: what is good and proper behaviour in times of changing and reforming government, ongoing internationalisation trends, new threats (terrorism), new challenges (best-practices) and new opportunities (more and better information technologies).

Furthermore, any discussion about public service ethics cannot be separated from an analysis of ethical behaviour in general in our societies. As a result, this survey will also evaluate recent studies on value developments in our societies.

Essentially, the aim of the survey is to establish the central elements of a common framework which sets out the standards required for ethical behaviour in the civil service or the public service. A well-functioning ethics infrastructure promotes a high-quality public sector environment which encourages high standards of behaviour.

This report is based on the answers given to the questionnaire (attached to this study) by all the 25 Member States of the EU. In addition, this is the first ever survey for the Directors-General of Public Service which collects material from all Member States of the enlarged European Union.

Today, the internet is one of the most important sources for researchers. This was also the case as regards this survey. Furthermore, this study is based on the analysis of the first ethics study, carried out by the European Institute of Public Administration for the Directors-General of Public Service of the Member States of the EU and the Candidate States (by Jean-Michel Eymeri in 2000). Needless to say, a considerable number of existing academic studies in the field of public administration and civil services (mostly within the last 10 years) have also been examined (especially those of Huberts et al. in The Netherlands). One should mention here that EU documents and publications do exist, but are very scarce; indeed, there are more studies

published by the World Bank, OECD, the Council of Europe, Transparency International and the European Foundation for the Improvement of Living and Working Conditions. In addition, at a national level, there are very few academic scholars who compare the highly complex and technical national civil service systems and link them to the question of ethical behaviour. However, we hope we have gathered the most relevant literature on comparative ethics in the public services of the EU member states.

Finally, as a member of the Human Resource Management Group (under the umbrella of the European Public Administration Network and the informal meetings of the Ministers responsible for the Public Service and the Directors-General of Public Service) we took the opportunity to discuss the issue within this group.

We hope that this study will serve to generate a productive debate within the network of the Directors-General of Public Service.

This survey by Danielle Bossaert and Christoph Demmke was conducted at 3 levels:

- a) Questions concerning legal and political elements
- b) Questions concerning cultural factors
- c) Behavioural questions

The first theoretical part of this study (chapter II) will discuss the concept of ethics and the question of how general values change in the European Union. In addition, we will discuss the resilience of traditional ethics and how they change. In this context, we have been particularly interested in collecting evidence of how recent administrative reforms in the Member States affect the ethical behaviour of civil servants.

In a next step (chapter III), we will focus on the developments and differences of traditional civil service ethics. Moreover, the question of what constitutes unethical behaviour will be analysed. Subsequently (chapter IV), we will study the actual situation regarding corruption and unethical behaviour in the European Union. Chapter V will discuss the most important practical issues: which instruments are effective in which countries and in which context? What must we do in order to create an ethical friendly environment. We will then draw tentative conclusions about the right combination of instruments for the different countries and organisations.

Finally, we want to emphasise that the answers received from the Member States and the European Commission understandably concentrated on some issues and questions to the detriment of others. In addition, the reports received by EIPA varied considerably in length. This study takes this fact into account, but at the same time considers all answers in a balanced way.

On the other hand, our aim was to keep the survey as short and precise as possible. As a result, some national responses may be quoted or referred to more briefly, explicitly or in greater depth than others. The authors apologise in advance if some Member States and/or the European Commission consider that their answers have not received sufficient consideration.

Finally, the study can be found on the Circa homepage at <http://www.forum.europa.eu.int> and <http://www.Eipa.nl>). The authors hope that the study, which contains constructive proposals for the future work of the Directors-General of the Public Service, will serve to generate a fruitful debate.

We would like to thank the Irish Presidency and especially the Department of Finance (Pat Casey, Sceline Scott and Jake Byrne) for the excellent cooperation during the past few months and to express our gratitude to the Directors-General and various national experts within the Member States and the European Commission for helping us to carry out this study.

We would also like to thank the members of the Presidency working group on human resource management who provided us with valuable information about the situation in their countries.

Danielle Bossaert and Christoph Demmke

II. THEORETICAL ASPECTS

1. What is ethical or unethical behaviour? Definitions and concepts

During the course of history, there has never been a uniform concept and a uniform understanding of ethics. Since Aristotle's *Nicomachean Ethic*, ethics have been discussed by many philosophers. When looking back, it becomes clear that ethical considerations always reflect the given social, cultural, political and economical context.

In addition, a public servant's sense of responsibility and ethical behaviour is a complex amalgam of many basic elements:

- his/her human nature (e.g. own personality),
- his/her community values (family values, school, friends, local identity),
- his/her professional socialisation (e.g. organisation, sector, public service ethics) and
- his/her personal philosophy (religion, belief, symbols, etc.).

From an initial point of view, these elements may produce endless combinations of ethical behaviour. Indeed, managing and implementing ethics is a highly complex and dynamic issue. Any discussion about values and the norms of public employees cannot be isolated from a discussion about the development of general societal values and norms. In addition, civil servants are citizens like everyone else, and managing people is never a purely mechanical and rational process with a clear end and output.

As regards public ethics, it is not easy to have a common understanding about the term "public service ethics". In the same way, it is not easy to define terms such as "corruption", "unethical behaviour", "integrity", "bullying", "intimidation" and "sexual harassment". Therefore, in this study, the differences between corruption, fraud and unethical behaviour will be highlighted.

Public ethics may be defined as common values and norms in the public services. The moral nature of these norms refer to what is judged to be right, wrong, good or bad behaviour. Whereas values serve as moral principles, norms state what is legally and morally correct in a given situation. On the other hand, corruption may be defined as "behaviour which deviates from the formal duties of a public role because of private (personal, close-family, private clique), pecuniary or status gains..."⁷

As regards mobbing or bullying, one has to be aware that an internationally-accepted expression for the phenomenon of workplace bullying does not exist. Consequently, there is no generally applicable definition, either⁸. Even in English literature there is no uniform term. In the United States, the experience of workplace bullying is often referred to as employee abuse, or workplace terrorism. American experts are also familiar with the expression of mobbing, which is used in

⁷ Leo Huberts, Muel Kaptein and Karin Lasthuizen, *Leadership and Integrity Violations at Work: A Study on the Perceived Impact of Leadership Behaviour on Integrity Violations within the Dutch Police Force*, Paper for IRSPM VIII 2004, Budapest, March 31 – April 2, 2004.

⁸ As regards the various definitions. See: European Parliament, Directorate General for Research, *Bullying at Work*, Luxembourg, Social Affairs Series, No. 8/2001, August 2001; European Commission, COM (2003) 317 final, 28.5.2003, p.6.

Germany, Italy and Sweden, for example. In the United Kingdom, the phenomenon is called both workplace bullying or simply bullying. The latter term, however, is used predominantly in the context of bullying in schools, which implies more physical aggression and threats than bullying at the workplace. The more psychological nature of workplace bullying is indicated by the French expression "*harcèlement moral*"⁹.

The International Labour Organisation (ILO), considers workplace bullying as "offensive behaviour through vindictive, cruel, malicious or humiliating attempts to undermine an individual or groups of employees. It involves ganging up on or mobbing a targeted employee and subjecting that person to psychological harassment. Mobbing includes constant negative remarks or criticisms, isolating a person from social contacts, and gossiping or spreading false information"¹⁰.

The conclusion that can be drawn from these definitions is that in order to amount to workplace bullying, behaviour must be exercised

- repeatedly,
- over a significant period of time,
- non-physically,
- with a humiliating effect on the bullied person.

It is very important to note that workplace bullying is not a single action, but a series of one or several different actions over a period of time¹¹.

The relationship between workplace bullying and harassment is similar. The verb "to harass" is defined as "to disturb or irritate persistently", "wear out, exhaust" or "to enervate an enemy by repeated attacks or raids".

To what extent are such issues covered by community law? Could a European code of ethics be covered by community law? Should it be?

The correct answer depends on the target group (contractual employees and/or civil servants) and on the area to be covered (corruption, fraud, intimidation, sexual harassment, bullying, violence, other forms of unethical behaviour).

European institutions have until now dealt with harassment motivated by discrimination. The Amsterdam Treaty brought new instruments to the Community to deal with the matter. New Articles 13 and 137 (ex 118) EC were followed by a Commission programme to combat discrimination, which itself led to three pieces of legislation (including the most important: Directive 2002/73/EC). At the time of writing, there is no specific legislation in the pipeline concerning unethical behaviour, bullying or group harassment (otherwise known as mobbing). The question of whether the Community should legislate proposals on bullying and mobbing in the workplace in Articles 13, 137 or 141 has been discussed¹². The European Commission noted in its communication, *Adapting to change in work and society: a new Community strategy on*

⁹ See: European Parliament, op. cit.

¹⁰ Ibid.

¹¹ Ibid.

¹² Miriam Driessen-Reilly and Bart Reilly, Don't shoot the messenger: a look at community law relating to harassment in the workplace, in: *European Law Review*, No 28, 2003, pp. 493

health and *safety at work 2002–2006*, that any action on psychological harassment and violence at work “will be able to build on the *acquis* of recently adopted directives rooted in Article 13 of the EC Treaty”. In their paper “Don’t shoot the messenger: a look at community law relating to harassment in the workplace”, the authors Driessen-Reilly and Driessen argue in favour of new community initiatives in this field¹³. However, a subsidiarity test would be necessary and useful in all new cases as long as new European initiatives are launched, especially if new initiatives also apply to the national public services. In addition, codes of ethics only make sense when employees are actively involved in the drafting of these codes on a regular basis. A European Code of Ethics which would be adopted by the Directors-General of Public Service would certainly not satisfy to these requirements. The Member States would, however, be free to adopt an informal and not legally binding European codes of ethics.

2. Fashion or not? Popular discussions about a very complex issue

In the past years, numerous reports, studies and publications about unethical behaviour have focused their attention on corruption and fraud in the public services in Europe. Today international organisations like the OECD (see, for example, the ethics infrastructure), the World Bank¹⁴, the United Nations¹⁵, the Council of Europe and organisations like Transparency International and the European Foundations for the Improvement of Living and Working Conditions¹⁶ are all working on the political, societal and economical costs of corruption and fraud and questions of how unethical behaviour can best be fought. One should also add to this the European Parliament, which approved a Code of Good Administrative Behaviour in 2001. This code applies to all European Institutions.

The OECD¹⁷ and the Council of Europe in particular have developed a number of initiatives and developed guidelines and procedures aimed at increasing awareness of the rise in corruption, with a view to fighting corruption and combating unlawful practices. The Council of Europe has taken a number of initiative to promote “*best practices*” in ethical standards at local and regional level¹⁸. In 2004, a conference was organised by the Dutch Presidency of the Council of Europe with the aim of further implementing the *European code of police ethics*¹⁹. Furthermore, a model initiatives package on Public Ethics at Local Level was adopted during the Dutch Presidency²⁰.

¹³ Miriam Driessen-Reilly and Bart Reilly, Don’t shoot the messenger: a look at community law relating to harassment in the workplace, in: *European Law Review*, op cit.

¹⁴ The World Bank, *Anticorruption in Transition, A Contribution to the Policy Debate*, Washington D.C., 2000

¹⁵ See for example: United Nations, UNDP, *Public Service Ethics in Africa*, ST/ESA/PAD/SER.E/23, New York 2001

¹⁶ European Foundation for the Improvement of Living and Working Conditions, *Preventing Violence and harassment in the workplace*, Dublin 2003.

¹⁷ The OECD (http://www.oecd.org/searchResult/0,2665,en_2649_201185_1_1_1_1_1,00.html) is working on Ethics since a number of years and has published a number of guidelines, recommendations the so-called ethics infrastructure but also comparative as well as country reports on the issue.

¹⁸ For example: Council of Europe, Steering Committee on Local and Regional Democracy, *Model Initiatives Package on Public Ethics at Local Level*

¹⁹ Council of Europe, Recommendation 2001 (10) adopted by the Committee of Ministers of the Council of Europe on 19 September 2001

²⁰ Council of Europe, *Model Initiatives Package on Public Ethics at Local Level*, adopted at the Noordwijkerhout conference on April 1 2004

Without doubt, the numerous discussions about ethics in the public sector reflect increasing public interest and concerns regarding moral and ethics in general. Today, hardly any policy areas of sectors can avoid a discussion about ethics and unethical behaviour. It seems that everyday discussions and speeches about the corporate responsibility of world-wide operating companies, the salaries of top-managers, the medical benefit of genetic engineering, euthanasia, ethics of green share holding, the social and cultural impact of the new media, our responsibility for climate change, etc. are increasing. No day goes by without media coverage on corruption, fraud and unethical behaviour.

Our present understanding of ethics seems to be paradoxical: on the one hand there has never been so much focus on unethical behaviour. On the other hand, especially from a comparative point of view, there is very little common understanding of what constitutes ethical behaviour. In addition, the focus in the national public administrations and the media is clearly about corruption, fraud and conflicts of interest (see table 1-4), but much less on unethical behaviour in general (see table 4 to 10). This is regrettable since different forms of unethical behaviour (bullying, intimidation – sexual or otherwise, etc.) are very expensive in terms of poor performance, absenteeism, sickness and staff turnover. However, comparable national public service studies do not exist²¹. The only existing data reveal that the public service has lower levels of unethical behaviour than other sectors²². In addition, the Directors-General of Public Service of the Member States of the EU have never discussed this aspect of ethics.

In this study, we will use a broad typology of ten categories of integrity violations as developed by Huberts et al. (1999) and Huberts/Kaptein/Lasthuizen (2004)²³.

²¹ Dieter Zapf is one of the rare experts who has done international research on the effects of sexual intimidation, discrimination, bullying and violence including the public sector. His latest contribution is in: Cary L. Cooper, Stale Einarson, Helge Hoel and Dieter Zapf (eds.), *Bullying and emotional abuse in the workplace*, London, 2003.

²² Bezemer en Kuiper (<http://www.bezemer-kuiper.nl/nw/pdf/pestenverslagweb.pdf>), *Pesten op het werk (Teasing and pestering at work)*, Rotterdam 2003, p.8

²³ L. Huberts and J.H.J van den Heuvel (eds.), *Integrity at the Public-Private Interface*, Maastricht 1999,

Typology of Integrity Violations

1. **Corruption**, including bribing, “kickbacks”, nepotism, cronyism and patronage (with gain for oneself, family, friends, or party);
2. **Fraud and theft** of resources;
3. **Conflict of private and public interest through gifts** (services, promises) or the possession of assets;
4. **Conflict of interest through jobs and activities** outside the organisation (e.g. “moonlighting”);
5. **Improper use of violence** towards citizens and suspects;
6. **Other improper methods** i.e. improper means for – often - noble causes;
7. **Abuse and manipulation of information**, i.e. unauthorised and improper use of files; leaking confidential information;
8. **Discrimination and sexual harassment**, i.e. indecent treatment of colleagues or citizens;
9. **The waste and abuse of organisational resources**;
- 10. Private time misconduct, such as domestic violence, drunk driving and private crime.**

Source: original Huberts (1999), Huberts/Kaptein/Lasthuizen, op cit. (2004)

Despite the increasing public attention to ethics (especially as regards corruption, fraud and conflicts of interest), there is an overall feeling also among civil servants that too little is done in order to fight unethical behaviour²⁴. This analysis corresponds with the findings of a study by GFK (a consultancy firm in the Czech Republic), according to which the citizens of the accession countries and others believe the present governments have no real interest in fighting corruption and fraud.

²⁴ J.H.J. van den Heuvel/L.W.J.C. Huberts/S. Verberk, *Het Morele Gezicht van de Overheid (The Moral Face of the Government)*, Lemma, Utrecht 2002, p.91

The Present Government has no real interest in punishing corruption

I totally agree/agree to some extent	%
1. Slovakia	80%
2. Ukraine	73%
3. Croatia	67%
4. Russia	62%
5. Slovenia	59%
6. Czech Republic	58%
7. Bulgaria	55%
8. Romania	55%
9. Hungary	52%
10. Austria	39%
11. Poland	37%

*Source: GfK Prague, 2001, N = 12,454. Line %.

The answers to our study cannot confirm this, at least from an initial point of view. In our survey, almost all countries have reported that they consider fighting unethical behaviour as one of their priorities for the coming years. According to our survey, eleven Member States have plans to introduce new legal measures in the field of ethics. In addition, thirteen Member States plan to publish new guidelines or design new strategies (e.g. the “Honest State Strategy” in Estonia, or a new governmental strategy in Latvia for preventing and fighting corruption in the period 2004-2008).

Surprisingly, a high number of Member States indicated in their responses to the questionnaire that levels of corruption and unethical behaviour in the national public services are low or very low. Typical for the situation in a number of Member States seems to be the situation in Latvia: according to the response to our questionnaire, “public opinion polls show a high level of corruption associated with public service, this cannot be proved because of the relatively low level of corruption in official statistics” (Latvian reply to the survey).

Clearly, perceptions of citizens and governments are contradictory:

- the general public believes that national governments do too little in order to fight unethical behaviour,
- the governments themselves see fighting unethical behaviour as one of their priorities and are of the opinion that unethical behaviour is not widespread.

There may be number of explanations for these contradictions.

- The first may be that the media attention and public sensitivity to ethical behaviour has increased over the years. Because of the increased openness and transparency of procedures and processes, more cases of unethical behaviour are being made public. However, this does not necessarily mean that unethical behaviour is increasing as such.
- A second explanation may be that the political reactions of national governments are largely symbolic, and consist primarily of deciding upon legal measures but much less on implementing such.

- Thirdly, citizens, media and the national administrations have too little information to properly assess the real size of the problem. Therefore, unethical behaviour may be low in the official statistics but the shadow statistics may be much higher. Consequently, one may also conclude that public and private discussions about the development of ethical behaviour have insufficient basis and often consist of speculation rather than evidence. This is all the more surprising as bullying and sexual harassment are not rare but are to be found frequently throughout the European Union. These phenomena severely affect the physical and the psychological health of the persons involved. Consequently, they are very expensive for both the organisation concerned and for society. Current European-wide provisions do not provide effective protection. However, a number of possible measures at EU level could endorse protection from bullying and sexual intimidation in the workplace. These measures could use *Framework Directive 89/391/EEC* as a legal basis. They could also be implemented through *Directive 2002/73/EC*²⁵.
- National administrations have statistics available that reflect the level of corruption. Often, Member States have statistics about the number of disciplinary violations. A few countries, e.g. Germany, publish an annual detailed report about the state of corruption²⁶. But even known corruption levels generally reflect the level of control activities and the number of controls. As a result, there is very little evidence concerning the true size of the problem (estimations regarding the proportion of unknown or undetected cases reach 90%). This can be explained by the nature of the problem. In cases of corruption, both parties profit and nobody has an interest in accusing the other side. Moreover, corruption is an offence that is very difficult to detect.
- Statistical evidence is almost totally lacking regarding unethical behaviour in general, e.g. bullying and sexual intimidation. Statistics about these forms of unethical behaviour are available to some organisations but not to national public services as a whole. This situation is in striking contrast to the perception among European citizens regarding the development of unethical behaviour in society. People believe that unethical behaviour and criminality has increased and that the situation was better and safer decades ago.
- A final explanation for the growing interest in ethics may indeed be that values and norms are losing ground in our societies. Consequently, people believe that criminality, corruption, fraud and other forms of unethical behaviour are increasing. As a parallel development, public sector confidence is also decreasing²⁷. As a reaction, more citizens are longing for a solid moral base in order to halt the seemingly unstoppable cultural and ethical decline in our societies. Moreover, people are yearning for a return to classical values because everything was better in the old days.

²⁵ Directive 2002/73/EC amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions, OJ L 269/15 of 5.10.2002

²⁶ Federal criminal bureau [*Bundeskriminalamt* - BKA], corruption report, Wiesbaden, 30 June 2003.

²⁷ Statement from the Swiss administrative board of control received by the business inspection committee [*Geschäftsprüfungskommission*] of the National Council for Ethics in public services, 1998, p. 30

3. The change of values in our societies

The feeling of a loss of values is as old as mankind. For example, in his book *The Division of Labour in Society* (1893), Emile Durkheim, a French sociologist, introduced the concept of *anomie*. He used *anomie* to describe a condition that was occurring in society. This meant that rules on how people ought to behave towards one another were breaking down. *Anomie*, simply defined, is a state where norms are confused, unclear or absent. According to Durkheim, it is a situation of normlessness. *Anomie* therefore refers to a breakdown of social norms and it is a condition where norms no longer control the activities of members in society. Changing conditions as well as adjustment of life leads to dissatisfaction, conflict, and deviance. Durkheim observed that social periods of disruption, e.g. economic depression, brought about greater *anomie*. Durkheim felt that sudden societal change caused a state of *anomie*. A similar theory was presented later on in the USA by Robert Merton (“Social Structure and Anomie”, 1938).

However, both authors could not explain why new values and norms are developing, too.

Recently, two studies have been published in the Netherlands on the development of values and norms in Dutch society (including some comparative observations with respect to various European countries)²⁸. In 2003, a report by the Dutch Scientific Council for Governmental Policy (*Wetenschappelijke Raad voor het Regeringsbeleid – WRR*) published a report on norms and values (*Waarden, Normen en de last van het gedrag*)²⁹. This report shows that the vast majority of the Dutch population was convinced that crime is increasing in 1980 and 1986. In reality, crime was increasing – but only among young men between the ages of 18 and 30.

²⁸ Social and Cultural Planning Agency [*Sociaal en Cultureel Planbureau*], Paul Dekker/Joep de Hart/Paul de Beer/assisted by Christa Hubers, *De moraal in de publieke opinie* (Morals in Public Opinion), The Hague, 2004, <http://www.scp.nl>; Scientific Council for Government Policy [*Wetenschappelijke Raad voor het Regeringsbeleid – WRR*], *Waarden, Normen en de last van het gedrag* (Values, standards and the burden of behaviour), The Hague 2003

²⁹ Wetenschappelijke Raad voor het Regeringsbeleid (WRR), “*Waarden, Normen en de last van het gedrag*”, 2003.

Are you of the opinion that crime is increasing, staying the same or decreasing (in %)

	Increasing	Staying constant	Decreasing
1980	89	10	1
1996	83	15	2
2000	85	14	1

However, the results of this report as well as another survey about “Moral in the public opinion” (2004) contrasted to some degree at least with popular stereotypes regarding an on-going moral and ethical decline in our societies. In fact, both studies concluded that citizens have surprisingly clear attitudes about what they believe is accepted moral and ethical behaviour and what is not. Regarding the question whether existing laws must be respected and enforced, for example, only a very small minority believed that this should not be the case.

The law must be enforced irrespective of circumstances, opinions of those aged 18 and older, 2002/2003 (in percentages)

	Absolutely yes	Yes	Do not know	Absolutely not	No
Netherlands	14	42	22	21	1
United Kingdom	23	53	11	12	1
Norway	13	54	16	15	1
Sweden	21	52	18	9	0
Denmark	29	50	8	11	1
Germany	18	53	16	12	1
Switzerland	19	49	17	13	1
Belgium	31	40	16	12	2
Spain	21	42	26	9	2
Portugal	44	47	7	2	0

Source: ESS 2002/2003, in: Sociaal en Cultureel Planbureau, De moraal in de publieke opinie, The Hague, 2004, p.18 (translated)

Also, the acceptance of the rule of law, individual freedoms, e.g. the right to express an opinion, right to be protected against discrimination, right to vote, support for principle of democracy, etc. are very widely accepted among European citizens. In addition, voluntary engagement in religious, political or cultural organisations is not decreasing but remains quite stable. Furthermore, the growing individualism in our societies does not seem to lead to less voluntary social engagement. “Individualism is not the same as egoism”³⁰.

The report of the above Dutch Scientific Council arrived at another important conclusion: according to the authors, people have an even stronger opinion about what they believe is good and bad than they did in former times.

³⁰ Sociaal en Cultureel Planbureau, De moraal in de publieke opinie, op cit, p.81 (translation).

Perceptions about fraud among those aged 18 or older, 1998 (in percentages)

Someone does not declare the total of his/her income with the aim of paying less income tax

	Totally wrong	wrong	Wrong but understandable	Acceptable
Netherlands	24	37	36	2
United Kingdom	20	53	24	3
Sweden	39	43	15	3
Denmark	44	32	20	5
Germany	14	32	33	21
Austria	18	31	33	18
Switzerland	22	44	23	11
France	25	33	32	10
Italy	43	27	18	12

Source: ISSP 1998, in: Sociaal en Cultureel Planbureau, De moraal in de publieke opinie, The Hague, 2004, p.15 (only partly translated)

The above results are confirmed in a study by Smeltz and Sweeny who show that – although perceptions about what is ethical behaviour differ - different forms of unethical behaviour, such as corruption and fraud, are not accepted by the vast majority of the population.

....unethical behaviour is not accepted everywhere !

	Bul	Cz	Hun	Pol	Ro	Slo	UK	F	D	I
Accepting a bribe is never justified	86	81	84	86	85	75	89	72	79	86
Claiming benefits which one is not entitled to is never justified	72	48	78	69	73	45	81	59	58	68
Not paying taxes is never justified	70	55	66	68	73	52	73	50	53	65

Source: Dina S.Smeltz, Anna E.Sweeny, On the Take: Central and East European Attitudes Towards Corruption, October 1999, p.9

The membership of social, religious, cultural or political organisations, etc. is changing but not decreasing. On the whole, unethical behaviour and corruption is not tolerated to a great degree by the population. The fact that values are not simply fading is also supported by the European Values Study 1999/2000³¹ which compared values and perceptions among the European population. This study shows that support for societal values, e.g. democracy, is still strong and not decreasing.

³¹ Source book of the 1999/2000 European Values Study Surveys, The European Values Study: A Third Wave, Loek Halman, Tilburg University, 2001.

However, all existing surveys, studies and comparative reports reveal that perceptions about values differ among European countries. Moreover, ethical behaviour is not limited to a single type. Rather, from a European point of view, there are different national and regional perceptions regarding different forms of unethical behaviour. For example, Europeans differ in their attitude towards tax fraud, social security fraud, paying under the table, driving too fast, driving under the influence of alcohol, soft drugs, waste disposal, etc³²

**Percentage of population that believes that the following aspects cannot be tolerated,
1999/2000**

	NL	B	DK	D	F	UK	Sw
Social fraud	82	93	96	88	86	89	87
Tax fraud	77	58	83	63	41	67	55
Paying under the table	75	74	93	78	66	80	83
Corruption	73	68	93	67	67	67	68
Driving too fast	66	79	80	52	76	48	44
Driving under the influence of alcohol	60	59	56	56	45	56	38
Joy riding	47	80	62	68	69	51	72
Soft drugs	44	61	71	54	54	54	46
Smoking	31	48	26	25	42	30	40
Waste disposal	16	27	24	42	32	33	25

Source: Wetenschappelijke Raad voor het Regeringsbeleid (WRR), Waarden, Normen en de last van het gedrag, 2003, p. 76

In some Member States, surveys exist relating to the ethical perceptions and ethical behaviour of civil servants. However, there are no comparable statistics available relating to the perception of civil servants regarding ethical behaviour in the European public services. However, interestingly enough, the European Values Study 1999/2000 compared the answers from European citizens to the following question:

³² Wetenschappelijke Raad voor het Regeringsbeleid, Normen en waarden, op cit, p. 74-80

4. How effective are ethics and codes of ethics?

In providing an ethical framework for civil servants, both aspirational and disciplinary means are used. For example, codes of ethics can be either aspirational or disciplinary, or both. Legal restrictions, anti-corruption laws and criminal laws all fall under disciplinary instruments.

Throughout their work on public service ethics, the authors of this study have been surprised to note that nowadays almost all countries have adopted codes of ethics or are in the process of doing so (see chapter V). Whereas some years ago, codes of ethics and policies on whistleblower protection were almost not existent, today there are hardly any countries that are not willing to invest in these new instruments. However, codes of conducts and whistleblower instruments differ from country to country, from organisation to organisation and from culture to culture.

Despite their popularity, codes of ethics make little sense unless they are accepted by the personnel, and maintained, cultivated and implemented with vigour. In addition, a code cannot be a remedy for the maladies of public service. “Codes nevertheless have limitations: they tend to codify existing behaviour (rather than being aspirational or moving things forward—as the reform programme is doing). They are not always recognised by those to whom they apply. The universal solutions they suggest do not always fit particular problems or circumstances, and they require practical systems of enforcement and associated sanctions. Such statements of values and purpose are likely to be regarded by staff as more relevant and influential when the statements originate from within the staff’s own department or unit and are integrated into their own change and development programme. In addition to codes there are some significant other instruments for improving standards in the public services, particularly the increasingly robust regulatory, accountability and performance management frameworks, together with professional self-regulation and development, which are becoming more embedded in the public services. The frameworks include regulation, governance, inspection and contract management, all linked by specific accountability relationships”³³.

Do codes of ethics fit particular circumstances and ethical dilemmas?

Case: Private use of telephone, e-mail and Internet

Mr and Mrs B want to celebrate their 25th wedding anniversary. They are preparing a big party to celebrate this event. Two days before the event, Mr B falls ill. His wife (civil servant in the Ministry X) decides to cancel the party. In order to do so, she must make some urgent telephone calls from her office. She also informs the party guests by e-mail that the party will be postponed. She also uses the Internet in order to cancel some other arrangements. Mrs B is well aware about the existing code of ethics in her ministry.

However, the codes deal with more general issues (such as neutrality, conflicts of interest, loyalty, confidentiality, respect for the law, etc.). Therefore she does not worry too much about the fact that she is using organisational resources for her private interests. She knows that most

³³ The United Kingdom Parliament, Select Committee on Public Administration, Seventh Report, Government Response to the Committee’s Report on the Public Service Ethos, <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmpublicadm/61/6104.htm>

of her colleagues also use Internet and e-mail for private purposes. And, time is not on her side. Mrs B has very little time to arrange everything.

A massive introduction of codes of ethics would prompt the question: how effective are ethics and ethical guidelines? In which way can ethical codes, disciplinary rules and ethical rules influence the individual behaviour of civil servants? Are civil servants less corrupt and neutral as other employees because they have specific ethical rules? Are countries with stricter disciplinary rules more successful in fighting unethical behaviour than those with more relaxed rules? Are Member States with aligned or privatised public services more corrupt or less corrupt than those where differences between the public and private sector are still characterised by ethical variations? Are specific ethical codes determining the behaviour of civil servants? And if so, how and when? In which ways are regulations and working conditions influencing the personality of civil servants?

It goes without saying that ethics are only effective if people believe in their usefulness and effectiveness³⁴. Consequently, ethical behaviour needs daily routine, as well as organisational and motivational support, e.g. by the way of continuous training. "Words alone are idle".

Moral imperatives, rules and codes have been trying to influence the behaviour of people for thousands of years. But why do so many fail to achieve their objectives? The answer may be found in a rather pragmatic approach. Moral imperatives are the basis of every moral, but they may fail at any time to achieve their objectives. However, without ethics, it would be not possible to live together in a civilised way³⁵. The paradox seems to be that all ethical and moral imperatives are never fully implemented. On the other hand, the awareness of this failure is a pre-condition for ethical and moral behaviour. Consequently, moral and ethical imperatives and rule do not guarantee good and proper behaviour. Alternatively, without these rules, people would not know whether they were being violated. Even if no one followed any ethical code or rule, the purpose of these rules can be found in their violation. Consequently, being aware of ethical and moral behaviour is a pre-condition for good and proper behaviour³⁶. However, education in ethical behaviour can not be isolated from general developments in society.

The more complex the world, the more complex the ethical codes. Our study has shown that a majority of Member States and Accession States are increasingly active in this area, mainly by way of prohibiting certain behaviour and regulating a number of different situations through punitive or preventive measures. This development is one of the most important results of the study: whereas some years ago, codes of ethics and provisions relating to whistleblowing were almost unknown, today, almost all countries invest considerable resources in these instruments.

³⁴ Journal für Philosophie, Der Blaue Reiter, Ethik, No. 3/1996, p.8

³⁵ "Die Welt der Imperative (...) bildet das Fundament für jegliche Moral, d.h. für eine Besserungsanstalt, die ihr Ziel in gewisser Weise zwar ständig verfehlt, aber dennoch menschliche Gemeinschaft überhaupt erst möglich macht" (The imperative (...) constitutes the basis for any kind of moral, i.e. as a correctional institution that often misses its mark, but is still necessary in order to make a community possible).

³⁶ "Selbst wenn kein Mensch je einem Imperativ folgen würde, so sorgen sie zumindest dafür, daß sie bewußt verletzt werden. Und Bewußtheit ist zumindest eine Voraussetzung für ethisch gutes Handeln" (Even if no one observes an imperative, the result is that the imperative is in any event consciously infringed. And consciousness is at least a condition for ethical dealings) Journal für Philosophie, Blauer Reiter, op cit, p.41

However, the differences among the countries can be found in the details. Needless to say, there is not only one ethical code. Member States have different codes for different categories of staff or different authorities and different levels of government. The concept of whistleblowing in particular is interpreted very differently in the various countries. For example, the German concept of *Remonstrationspflicht* (a specific duty to complain in case of illegal behaviour) is totally different to the British concept of whistleblowing. Here, the most important differences can be found in the procedures to whom whistleblowers can refer to and complain, e.g. to an external body or to the direct superior, and in the degree of protection for the whistleblower (anonymous or otherwise).

As regards the codes of ethics, there are several models in place: In Ireland, for instance, a single draft civil service code of standards and behaviour sets standards for service provision (dealing with the public and respect for the law), behaviour at work (relations with colleagues), anti-discrimination, performance, and standards of integrity (conflicts of interest, acceptance of outside appointments, etc.). The code is a code of standards. Ethical issues are also dealt with by legislation (both Acts and Standards of Integrity), reflecting the seriousness with which the Irish view ethical breaches. On the other hand, in Italy several different rules and actions (codes of ethics relating to sexual harassment, specific actions against mobbing and a law for the prevention of corruption) have been adopted. In the United Kingdom, a distinction can be made between the civil service code, the guide for civil servants dealing with lobbyists, the civil service management code, etc.

5. Why not discuss the positive aspects of ethics?

Our study has revealed another surprising result: where ethics are concerned, the focus of public discussions is clearly negative. Media and politics focus on fraud and corruption. This concentration on the negative aspects has one important consequence: media coverage about the work of the public service is also predominantly negative. Consequently, very little attention is placed on the quality, performance and the good work on the done by the vast majority of civil servants.

In the United Kingdom, the Nolan Committee³⁷ was the first in the European public services to concentrate on the positive guiding principles of civil service behaviour such as selflessness, integrity and honesty. Seven key principles of public life were put forward by the Nolan Committee in its First Report in 1995. The seven guiding principles were:

- *Selflessness*

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

³⁷ Committee on Standards in Public Life, Standards in Public Life: First Report of the Committee on Standards in Public Life (Nolan Committee)

- *Integrity*
Holders of public office should not place themselves under any financial or other performance of their official duties.
- *Objectivity*
In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, holder of public office should make choices on merit.
- *Accountability*
Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- *Openness*
Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons and restrict information only when the wider public interest clearly demands.
- *Honesty*
Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- *Leadership*
Holders of public office should promote and support these principles by leadership and example.

In the responses to our survey, little light could be shed on the positive aspects of the behaviour of civil servants. For example, what are the values of civil servants? What are their norms and values? What are the positive ingredients of ethical behaviour? Are they dedicated to the public good? Are they honest? Are they good leaders? Are they open?

The authors of this study believe that the Nolan principles could serve as a good practice model for other national services. However, we believe that the principles could also be used as indicators in order to measure the positive behaviour of the public officials.

Ethical conduct also requires motivation and example: the development of the will of individuals who wish to serve the public and their employees with integrity in the public interest. Suitable personnel management policies and their implementation can help to uphold morale and develop motivation, but leadership and example from the top are also important requirements.

6. Are civil servants different because they are civil servants? The link between personality and organisational structure

A widespread popular assumption suggests that specific public tasks, objectives (working for the common good), organisational structures (hierarchical and bureaucratic structures) and working conditions, e.g. life-time tenure, do cause changes and influence personality. That means that

specific organisational structures, working conditions and ethical requirements in the public service will also influence the personality of a civil servant. Max Weber observed that the individual becomes a cog in the machinery of modern bureaucracy. While modern observers would see this development as threatening for an open-minded individual, Max Weber was convinced that the anonymous cog would best fit into a bureaucratic structure.

Merton (1940)³⁸ was actually the first scientist to analyse the connection between personality and bureaucratic structure. According to him "...the bureaucratic structure exerts a constant pressure upon the official to be methodical, prudent, disciplined. (...). An effective bureaucracy demands reliability of response and strict devotion to regulations...."³⁹.

According to Merton, the bureaucrat's official life is structured in terms of a graded career, promotion by seniority, pensions, incremental salaries, etc., "all of which are designed to provide incentives for disciplined action and conformity to the official regulations (...). But these very devices (...) also lead to an over-concern with strict adherence to regulations which induces timidity, conservatism, and technicism".

Another feature of the traditional bureaucratic structure, "the stress on depersonalisation of relationships, also plays its part in the bureaucrat's trained incapacity...the dominant role of general, abstract rules, tend to produce conflict in the bureaucrat's contacts with the public or clientele. (...) The impersonal treatment of affairs which are at times of great personal significance to the client gives rise to the charge of "arrogance" ..."⁴⁰

In fact, the process of alienation of the individual's personality starts with a demand for control by the organisation. This is implemented by an official through rule compliance, with an emphasis on correctness. As a consequence, individuals become defensive, rigid and reliable. Later on, this behaviour (rigidity, slowness, resistance to change, attachment to rules, excessive discipline, need to control) was called "bureaupathic" behaviour (Thompson).

Merton demonstrated that certain bureaucratic structures influence behaviour:

- *Seniority and career*: "The career structure supports an overconcern with strict adherence to regulations"
- *Espirit de corps*: "There is a sense of common identity for all those who work together in a bureaucracy. They share the same interests and there is relatively little competition in so far as promotion is based on seniority; and group aggression is thus minimised. This esprit de corps may lead, however, to personnel defending their entrenched interests rather than assisting the higher officials or clients of the organisation"
- *Process of sanctification*: "There is a tendency for certain bureaucratic norms, originally introduced for technical reasons, to become rigidified and "sacred"."
- *Impersonality*: "The personality of the official is "nucleated" about the norm of impersonality. This, in association with the bureaucrat's tendency to categorise all matters of concern to the organisation, frequently causes the peculiarity of individual cases to be

³⁸ Merton, Robert K., Bureaucratic Structure and Personality, in: Shafritz, Jay M./Hyde Albert C., Classics of Public Administration, The Dorsey Press, Chicago, Illinois, 2.Edition 1987, pp.111

³⁹ Merton, in: Shafritz/Hyde, op cit, p.112

⁴⁰ Merton, in: Shafritz/Hyde, op cit, p.112

ignored. Since the client inevitably tends to be convinced of the special features of his own problem, he often objects to such treatment. This gives rise to charges of the bureaucrat being arrogant and haughty in his behaviour”

Merton’s explanations supported the view of the entrepreneur as an innovator and individualist and the civil servant as a conformist and someone avoiding innovation. At the same time, the notion of a bureaucratic personality and the belief that adult personality socialisation develops through work organisation emerged. According to this concept, a traditional bureaucratic structure produces a bureaucratic personality which can be defined by the following:

- Subordination: a willingness to comply fully with the orders of the superior
- Compartmentalisation: confidence in expert judgement and a need to restrict one’s concerns to one’s own area of specialisation
- Impersonalisation: a preference for impersonal or formal relationships with other individuals
- Rule conformity: a desire for adherence to rules, regulations and standard operating procedures

However, after the Second World War, some authors claimed that these classical views are not correct and that bureaucrats and bureaucratic organisations may differ from each other and show a high degree of flexibility. For example, Kohn (1971) found in his empirical analysis that officials were “more intellectually flexible, more open to new experience, and more self-directed in their values than are those who work in non-bureaucratic organisations”⁴¹. For Allinson, too, the rigid bureaucrat concept was a false image⁴². “Thus the traditional view of the rigid bureaucrat is called into question”⁴³. Allinson concluded in his study (1984) that the “traditional image of the bureaucrat, with his dissatisfaction and insecurities reflected in pathological behaviour patterns, is not generally applicable”⁴⁴. In fact, the average bureaucrat is “probably engaged in non-managerial clerical work, relatively satisfied in his job, (...) well adjusted individual who has found his niche in the organisational world. He is amenable to a degree of autonomy and will use his discretion as long as he is given a clear indication of what is expected of him...He understands the need for rules, documentation, standard procedures and specialist skills, and may well be more capable of exercising the self-discipline necessary in their use than the most prone to criticising him (...). Thus the popular view of the modern bureaucrat may be an injustice”⁴⁵.

In 2003, in the United States, Brewer compared civil servants and other citizens with regard to several important civic attitudes and behaviours that are closely related to social capital. These elements include social trust (in politics, institutions, neighbours etc.), social altruism (e.g. helping people), equality, tolerance, humanitarianism, and civic participation. This empirical survey concluded that “public employment is a substantively important and highly significant predictor of civic participation. Overall, public servants are far more active in civic affairs than are other citizens, and they appear to be catalysts for the building of social capital in society at

⁴¹ Christopher W. Allinson,, Bureaucratic Personality and Organisation Structure, University of Leeds, 1984, p.39

⁴² Allinson, op cit, p.39

⁴³ Allinson, op cit, p.40

⁴⁴ Allinson, op cit, p.114

⁴⁵ Ibid

large”⁴⁶. The study does not distinguish between career civil servants and other public employees. However, it suggests that abolishing “bureaucrats” would also have an important negative impact on society as a whole. Any plans for alignment and privatisation of working conditions should also take these effects into account.

⁴⁶ Gene A. Brewer, Building Social Capital: Civic Attitudes and Behaviour of Public Servants, in: Journal of Public Administration Research and Theory, Vol. 13, No 1, 2003, p.5

III. ETHICS IN THE PUBLIC SERVICES OF THE EU MEMBER STATES

1. What are public service ethics?

In this study, we propose to make a distinction between two different types of ethics, general ethics, which consist of those values and norms which apply to all people and all societies (“you shall not kill”) and special ethics, which concern instructions for persons of specific professions and activity fields: ethics for economy, for medicine, science, administration of law, churches, politics, mass media, for the international community of states, etc.

A special ethic is the ethic for the civil service. However, public servants do not work in a vacuum. Rather, they are surrounded by a web of values and norms in which they work and serve. In this respect, we can distinguish between:

- democratic values (principle of democracy, freedom of association, freedom of opinion, ministerial responsibility);
- administrative values (responsibility of public administration, good administration, legitimacy, openness, transparency, etc.);
- judicial values and norms (rule of law, human rights, constitutional principles etc.);
- economical values (efficiency, implementability, accountability, effectiveness);
- professional values (quality, innovation);
- individual and people values (fairness, collegiality, expertise, loyalty, neutrality, honesty, etc.).

Finally, values differ and change according to external and internal contexts of public organisations:

Factors	Values in the context of ...
External	<ol style="list-style-type: none"> 1. The organisation and its environment, e.g. equality, rule of law, common good, sustainability) 2. The organisation and other organisations (competitiveness, solidarity) The organisation and the public (customer orientation, transparency, efficiency, quality, reliability)
Internal	<ol style="list-style-type: none"> 1. The organisation and its employees (fairness, leadership) 2. The employee and the organisation (accountability, competence, obedience, openness, selflessness, creativity, competence) 3. The employee and other employees (collegiality, loyalty, solidarity, teamwork) 4. The employee (self-fulfilment, autonomy)

Source: with the permission of the authors Leo Huberts/Emile Kolthoff/van den Heuvel, The Ethics of Government and Business: What is valued most, EGPA Paper, Portugal, September 2003 (not to be quoted).

Despite the differences in general ethical perceptions, the obligations of civil servants as regards ethical behaviour are surprisingly similar in all 25 national public services of the enlarged European Union. This also applies to the ethical requirements as laid down in laws and in disciplinary legislation.

Twenty-four Member States (plus Bulgaria) have confirmed in this study that they pursue a specialised integrity policy. In addition, almost all countries have put in place specific laws, regulations and codes in order to guarantee that specific ethical values of the civil service are protected and maintained. In these legal provisions for the public service, civil servants – in almost all Member States plus the accession states - are required to

- serve the public administration impartially;
- act neutrally;
- act in respect for the law (rule of law principle);
- performing well in the exercise of their duties;
- deal with the public fairly;
- treat their colleagues with respect (no discrimination and intimidation);
- avoid conflicts of interests;
- be prudent in managing information and data while respecting the principle of confidentiality;
- behave in a respectful manner;
- reject payments or gifts.

Moreover, the traditional values of national civil services, e.g. neutrality, respecting the rule of law, confidentiality, impartiality, avoiding conflicts of interest, etc., are very stable values and have survived all changes within the last decades. Thus, our results are similar to those of OECD, which has identified the following 8 values as being characteristic for all public administrations in the OECD countries.

The core values of the public sector in OECD countries⁴⁷
Impartiality
Legality
Integrity
Transparency
Efficiency
Equality
Responsibility
Justice

⁴⁷ OECD, <http://www.oecd.org/dataoecd/60/43/1899427.pdf>

We will see later on in this study who these traditional values are suited to new administrative and managerial requirements, e.g. more mobility and more flexibility. So far, we can conclude that differences between the countries are mostly to be found in the details. These concern the:

- regulatory framework (constitution, law, guidelines, codes of ethics);
- quality of legislation, e.g. Spain has a very detailed disciplinary legislation;
- level of regulation (central, regional, local level, etc.), and
- instruments used or not used, e.g. whistleblowing provisions, register of conflicts of interest, job rotation.

Question: Has your policy been implemented in legal provisions?

Constitution	In acts, i.e. penal code or special laws	Regulations
Denmark Luxembourg Portugal Sweden Lithuania Spain Germany Czech Republic 2005 Estonia Italy	Belgium (fed.) Denmark Hungary Luxembourg France Cyprus Ireland Finland Slovenia Greece Austria Portugal Sweden Lithuania Netherlands Spain Germany United Kingdom Poland Estonia Latvia Italy <i>Bulgaria</i>	Belgium (fed.) France Cyprus Finland Slovenia Malta Portugal Lithuania Netherlands Germany United Kingdom Italy Poland Estonia Latvia Ireland

Naturally, general duties, ethical obligations and ethical guidelines are often rather theoretical and abstract. In addition, they do not always help and provide useful guidelines with respect to the daily work of civil servants.

Civil servants make hundreds of decisions every day and conflicting values play a role in the day-to-day decision making of civil servants. These may be individualistic values, e.g. performing

well in order to be eligible for performance-related pay bonuses, organisational values, e.g. reaching the targets and objectives, being as efficient as possible, or societal values, e.g. working for the common interest, serving the citizens. Also expectations of society, e.g. rapidity in procedures, openness, transparency, individual treatment, flexibility, play a growing role, but may clash with the organisational and individual duties of the civil servant. On the other hand, decisions made by the public service may be considered as restricting personal liberty by many people.

Case: Evening lunches

A civil servant is travelling to a conference in a different country. During the evening break, he/she takes a taxi together with some colleagues in order to enjoy the nightlife in the town. The civil servant decides to pay cash instead of using the Ministry's credit card because he/she does not want to amuse him/herself with tax payers money.

One of the colleagues in the taxi is a manager of a big company. He/she uses the company's credit card since he believes that this evening excursion may be very useful – also from a business point of view.

Who is acting ethically? Both? The civil servant? The manager? Nobody?....

Case: Reimbursing the costs of the trip

The civil servant takes a taxi to the airport. He/she is accompanied by two other colleagues. At the airport, the civil servant asks the taxi-driver for a receipt. He/she gets the receipt for the full amount (for all three persons) but realises this only when he/she arrives home.

Later on, he/she declares the full amount to be reimbursed because he/she possesses only this receipt. Otherwise, he/she would not be entitled to receive anything.

Is this acceptable from an ethical point of view?

2. No easy answers: is ethical behaviour in the public sector different to the private sector?

Who “sees government and business values as contradictory, will probably also stress the potential dangers of interaction”⁴⁸. “Fears are often expressed that exposing managers to the private sector might cause them to lose their integrity.... Lawton states that “the evidence is thin on the ground”⁴⁹.

“The discussion about possible differences between public and private sector ethics is often intermingled with the discussion about problems arising from an intermingling of these values”⁵⁰.

⁴⁸ With the permission of the authors: Leo W.J.C. Huberts, /Emile W. Kolthoff/Hans van den Heuvel, The Ethics of Government and Business: What is valued most, EGPA Study Group “Ethics and Integrity in Governance”, Paper presented in Portugal, July 2003 (not to be quoted in publications)

⁴⁹ Ibid

⁵⁰ Ibid

Positions on Value Differences and Value Conflicts

Public and private sector	Intermingling is no problem	Intermingling is a problem
Sector values are similar		
Sector values are different		

The study by Huberts/Kolthoff/van den Heuvel on “The Ethics of Government and Business: What is valued most?”⁵¹ concludes that differences exist between the values of politicians and civil servants⁵². According to the survey, public servants value expertise as the most important value. Interestingly, when asked what the key values should be and which values actually stand out, civil servants mentioned “meeting targets” as the most important key principle of their work⁵³.

Furthermore, the authors of the study conclude that civil servants are confronted in their daily life with a considerable number of public values, some of which overlap with those in the private sector⁵⁴. In addition, some values are changing⁵⁵. However, a number of values are the same in the public and private sectors: accountability, collegiality, competitiveness, consistency, cooperativeness, courage, dedication, effectiveness, efficiency, expertise, honesty, impartiality, innovativeness, lawfulness, obedience, profitability, responsiveness, self-fulfilment, selflessness, service orientation, social equity, sustainability, transparency.

Another survey by van den Heuvel, Huberts and Verberk on the values of Dutch civil servants arrives at interesting conclusions⁵⁶. According to the authors, morality is likely to be higher in the public sector or the same as in the private sector⁵⁷. Interestingly, the authors do not find any difference between ethics of senior officials and ordinary workers. However, civil servants often face dilemmas where they have to decide on issues where different values contradict one another (rule of law versus efficiency). Depending on the dilemma (citizens orientation versus correctness), these situations are valued very differently and differ from situation to situation⁵⁸.

⁵¹ Ibid

⁵² Huberts/Kolthoff and van den Heuvel, op cit, p. 7

⁵³ Huberts/Kolthoff and van den Heuvel, op cit, p. 8

⁵⁴ Huberts/Kolthoff and van den Heuvel, op cit, p. 9

⁵⁵ Huberts/Kolthoff and van den Heuvel, op cit, p. 12

⁵⁶ J.H.J. van den Heuvel/L.W.J.C. Huberts/S. Verberk, Het Morele Gezicht, op cit.

⁵⁷ J.H.J. van den Heuvel/L.W.J.C. Huberts/S. Verberk, Het Morele Gezicht, op cit, p.93

⁵⁸ J.H.J. van den Heuvel/L.W.J.C. Huberts/S. Verberk, Het Morele Gezicht, op cit, pp.114/115

Ranking of values for Civil servants	
1.	Expertise
2.	Legal correctness
3.	Dedication
4.	Service orientation
5.	Dedication to the objective
6.	Honesty
7.	Integrity
8.	Collegiality
9.	Obedience
10.	Independence
11.	Openness
12.	Availability

In addition, as regards the values of civil servants, the study by Huberts/van den Heuvel/Verberk reveal that especially small incidents, such as taking home pencils, pens and writing blocks, are more likely to be accepted than incidents which may become costly, e.g. private telephone calls. Finally, another interesting observation is that women are less tolerant of unethical behaviour than men, but corruption and fraud is not accepted by both sexes.

What conclusions can we draw regarding the question of whether moral and ethical behaviour in the public sector is different or similar to that in the private sector? At present, it seems that nobody can say for sure. However, it is possible to conclude that moral “dimensions and criteria can be applied to all kinds of organisations (...) and business ethics and public sector ethics share at least some basic values and norms.”⁵⁹

3. Unethical is not the same. What is unethical behaviour?

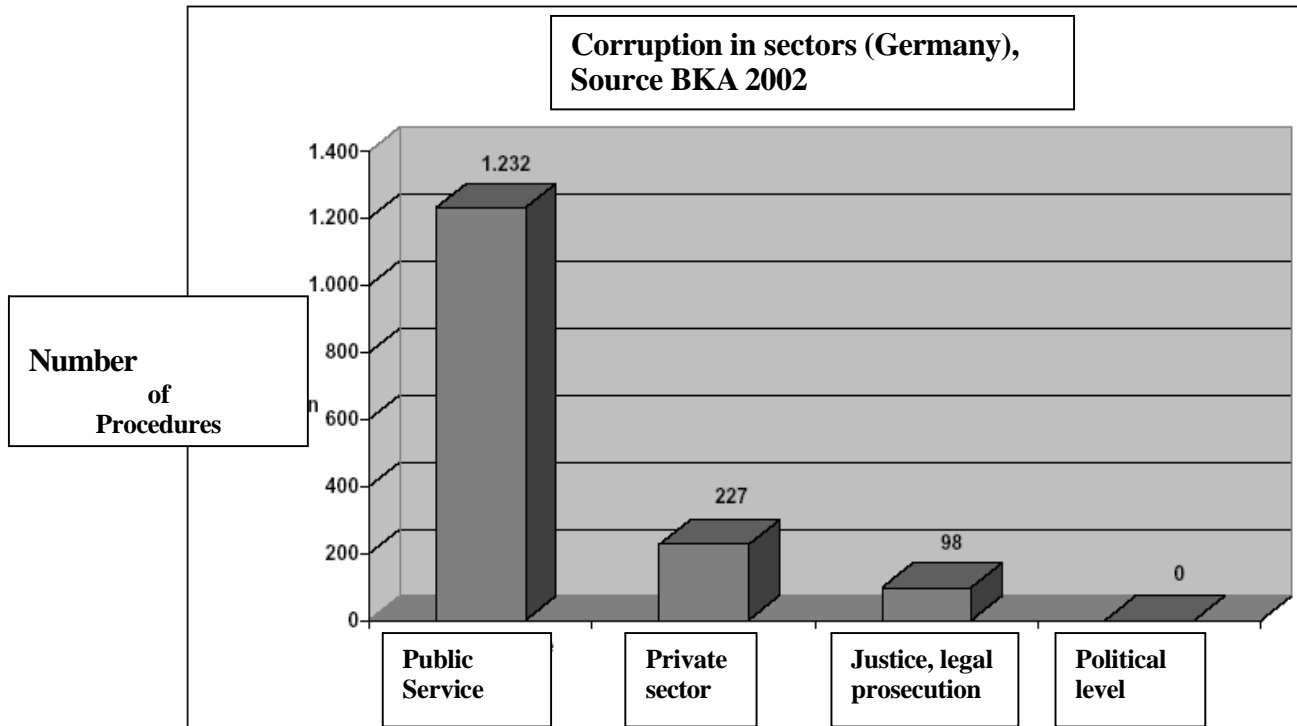
When defining what is unethical, numerous situations can be envisaged. Unethical behaviour is not always done deliberately and every civil servant is faced with a number of similar but also different situations. All these situation require a careful balancing of ethical values and dilemmas. In *Het morele gezicht van de Overheid* [The moral face of government], van den Heuvel/Huberts and Verberk describe a number of ethical dilemmas in the daily life of public servants⁶⁰. The authors come to the conclusion that every public servant is confronted by a number of conflicting values and ethical dilemmas. Whereas in some cases, situations may be relatively easy to manage, others are more difficult.

Due to the importance, diversity and particular nature of work in the public sector, the public service is an important target for corruptive practices as well as for fraud and unethical

⁵⁹ Huberts/Kolthoff/van den Heuvel, op cit, p.4 .

⁶⁰ The cases have served as an inspiration for the authors to design similar cases based on the models mentioned in van den Heuvel/Huberts/Verberk op cit.

behaviour. For example, in Germany in 2002, out of 1,557 suspected cases of corruption, 1,232 related to public administration⁶¹.



Source: Federal criminal bureau report, 30 June 2003

According to the German Federal Agency for Criminal Matters (BKA), public administration is even more a target for corruption than the private sector. The most sensitive sectors for corruption are public procurement in the construction and the health sector⁶².

The findings in the German study are at least partly confirmed by Transparency International. According to the TI Source book of Transparency International⁶³, most corruption and fraud problems appear in the following sectors.

- Public procurement
- Rezoning of land
- Revenue collection
- Governments appointments
- Local government

Finally, also according to the Council of Europe, “public procurement is by far the most important domain of corruption”⁶⁴.

⁶¹ Federal criminal bureau [*Bundeskriminalamt*] report, Federal Republic of Germany, 2002, p.20.

⁶² Federal criminal bureau, op cit, p.20

⁶³ TI Source book 2000 (Transparency International, ed), Jeremy Ope, Confronting Corruption, The Elements of a National Integrity System

In addition, one must also consider that there are other forms of unethical behaviour than corruption and fraud. Here, we propose to distinguish between nine different categories of unethical behaviour:

- Corruption
- Fraud, theft
- Receiving gifts and making illegal promises
- Acting in a conflict of interests
- Abuse of information
- Abuse of responsibilities
- Waste of resources and poor performance
- Discrimination and intimidation
- Crime

Surprisingly, the Member States seem to have very little statistical evidence available regarding the different forms of unethical behaviour. This is surprising as problems of integrity occur on a daily basis in every administration. In Latvia, for example, 88.7% of all ethical infringements are related to a failure to submit annual financial declarations.

On the other hand, the case of the Dutch police shows that unethical behaviour is a very complex phenomenon and takes very different forms.

⁶⁴ Council of Europe, Model Initiatives Package on Public Ethics at Local Level, presented at the Ethics and Integrity Conference during the Dutch Presidency in Noordwijkerhout on 31 March/1 April 2004, p. 115

The case of the Dutch Police...⁶⁵ .

Perceptions on integrity violations in the Dutch Police	In percentage of respondents indicating that violations occur “sometimes”, “relatively often” or “often”
Corruption	
External favouritism of family and friends	19
Internal favouritism within the organisation	68
Fraud and Theft	
Declaration fraud	19
The use of working hours for private purposes	52
The use of organisational resources for private purposes	57
Conflict of interest through gifts	
Arranging private accounts on-duty	13
Accepting gifts exceeding EUR 25	5
Conflict of interest through jobs and activities	
Activities with possible conflicts with organisational interests	27
Improper use of violence towards citizens	12
Other improper investigative methods of policing	
Use in illegal investigative methods	9
Abuse and manipulation of information	
Abuse of confidential information	11
Negligent use of confidential information	31
Lying	53
Discrimination and sexual harassment	
Sexual harassment	16
Discrimination on basis of sex	19
Discrimination on basis of race	18
Gossiping	89
Telling dirty jokes	82
Incorrect care of suspects	15
Racist and sexual remarks towards citizens, etc.	24
Waste and abuse of organisational resources	
Reporting ill falsely	48
Minimal effort and commitment	68
Careless use of organisational misconduct	
Private time misconduct	39

These cases show that organisational and individual performance is very much connected with ethical or unethical behaviour. The greater the unethical behaviour, the more likely it is that the organisational performance will decrease. Especially harassment or bullying is endemic at work. “It is a serious problem in the work environment that urgently requires greater attention as well as

⁶⁵ With the permission of the authors Karin Lasthuizen/Leo Huberts/Muel Kaptein, Leadership and Integrity. How Leadership Characteristics Influence the extent of Integrity Violations in the Police, EGPA Conference Paper presented in Portugal, September 3-6, 2003, p. 9 (not to be quoted in official publications)

proactive measures to stamp it out. Just how widespread this problem is has been confirmed by data collected in a number of Member States. According to these data, around 9% of workers in the EU – some 13 million people – have suffered intimidation (or psychological harassment) at work (in 2000)⁶⁶.

The Second European Survey on Working Conditions (ESWC, 1996) by the European Foundation for the Improvement of Living and Working Conditions indicates that 8 % (12 million) of all workers in the EU are subjected to intimidation and bullying with the highest exposure rates in services (13 % in public administration and 10 % in banking and other services)⁶⁷. Female workers (9 %) are more concerned than male workers (7 %). An effect on absenteeism was reported with 34 % of workers exposed to bullying having been absent from work over the last 12 months. The Irish Health and Safety Authority reports the stress and ill-health that is part of the daily life of individuals who are bullied. It states that workplace bullying often causes psychological health problems such as anxiety, panic attacks, feelings of helplessness and paranoia, reduced confidence and self-esteem, as well as depression. In addition, physical health problems usually occur, e.g. sleeping disorders, palpitations, increased blood pressure, irritable bowel syndrome, stomach disorders, chest pains and headaches. Up to now, there have been no accurate calculations of the cost of workplace bullying and estimates of the economic effects differ considerably⁶⁸.

For example, in the Netherlands, 9.4% of all employees in the public and private sector have suffered from – sexual – intimidation at work and unethical behaviour. In 40% of all cases, they were subjected to intimidation by their superiors⁶⁹. As a consequence, people who suffer from intimidation are often performing badly and their absence due to illness is considerably higher than average. Nowadays, discrimination and intimidation is regulated by Directive 2002/73/EC, which must be incorporated into national law before 2005. With regard to corruption, too, “many studies have presented powerful evidence on the economic and social costs of corruption”. According to a study by the World Bank: “The challenge ahead for transition countries is to strengthen the commitment to tackle corruption. The task will not be easy. The status quo often benefits powerful interests, state capture poses formidable challenges, and the political economy of anticorruption initiatives has proven complex and difficult. The roots of these problems reach deep into historical legacies, economic structures, and transition paths (...) reform and progress are possible and the costs of doing nothing are extremely high”⁷⁰.

⁶⁶ Memorandum from Mr Kinnock to the Commission on Psychological Harassment policy at the European Commission, p.1

⁶⁷ See for more information: European Parliament, Bullying, op cit.

⁶⁸ Ibid

⁶⁹ Health and Safety Report , Sexual Intimidation, aggression and violence [*ARBO actuell, Seksuele intimidatie, agressie en geweld*] No. 3, December 2000, p. 6

⁷⁰ The World Bank, Anticorruption in Transition, A Contribution to the Policy Debate, Washington D.C. 2000, p. xxxi

4. Changing world, changing civil services, changing ethics

One could say that where civil service ethics are static and conservative, public and societal values are fluent and modern. Overall, the public service ethic stands for stability, whereas reform and management theories favour innovation, flexibility, adaptiveness and change. This tension between old and new values has become more evident in recent years.

However, there is too little evidence in the Member States how all these political, economical, administrative, cultural and human resource management changes affect the ethical behaviour of public employees in national public services. Because of the lack of scientific evidence, we suggest that further research must be undertaken in the future in order to analyse the relationship between the reform of the national public services and the impact on ethical and unethical behaviour in the public services.

Naturally, the changes in the national public services cannot be isolated from the changes in our societies. According to Gergen/Kellerman⁷¹, in the 21st century, these changes can be summarised as follows:

- Security concerns are returning;
- Globalisation is increasing;
- The information revolution is spreading;
- Diversity is growing;
- The culture of leadership is changing;
- The divisions between public, private and non-profit sectors are becoming increasingly vague.

It is evident that within these changes the European-wide understanding of ethics and values is also developing. For example, attitudes regarding confidentiality and security may change in relation to openness, individual freedom and human rights.

A publication on values in the Dutch public service by Van den Heuvel, Huberts and Verberk shows that new trends in administrative reform result in the emergence of new values in the behaviour of civil servants⁷². According to the authors, however, one can also observe that traditional values do not disappear but combine with new values.

⁷¹ David Gergen and Barbara Kellerman, *Public Leaders: Riding a Tiger*, in: John Donahue/Joseph S.Nye (eds.), *For the People, Can we fix public service*, Brookings Institution, Washington D.C., pp. 16

⁷² Heuvel, Huberts, Verberk, *Het Morele Gezicht*, op cit

Classical and NPM values	Scale (level of importance)	Belong to the most important three values
Expertise	8.7	65.5%
Honesty	8.7	34.7%
Reaching objectives	7.9	30.9%
Legal correctness	8.1	30.6%
Service orientation	7.9	28.8%
Dedication	7.9	26.4%
Openness	7.9	21.4%
Integrity	8.3	19.6%
Collegiality	7.3	18.5%
Independence	7.9	18.0%
Availability	6.5	3.8%
Profit orientation	4.8	1.4%
Obedience	5.0	0.5%

*In bold, new or modern values. In normal, classical values
Source: Van den Heuvel/Huberts/Verberk, 2002, p. 154.

During the past decades, work and the workforce have changed considerably. New professionals have entered the professional corps, e.g. social workers and psychologists, and have introduced their own individual professional deontology. The changing qualifications and competencies also have an impact on the values of the civil servants.

Today, civil servants want to be seen as individuals and to be treated individually. Consequently, traditional pay systems with their career ladders, time-based pay increases and specific allowances, reflect a slowly disappearing concept of employment. “That model is designed to reward loyalty by providing stable and secure employment, reflecting and meeting those needs”⁷³. Today, employees themselves “expect immediate rewards and recognition for their individual accomplishments...” e.g. if two employees perform similar jobs, but one has a greater workload, he/she wants better pay⁷⁴. This individualisation process is further enhanced through the introduction of individual performance measurement and performance management techniques. The introduction of these techniques favours individual performance orientation instead of corporate thinking for the common good. However, very little is known about the effects of the introduction of individualised performance management systems and their impact on ethical behaviour in the national public services.

Current developments in the public services are be mirrored by developments in society: citizens have become much more self-consciousness, critical and demand better performance and services. At the same time, confidence of citizens in the public services has declined in the past decade. This weakening confidence is also related to the fact that citizens have the feeling that the political system is responding insufficiently to problems of poverty, unemployment, criminality and living together. Consequently they turn against the system and withdraw their support. However, this support is of essential importance for the legitimacy of the system.

⁷³ US Office of Personnel Management, Performance Related Pay, Washington D.C, April 2002, p.4

⁷⁴ US Office of Personnel Management, op. cit, p.7

What we know is limited to: traditional values are subject to great change and yield new ethical questions. For example, how is the concept of neutrality changing under new circumstances? And how important is the confidentiality value in times of transparency and openness? For the future, it seems that more research must be devoted to the question of how new values develop, e.g. thinking in terms of outcomes and objectives, and how they can be reconciled with traditional values, e.g. legal correctness). So far, only one thing is sure: new dilemmas....and new complexities are dominating the debate about ethics in the 21st century.

Ethical dilemmas in the daily lives of public servants

Case: Honesty and achieving the objective within time

A chemical company receives a permit to build a big company for 10,000 employees. However, the project designer asks the responsible public officials whether he could make some additional modifications. These modifications are legal and in accordance with the permit. However, they would delay construction considerably. The responsible public servant has been working on this project for a very long time. Recently, he was charged with a new project. Consequently, he wants to finalise the project. Therefore, he informs the company that their plans would be not in accordance with the permit. In the end, construction is completed on time and without modification.

Case: Commitment and individual performance versus collegiality and organisational performance

A unit head must evaluate the performance of a member of his unit. The public servant to be evaluated is a high performer. He works very efficiently, regularly working overtime and is always the last to leave the office. Sometimes he even sleeps in his office in order to get all the work done. He does not mind since he is single and has plenty of time to do his job. Besides, he is a real workaholic.

Because of his high performance, the unit head wants to promote the civil servant. In addition, he presents this person as a role model for his colleagues. As a consequence, the colleagues suffer more and more from the social pressure. Finally, they also start to work overtime since they do not want to be considered as lazy. In addition, they are afraid of missing out on promotion if they do not work as hard as their colleague. Gradually, the working atmosphere deteriorates.

Case: Neutrality and own private interests

A local NGO is protesting against a plan for a new cement company. The responsible public servant is a good friend of a board member of the local NGO. The board member promises the public servant that all protests will be halted if the public official decides against another important project (a waste water station), which will have considerable impact from an environmental point of view.

However, the public official considers that it would be good for his own image and career development if he objects to the lobbying by the local NGO. His behaviour has the intended effects. His superior particularly appreciates his firmness and determination.

Case: Openness and Correctness

The plans for the construction of a new airport must soon be made public. A journalist is asking a public official for information before the plans for the airport are made available to the public. Openness and sensitivity to public opinion rank very high on the agenda of the ministry in question. However, the public official fears that an early publication of the plans may delay the construction of the airport. At the same time, he is very much in favour of as much openness and transparency as possible. He also considers the journalist to be supportive of the project.

Case: Rule of law versus achieving the objectives in time

The responsible civil servant is aware that it will be impossible to have the construction of an apartment block completed on time if all legal requirements have to be fulfilled. However, the projected would be completed on time if certain legal requirements are disregarded.

Separating private and public considerations

The head of the personnel department is member of a selection committee for the appointment of a senior civil servant. There are no reasons to doubt that the candidate is the best person for the job and has a great deal of expertise. Both the head of personnel and the candidate live in the neighbourhood. However, the head of the personnel department knows that the senior civil servant is employing a cleaning woman at home and paying her under the table. He also knows from his neighbour that the candidate regularly beats his children.

4.1. Why is there a need for specific public service ethics? Traditional and modern arguments and new dilemmas

In this study, we reject two myths about public service: one suggesting that only the public sector can deliver public services, the other implying that there is nothing special that distinguishes public services from private services. We conclude that it is possible for public employees to uphold a specific public service ethos, although a number of things have changed within the last decades.

The classical argument for a specific ethical status of civil servants is the need for stability, commitment, neutrality, confidentiality and expertise. Traditionally, clear and rigid career paths, life-time tenure, full-time employment, seniority, advantageous pension systems and rigid remuneration systems were introduced in order to reduce as far as possible the danger of too much political influence, corruption, misconduct, the exercise of private interests and instability of government.

Historically, having a public service with a number of specific working conditions and a specific status meant that by protecting civil servants from arbitrary or politically-based actions, the civil servant would be loyal and would not depend on a particular interest or political party. Life-time tenures were introduced with the following in mind: "Civil servants might even overlook the temptation of short-term personal gain, e.g. in the form of a higher paying job offer, because they

knew that their jobs with government were secure...”⁷⁵. In addition, the career ladder and a uniform pay system would guarantee equity, transparency and security instead of jealousy and individualisation.

“The civil service was also meant to protect existing public employees from shifts in political administration, and to ensure that such personnel actions as promotions, pay rises and layoffs were executed based on individual’s skills and abilities, and not on favouritism”⁷⁶. The argument for the principle of seniority (in addition to the principle of merit) was mainly that it allowed the public employer to rely on institutional knowledge and continuity of its employees. The main arguments in favour of advantageous social protection has been to compensate for the generally higher private sector salaries and to enhance job protection for those employees with a regulatory or enforcement function and with jobs that need to be protected against individual and political pressure. “Absent strong job protection, environmental regulators, for example, might be loath to enforce regulations when it comes to a large company with close ties to a particular legislator or governor. But with the protection that comes with seniority, the same official can move with some confidence”⁷⁷. Today, at least some of these arguments are still used for maintaining differences between civil servants and private employees. For example, as Pochard writes about the situation in France: “The foundations and principles, linked to the fact that the public employer – which due to its missions and prerogatives is not an ordinary employer – are today as in the past necessary in order to equip civil servants with a "state", and to shield (protect) them from favouritism and from the arbitrary and to allow them to dedicate themselves with impartiality and autonomy to the public service”⁷⁸.

In reality, however, and despite the long experience with traditional features in the national public services, e.g. seniority, strict careers, centralisation of human resource management, surprisingly little is known about the impact and effects of the above traditional civil service principles and their reform on the individual behaviour of civil servants. On the other hand, very little evidence exists regarding the effects of organisational and human resource management reforms on civil service ethics. For example, civil servants in classical career systems, e.g. in France, often have difficulty imagining that a public service can function very well when working conditions have been aligned to practices used and applied in the private sector, e.g. in Sweden. In such cases, however, experience has shown that employee motivation may be high, the efficiency of work processes impressive, neutrality of civil servants assured, corruption very low and working conditions favourable. On the other hand, popular management reforms in national civil services largely neglect the fact that staff in traditional civil services also perform well, are highly productive, motivated and content in their work.

Aspects of public sector employment and the expected impact on ethics

Traditional public service principles	Expected impact on ethical behaviour
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⁷⁵ Walters, J., Life after Civil Service Reform: The Texas, Georgia, and Florida Experiences, IBM Endowment for The Business of Government, Human Capital Series, October 2002, p.7

⁷⁶ ibid

⁷⁷ Walters, op cit, p.40

⁷⁸ Marcel Pochard, The implications of free movement : more than a trivialisation, the standardisation of law in public office), in AJDA, 27 October, p. 1999

Oath	Neutrality, integrity and impartiality
Public law status	No corruption
Specific legal provisions on conflicts of interest	Stability
Specific disciplinary legislation	Continuity
Life-time tenure	Performance
Limited right to strike	Loyalty
Careers and seniority	Obedience
Specific recruitment procedures	Security
Limited mobility	Rule of law
Specific pay system	Confidentiality and careful disclosure of information
Principle of centralisation	Politeness and respectful dealing with the public
Principle of merit	No discrimination and intimidation

For example, the civil service in Germany is built around a number of specific ethical duties, obligations but also rights of the official. Whereas some are well known in other countries, e.g. principle of neutrality, principle of confidentiality, etc.⁷⁹ others like the principle of *volle Hingabe an den Dienst* (full commitment to the service) are very specific to the German civil service concept. Consequently, German civil servants have a number of specific and clearly defined duties and rights which extend to their private lives and also well into retirement. In addition, German civil service law (*Beamtenrechtsrahmengesetz, Bundesbeamtengesetz*) and some regulations, e.g. *Bundesdisziplinarverordnung und Bundesnebenbeteiligungsverordnung* provide for detailed provisions on conflicts of interest and disciplinary rules.

According to Transparency International, Germany is a country with relatively little corruption and fraud. In Germany, this could be interpreted as a result of the specific legal and organisational structure of the German public service. However, this does not explain why other more privatised civil services, e.g. Sweden, are as stable as the German public service. What's more, observers have found that it "is no coincidence that the countries where the new public management has come the furthest are, as a whole, the least-corrupt political systems in the world"⁸⁰ The latter is also confirmed by the ranking of some Scandinavian countries in the corruption index of Transparency International. Whereas Finland is ranked no. 1 in the index, other Scandinavian states follow closely.

However, things are not as clear as these statistics show. According to a study by Maravic, the "literature analysis shows that all three elements of a corruption fostering situation (motivation, opportunity and possibility of corruption) are affected by public management reform. The motivational aspect is affected by promoting market values, bureau-bashing or just uncertainty among public employees about the future. The opportunity for corruption is being created where government and private actors have "a commercial contractual relationship" (Meny 2000: 205). This happens in the case of contracting out. Actors perceive control mechanisms as inadequate where decentralisation is not backed up with sufficient control mechanisms. Undermining

⁷⁹ For example in Austria. See Ethik im öffentlichen Dienst (Ethics in Public Service), Supplement to the Wiener Zeitung, May 2000, No. 33.

⁸⁰ Steve Keleman, in: Patrick von Maravic and Christoph Reichard, New Public Management and Corruption: IPMN Dialogue and Analysis, in: International Public Management, Vol. 4, No. 1, 2003, p.87.

controls becomes possible where the risk of being caught is low. It is therefore argued that the fusion of institutional and actor-centred assumptions is not only necessary for grasping theoretically the impact of public management reform on corruption but also for stimulating a more differentiated theoretical understanding of corruption fostering situations”⁸¹.

4.2. *Where are we going? Civil service reform and their impact on ethics*

Within the last decades, career systems in Italy, the United Kingdom, the Netherlands and Finland, have changed fundamentally. The first European country to deviate from a classical career system was the UK (after the Fulton report in 1968), followed by the Netherlands (following the *Pre-advies* in 1982) and the reforms undertaken in Sweden and Italy (in the late eighties and early nineties). Other countries, like Austria and Denmark, pursued a policy of contractualisation, meaning that they drastically reduced the number of civil servants. Less drastic, but also important, were the civil service reforms (*Dienstrechtsreformgesetz*) in Germany (1997/1998) and the *Politeia* reform in Greece (from 2002). In addition, other EU countries, e.g. France, Ireland, Spain, Portugal and Finland, are in a process of on-going reform of their public services. The latest important example of public service reform is federal level reform in Belgium (2003), where reform of the career system was accompanied by the introduction of a new competency management and merit system⁸².

Does administrative reform which leads to an alignment with private sector practices foster unethical behaviour? Or to put the question differently: do specific reform projects unintentionally increase the risk of unethical behaviour such as corruption and fraud?

Supporters and opponents of eliminating the differences generally make a number of predictions about the benefits or negative effects for the performance and stability of public sector employment. Critics would argue, for example, that a total privatisation of the public services would lead to a decline in organisational loyalty. In addition, such a trend would increase the mobility between the public and private sector and lead to less continuity and stability.

Others argue that the possibility of dismissing employees and the individualisation of pay would lead to higher performance levels among employees, as privatised employees would be subject to sharper discipline. Alternatively, critics suggest that the introduction of performance-related pay, the decentralisation of personnel management and the possibility of firing employees would have the opposite effects: more frustration, the feeling of being treated incorrectly, a lack of coherence, loyalty and less motivation to work.

Ethics in relation to administrative reform

Traditional Public Sector Principles	Trends in administrative and human resource management reform
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⁸¹ Partrick von Maravic, How to analyse corruption in the context of public management reform?, EGPA paper presented in the *Group on Ethics and Integrity of Governance* in Portugal, September 2003

⁸² Royal decree relating to federal public service staff.

Separation between public and private sector Centralisation and unity Obedience and hierarchy Focus on rules and procedures Stability, continuity and equity Effectiveness Legal correctness Internal recruitment, life-time tenure Discretion Accountability Focus on disciplinary legislation Common good orientation Org. performance Focus on national level Stability	Governance and public-private partnerships Decentralisation and delegation Delegation of responsibilities to managers (individual) Performance orientation, PRP Enhanced functional mobility (public/private) Focus on efficiency Output orientation Competition and on-time nomination Transparency Focus on accountability Focus on codes of ethics and whistleblowing Service and citizen orientation Quality orientation Internationalisation Flexibility Good practices
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Proponents of radical civil service reform will argue that there is no denying that the civil service faces tremendous challenges and needs serious reform. Therefore, reformers often call for the freeing of civil servants (mainly senior civil servants) from bureaucratic restraints, and advocate an increase in their authority and flexibility, introducing individual and organisational performance management systems and giving them more responsibility over the work. To the extent that we want public sector employees who are creative, innovative, flexible, entrepreneurial, etc. – qualities often praised in the rhetoric of reform – we are also required to give them freedom to act independently. This in turn means we need to trust them to make decisions in the public interest. The problem is that trust is decreasing and not increasing..⁸³.

Where persons can be trusted to act responsibly, fewer rules and less monitoring are needed, and sanctions will be required only rarely. On the other hand, today’s focus on transparency, accountability and responsibility produces more rather than less rules. “Yet internal and external controls stand in inverse relation to each other: increase in the use of one is linked to a decrease in the other..⁸⁴”

In our study, thirteen countries are of the opinion that new reform measures in the field of public management, e.g. improving mobility between the public and private sectors, decentralisation of responsibilities, etc. will increase the risk of unethical behaviour. This is a surprisingly high number since very little is known about the effects of the ongoing reforms and the so-called alignment of working conditions and structures to those applied in the private sector and their impact on ethical or unethical behaviour.

⁸³ See Christoph Demmke, *European Civil Services between Tradition and Reform*, Maastricht, EIPA 2004, p. 154

⁸⁴ Linda deLeon, *On acting responsibly in a disorderly world: Individual ethics and administrative responsibility*, in: B.Guy Peters and Jon Pierere, *Handbook of Public Administration*, SAGE Publication, London, Thousand Oaks, New Delhi, 2003, p. 577

Despite many changes, classical views about the role and tasks of the public service are still grounded in the centralised and unified public administration which is clearly separated from the private sector. Moreover, the civil service is often seen as an apolitical apparatus which is supposed to be neutral when implementing government policies. However, more and more civil service observers agree that this classical model of public administration was shaped in a world that no longer exists.

Consequently, a gap seems to be opening up between this traditional theory and the modern reality of public service. A number of factors, including the real and perceived shortcomings of public sector organisations and public services generally, may also be playing a part in creating this gap. The national public services are changing, and rapidly. As a consequence, it has become increasingly difficult to define what the public sector is and what public service is. Boundary lines are shifting, and are often confusing. To add to the confusion, the scope of public-private partnerships of various kinds has been extended considerably in recent years across a range of public services⁸⁵.

Today, the alignment with the private sector raises questions about possible threats to the traditional ethos. The boundaries between public and private services are increasingly difficult to define, and the picture is also confused by the emergence of new types of public-private partnerships. In our study, a number of Member States have raised concerns about the increased contacts between the private and public sector and the impact on unethical behaviour. With regard to the question of which are the greatest challenges in order to foster high ethical standards in your civil service?, twelve countries mentioned the increased contacts between the public and private sector.

⁸⁵ See The United Kingdom Parliament, Select Committee on Public Administration, *The Public Service Ethos*, Seventh Report, 13 June 2002

Question: Do new reform measures increase or decrease the risk of unethical behaviour?

Increase	Decrease
<ul style="list-style-type: none"> • Belgium (fed.) • Denmark (to a very small extent) • Finland • Malta • Austria • Sweden • Lithuania • Netherlands • United Kingdom • Italy (depending on measure) • Poland • Estonia • Latvia 	<ul style="list-style-type: none"> • Cyprus • Finland • Slovenia • Portugal • Italy (depending on measure) • Hungary

However, “the combination of decentralisation, internal differentiation and outsourcing has often diminished the public service ethos and identity”⁸⁶. In addition, the majority of countries responded to our questionnaire by stating that the increasing contacts between the public and private sector do pose challenges to ethics in the public sector.

Italy responded to our question by stating that the increased mobility between the public and private sectors *may* increase the risk of unethical behaviour in the civil service and the decentralisation of responsibilities *may* decrease the risk of unethical behaviour in the civil service

Furthermore, the Finnish response stated that more openness *may* contribute to an increase in unethical behaviour whereas the increase of purchasing services from the private sector *may* increase unethical behaviour. Slovenia mentioned that more mobility of personnel must be combined with an increase in transparency of procedures. With more decentralisation, there is also greater personal responsibility - also at lower levels. More responsibility on the side of the employees could also enhance motivation “and this leads to more responsible and ethical behaviour” (Slovenia). The reply of the United Kingdom pointed to the fact that greater mobility into the civil service can present challenges in terms of maintaining a broad understanding across the service of core civil service values. Hungary underlined the importance of secure career paths, a stable salary system and attractive career opportunities, “new values, e.g. professionalism and innovation, must be based on the traditional ones”. Estonia mentioned that “it is a greater challenge to secure integrity, neutrality and transparency in a decentralised and open civil service system, where people can move freely between the private and public sectors. In addition, a great turnover of staff in the civil service, especially at central level impedes the development of a coherent set of values for the civil service.”

⁸⁶ John Halligan, Leadership and the Senior Civil Service from a Comparative Perspective, in: B. Guy Peters/ Jon Pierre, Handbook of Public Administration, SAGE Publication, London/Delhi/Thousands Oaks, 2003, p. 105

The answers of the Member States show that recent reforms may have different positive and negative effects on the behaviour of public employees. Moreover, the answers from the Member States show that evidence is still lacking regarding the impact of administrative reforms and ethical behaviour. Therefore, important questions are still awaiting clear answers. For example, is a career system (as in France, Germany, Greece, Spain, Ireland, Slovenia, Slovakia, etc.) guaranteeing more neutrality and stability than a position system (Sweden, Finland, United Kingdom, Netherlands, Estonia, Italy) ? Are countries with enhanced mobility between the public and the private sector e.g. Sweden and France, more vulnerable to unethical behaviour than those countries with little mobility, e.g. Luxembourg? What is the sense of a specific civil service if employees under private contract assume their responsibilities just as well (or badly) as their colleagues under public status? What is the relationship between status and organisational structure on the one hand and personality and behaviour on the other hand?

5. The link between organisational structures and ethics

Organisational principles such as subordination, formalism, careerism, centralisation, closeness, rule-bound administration, hierarchy and rigidity (in the sense of organising bureaucracies strictly into careers) easily conflict with demands for transparency, pluralism, flexibility, democracy and responsibility.

In *Politik and Beruf* (Politics and Profession) the German sociologist Max Weber suggested that civil servants should administer without fight, passion and emotion. Communication should be dehumanised by eliminating feelings like hate and other irrational and emotional elements. The civil servant should not do the task of a politician: fighting!⁸⁷

According to Weber, the best remedy for ensuring that civil servants act rational and efficiently is to organise the public services as a bureaucracy.

Weber⁸⁸ was convinced that a bureaucratic organisation enables the highest possible output of *rationaler Herrschaft* (rational power). In order to achieve this form of rational power, an organisation has to function according to a number of precepts:

- It must be a rule-bound organisation, based on the principle of continuity;
- The organisation will have clearly defined tasks and competences;
- Its structure is based on the principle of hierarchy;
- There is acceptance of specific rules and norms;
- It must have a career structure and recruit a specific category of employees - *Beamte* (civil servants).

Furthermore, bureaucracy in Weber's concept is impersonal, formalistic, rule bound and highly disciplined. As a result of these characteristics, bureaucracy is:

- Highly efficient;

⁸⁷ Max Weber, *Politik als Beruf*, Reclam, Stuttgart 1999, p. 32.

⁸⁸ Max Weber, *Wirtschaft und Gesellschaft, Grundriss der verstehenden Soziologie*, 5. Edition, Mohr Siebeck, Tübingen 1980, pp. 128

- Powerful; **= resistant to corruption**
- Rational;
- Standardised and mostly centralised.

Organisational characteristics such as hierarchy, centralisation, precision, speed, lack of ambiguity, knowledge of files, continuity, discretion, unity, strict subordination were for a long time highly appreciated. Even today (and despite the negative image of bureaucracy), “no nation lacking a big bureaucracy and a powerful government has the means of insuring either its liberty or its welfare”⁸⁹. What’s more, despite differences in detail, all national administrations in the Member States still follow some common organisational principles:

- They are rule-bound organisation, based on the principle of continuity;
- The organisation have clearly defined tasks and competences;
- They still have structures which are based on the principle of hierarchy;
- There is acceptance of specific civil service rules and ethical norms;
- Most organisations have specific recruitment procedures for public employees.

However, things have changed dramatically. In all countries, few “things are more disliked than bureaucracy, few occupations held in lower esteem than that of the bureaucrat. According to Gayduschek, “bureaucracy is an entirely negative phenomenon”⁹⁰. To most people, bureaucracy is indeed a negative word and criticism of the public sector is the same, be it in the USA, Sweden, Japan, Great Britain or France. There is no region in the world whose nations express satisfaction with bureaucracies⁹¹. Why do people dislike bureaucracy and civil servants so strongly? One answer is simply because bureaucracy is inherently controlling. “Most of us do not like being controlled, even for the collective good”⁹². However, public employees nowadays are more qualified, flexible and self-confident and will not simply accept the taking and giving of orders. The first time that public service ethics were called into question, was during and after the second world war. *Befehl ist Befehl* (order is order) as an expression of passive obedience was not accepted at the trials of war criminals. Apart from blind hierarchical obedience, other values were required, such as respect for human dignity.

Today, it is still widely accepted that public administrations have to follow standardised practices and cannot always adapt to individual needs. On the other hand, excessive focus on impersonal treatment and bureaucratic behaviour should be avoided as it is feared that the consequence would be dehumanised, anonymous, hierarchical and impersonal organisations. Another reason is that bureaucracies often function pathologically and are not rational – not always, but under specific conditions. In many cases, bureaucracies may even be characterised by:

- “bosses without and underlings with technical competence;
- arbitrary and eccentric rules;
- an underworld or informal organisation that subverts or even replaces the formal apparatus:

⁸⁹ Dwight Waldo, *The Administrative state*, Ronald Press, New York, 1948, p. 69

⁹⁰ György Gayduschek, “Bureaucracy: is it efficient? Is it not? Is that the Question?”, in: *Administration and Society*, Vol.34, No 6, January 2003, p. 721

⁹¹ Derek Bok, *Government Personnel Policy in Comparative Perspective*, in: Donahue/Nye, op cit, p.260

⁹² Barry Bozeman, *Bureaucracy and Red Tape*, New Jersey, 1995, Preface

- confusion and conflict among roles;
- cruel treatment of subordinates based not on rational or legal grounds but on inhumanity”⁹³

A bureaucracy is also inherently slow since it functions under specific procedures and processes which should guarantee accountability of the organisation (in terms of budget, fairness and due process). In addition, bureaucracy is insensitive to the individual, but is instead fully committed to the common good.

As a result of all these shortcomings, almost all Member States have one common objective: the reform and modernisation of traditional bureaucratic structures.

Due to the well-known disadvantages of this model, most public organisations worldwide are in a process of reforming the classical bureaucratic model. From an efficiency and effectiveness standpoint, there are good reasons to move away from the traditional hierarchical structure and to favour the decentralisation of responsibilities and the deregulation of rules in this area. Proponents of decentralisation of responsibilities to managers assert that these measures increase the efficiency and effectiveness of human resource management. Decisions can be taken quicker, recruitment can be effected to meet the exact needs of the organisation, less complex procedures are needed, etc. In addition, effectiveness is increased, because decentralisation increases the manager's discretion, thus enabling him to recruit, evaluate, offer incentives, promote, suggest training needs and communicate directly. The philosophy behind decentralisation and deregulation is mainly the traditional argument: centralised personnel management is rigid, unresponsive, slow and ineffective. Although this is a valid argument, decentralisation also comes at a price, which is mostly the additional need for coordination and new accountability procedures

However, any reform must also face possible drawbacks due to the loss of the advantageous aspects of the bureaucratic model. For example, the risk that increased mobility and interaction between the private and public sector will increase forms of politicisation and corruption cannot be excluded. One comment about this problem in our survey came from Sweden⁹⁴: “In 1997 a government commission (...) feared that the public "ethos" was challenged by the decentralisation of responsibility and by the more market-like relationships between the government, employers and the employees. In Sweden, civil service agencies have individually differentiated pay and have the right to conclude workplace agreements about many other benefits and conditions of work. Quoting the commission: “.. the entrance of a market culture in the civil service may lead to the civil servant culture soaking down.” Increased focus on “carry out” was feared by the commission to be threatening the public "ethos" and even the rule of law. Since then, the limits for public responsibility have been removed even further, as a great deal of outsourcing has taken place, primarily of service businesses. It was suggested that a new commission would be needed to investigate the legal responsibilities of public employees. Until now, however, the government has failed to appoint such a commission.

Despite all the changes in Swedish public services in the last decades, compared to many other countries, the notion of public responsibility is still strong in Sweden.

⁹³ David H. Rosenbloom/Robert S. Kravchuk, Public Administration, New York 2002, p. 154

⁹⁴ The quotation is taken from an e-mail which the authors have received from the Swedish central administration.

The situation in Sweden leads us to the preliminary assumption that “there can be no doubt that every organisational type has its own “Achilles heel”⁹⁵. Still, no new universal alternative model of civil service organisation is likely to replace the bureaucratic model. On the other hand, the classical bureaucratic career model has probably had its day. Member States are retaining only basic elements and disposing of those aspects which they consider too inflexible, too hierarchical, too slow or too unresponsive. On the other hand, it seems unlikely that a new universal model will come into effect in the near future. Instead, the development of organisational structures in the European civil service reflects the general tendency towards greater differentiation and individualisation in society. This trend may also lead to more diversity and less unity in the European civil services.

5.1. *The difference between loyalty and neutrality*

Writers on public administration have long suggested that without a specific status, legal protection, life-time tenure and special ethical rules our societies would be open to terrible corruption (*furchtbarer Korruption* – Weber) and this would undermine the capacity of the State to rule society. Consequently, in 2003, the French Conseil d’Etat came to the following conclusion: “...the main objectives of the successive statutes of 1946, 1959 and 1983, were to establish in France an ethical, competent and non-politicised civil service, that is to say a civil service loyal towards the public authority, and which is protected from political and partisan pressures. This result is without doubt to be regarded as successful...”⁹⁶.

In this conceptual understanding, neutrality is commonly understood as the absence of politicisation. For example, many EU civil servants believe their special status is justified because of the need to protect them against the political influence of the national administrations. However, any expert in this field will find it difficult to control all the variables that may influence the politicisation of the civil service. Are civil servants less politicised than other employees? Are they less corrupt? “Today it is impossible to study the politicisation of the civil service without taking into account the social evolution, political culture and the history of the various countries...”⁹⁷. This means that the introduction of a career system in an acceding country will not immediately – as probably expected – reduce the politicisation of the national public service. For this, a number of other cultural, political and sociological elements will have to change, too.

It is also important to challenge the word “neutrality”. The fact that civil servants should be neutral is still one of the most important prevailing principles in national civil service laws. For example, as Pochard writes: “The foundations and principles, linked to the fact that the public employer – which due to its missions and prerogatives is not an ordinary employer – are today as in the past necessary in order to equip civil servants with a “state”, and to shield (protect) them

⁹⁵ Patrick von Maravic, in: von Maravic/Reichard, op cit, p.118.

⁹⁶ Council of State, Public report of the Council of State, Studies and Documents, Reflections on the Civil Service, Paris, 2003

⁹⁷ Luc Rouban, Politicisation of the Civil Service, in: Peters/Pierre, op cit, p. 310.

from favouritism and from the arbitrary and to allow them to dedicate themselves with impartiality and autonomy to the public service.”⁹⁸.

Strangely enough, only a few observers have questioned the word neutral. What form of neutrality? Is neutrality possible at all? Does status produce neutrality and are those employees who do not benefit from a status non-neutral? How important is the life-time tenure in this respect?

Today, because of the fact that politics and administrations are different elements of the same process, one may ask whether civil servants can and should be neutral at all. And – as paradoxical as it may sound - neutral for whom?⁹⁹

One could probably agree on the need to have neutral officials in the sense of absence of corruption and political indoctrination. But neutrality in the sense of absence of personality and individual political opinion? Wouldn't it be better if civil servants followed their own personal values rather than adopt “cold-fish indifference but responsiveness to political direction, an acknowledgement of democratic political supremacy”¹⁰⁰? Or to put the question differently: “In dealing with public administration, including police, in which types of functions or positions is it better to have Weber’s bureaucrats?”¹⁰¹ Apparently, civil servants must differ in various positions.

Bureaucrats are never neutral in their job. They bring their social origin, socialisation experience, attitudes and behaviour (elite officials, upper class, women are different, minorities)¹⁰² although it is still not clear whether social origins or administrative culture matter more¹⁰³. Total neutrality is impossible (Kingsley). “One need not be surprised...to discover that the Civil Service also reflects the basic inequalities of the social structure and the prevailing temper of the nation”¹⁰⁴

But the fact that civil servants are not neutral does not mean that they are politicised. Moreover, it does not mean that senior officials should be active and exercise leadership – especially as regards unethical behaviour. In our survey, ten countries answered that insufficient commitment and support of ethics by the management is one of the biggest challenges facing high ethical standards in civil services. This is all the more interesting as seventeen countries replied that commitment by political leadership would be the most effective instrument in combating unethical behaviour.

The principal activity of civil servants is still drafting and implementing laws, regulations and programmes. Every day, the civil service must advise ministers on important decisions to be taken. In addition, civil servants also carry out a growing number of other activities. The growing volume of secondary legislation (or in EU terms, comitology) and trends towards decentralisation

⁹⁸ Marcel Poachard, op cit, p. 1909

⁹⁹ Julie Dolan and David H. Rosenbloom, Representative Bureaucracy, Classic Readings and Continuing Controversies, Armonk/New York, London, Sharpe, 2003, p. 27

¹⁰⁰ Samuel Krislov, Representative Bureaucracy, in: Dolan/Rosenbloom, op cit, p. 27

¹⁰¹ Dolan/Rosenbloom, op cit, p. 30

¹⁰² Dolan/Rosenbloom, op cit, p. 78

¹⁰³ Ibid

¹⁰⁴ J. Donald Kingsley, Representative Bureaucracy, in: Dolan/Rosenbloom, op cit, p. 12.

and agencification raise not only important questions about the neutral role of civil servants, but also about democratic accountability and control of civil servants' executive decisions.

In addition to implementing legislation, civil servants also play a growing role in advising politicians in the policy-making process. Moreover, the EU decision-making process has become a forum for civil servants who initiate community legislation. In addition, one of the most remarkable developments in the past few years has been the growing contact and opportunities for communication between citizens and administrators.

Finally, neutrality may also conflict with the need to staff the civil service according to the composition of the population. "Representative bureaucracy is desirable because it makes government as a whole more representative" and "promotes equal opportunity and equality"¹⁰⁵. However, it also creates permanent tensions between the principles of merit and neutrality. Despite this, there is an important question about whether representative bureaucracy in terms of race, sex, demography, etc. produces different outcomes, e.g. an administration with more women might produce different results than the same administrative unit with more men¹⁰⁶. According to a recent study published by Rosenbloom et al., the answer seems to be affirmative¹⁰⁷.

Adherence "to the minority representative role perception is positively associated with policy outcomes consistent with minority interests. When administrators see themselves as representatives of minority interests, policy outcomes responsive to those interests are more likely to be achieved"¹⁰⁸. Furthermore, the more disadvantaged groups are employed in a public authority, the more likely it is that more disadvantaged groups will be employed. However, as "education levels increase, respondents are less likely to see themselves as representatives of minority interests"¹⁰⁹. Also as tenure in the federal government increases, "administrators are less likely to adopt this role"¹¹⁰. The call for neutrality may therefore produce positive and negative effects: "Weberian neutrality is not always advantageous"¹¹¹.

There is as yet no one accepted theory about the pros and cons of representative public service. "In fact, tension exists between those camps who prize neutral competence and merit principles as guiding values for public personnel administration and those who uphold equal employment opportunity and representation of diverse social groups as the most essential values"¹¹².

To conclude, the discussion shows that neutrality (in the sense of absence of own interests and opinion) is an inappropriate discussion, focusing on the wrong topics. It is not possible to have

¹⁰⁵ Dolan/Rosenbloom, *Theoretical Underpinnings*, op cit, p. 6

¹⁰⁶ Sally Coleman Selden, Jeffrey L. Brudney and J. Edward Kellough, *Bureaucracy as a Representative Institution: Toward a Reconciliation of Bureaucratic Government and Democratic Theory*, in: Dolan/Rosenbloom, op cit, p. 125

¹⁰⁷ Sally Coleman Selden et al, in: Dolan/Rosenbloom, op cit., p.125

¹⁰⁸ Sally Coleman Selden, Jeffrey L. Brudney, and J. Edward Kellough, *Bureaucracy as a Representative Institution: Toward a Reconciliation of Bureaucratic Government and Democratic Theory*, in: Rosenbloom, p. 150

¹⁰⁹ Sally Coleman Selden et al, in: Rosenbloom, op cit, p. 146

¹¹⁰ Sally Coleman Selden et al, in: Rosenbloom, op cit, p. 146

¹¹¹ Gregory S.Thieleman and Joseph J. Stewart, Jr., *A Demand Side Perspective on the Importance of Representative Bureaucracy*, in: Dolan/Rosenbloom, op cit, p. 181

¹¹² Sally Coleman Selden et al, in: Rosenbloom, op cit, p. 31/151

neutral civil servants. Instead, it is necessary to have loyal civil servants who are aware of ethical problems, the dangers of corruption and the problems involved with political favouritism.

6. Ethics in the enlarged European Union

6.1. Is ethics of greater importance for the accession states than for the former Member States?

Several countries responded to the questionnaire by stating that there is a clear link between the image of the civil service and ethical behaviour. For example, according to the Italian report to this survey, “this link is bilateral: high ethical standards improve the image of public administration and employment and the diffusion of a good image stimulate higher ethical performance”. However, according to the European Value Study (<http://www.europeanvalues.nl>), European citizens do not have very much confidence in the civil service.

How much confidence do you have in the civil service, is it a great deal, quite a lot, not very much or none at all?

	A great deal	Quite a lot	Not very much	None at all	N
France	4.3	41.6	36.6	17.5	1574
Great Britain	3.7	42.2	44.2	9.9	903
Germany	2.1	36.6	50.8	10.4	1954
Austria	5.1	37.3	51.0	6.6	1323
Italy	3.6	29.6	51.6	15.2	1944
Spain	6.7	33.8	45.5	14.0	1141
Portugal	3.3	50.3	36.9	9.5	917
Greece	1.1	19.1	42.4	37.3	1136
Malta	7.1	42.1	35.4	15.4	996
Belgium	3.5	42.6	39.1	14.8	1855
Netherlands	1.6	35.9	55.6	6.9	978
Luxembourg	8.0	51.5	33.2	7.3	1097
Denmark	3.7	51.2	40.8	4.3	978
Sweden	2.7	46.1	45.7	5.5	941
Finland	3.4	37.5	50.9	8.2	1009
Iceland	5.4	50.5	40.6	3.5	944
Ireland	13.1	46.2	33.0	7.7	973
N Ireland	9.0	43.5	36.1	11.4	904
Estonia	2.6	37.8	49.5	10.1	911
Latvia	4.5	44.8	38.6	12.3	962
Lithuania	0.2	20.4	57.9	21.5	917
Poland	6.0	26.6	50.7	16.8	1008
Czech Rep.	2.1	19.7	64.4	13.8	1869
Slovakia	2.2	36.5	46.9	14.4	1225
Hungary	4.4	45.2	38.2	12.2	953
Romania	4.5	22.8	47.5	25.1	1046
Bulgaria	2.9	21.0	51.0	25.2	833
Slovenia	4.4	20.9	54.5	20.2	965
Croatia	3.0	28.3	56.4	12.3	975
Belarus	4.3	18.7	45.1	31.9	915
Ukraine	4.9	34.0	41.4	19.6	1079
Russia	4.4	33.4	40.7	21.5	2253
Total	4.2	35.5	45.7	14.6	37476

Source: Loek Halman, The European Values Survey a Third Wave, 1999/2000, Tilburg University 2001, p. 192

The survey shows – especially as regards the accession states – that Lithuania, Poland, the Czech Republic and Slovenia face low confidence in the national civil services. For example, the *Polish* answer to our questionnaire mentioned that “the civil service has been attacked for years now for corruption and low ethics – to the point where no one thinks anything can be done about it”. Or as the reply from *Latvia* puts it: the Latvian public administration system is characteristic for a country in transition. Public attitudes to the civil service are often negative because civil servants are associated with public power and public policy, taking responsibility of all problems society is facing in this transitional period.

It is clear from the above that the legitimacy of the public sector in a number of accession states is at stake.

When looking at the differences between the Member States and the accession states, it is clear that the accession to the European union also provides the opportunity to create a more reliable civil service. However, any far-reaching reform and reorganisation of the civil service in the accession states raises the fundamental question as to the pros and cons of having a civil service with specific ethical rules, and also the question as to which of the disparate models and types to choose.

However, unethical behaviour is not only a matter for the accession states. Rather, it is also a matter of growing concern in the EU Member States. But what is good and proper behaviour in times of changing values and growing uncertainties about the need for new and old values? Are we living in times of loss of values or simply changing values? Are classical public service ethics disappearing or simply changing? Although it is tempting to simply recommend going back to the good old times days, it must be acknowledged that times have changed. New times also require new values. In addition, a purely rational understanding of ethics seems to be useless. Ethics make sense only when they are translated into the motivation of the individual to act appropriately. Therefore, ethical behaviour must be learned, understood and accepted. Learning ethical behaviour can not be taught at once. Rather, it is an ongoing learning process.

IV. THE DIMENSION OF UNETHICAL BEHAVIOUR – CAUSES AND EVIDENCE

1. Causes of unethical behaviour

There are various causes of unethical behaviour which vary from individual to individual, from sector to sector and from country to country. As a result, instruments to fight unethical behaviour must be designed carefully. In addition, they must suit the local situation and be adaptable to the given regional, local and organisational tradition and culture. As regards the causes of unethical behaviour in the public service, one may distinguish between problems at organisation level, individual level, and other causes of unethical behaviour. In our survey, we asked the different countries for their opinion about the greatest challenges facing high ethical standards in the civil service. Member States could choose from:

- Corruption, bribery or other criminal activities;
- A low civil service ethos or no shared values;
- No clear mission for the civil service;
- Low morale of civil servants;
- Low salaries;
- Bad working conditions (such as time-limited contracts, low job security, no career prospects, etc.);
- Insufficient training on civil service values and standards of conduct;
- Insufficient commitment and support with respect to ethics by the management;
- Increased contacts between the public and private sector through the growing trend towards public-private partnerships.

The answers were surprising. Most Member States mentioned increased contacts between the public and the private sector through the growing trend towards private-public partnerships, insufficient training and too little commitment and support with respect to ethics by the management as the most important threats and challenges.

What are the biggest challenges facing ethical standards?	Country replies
Corruption, bribery or other criminal activities	Slovakia/Portugal/Netherlands/Germany/Italy/ Poland/Estonia/ <i>Bulgaria</i> = 8
A low civil service ethos or no shared values	Slovenia/Portugal (a declining ethos <i>would</i> pose threats to ethics, Sweden) Lithuania/Belgium/Poland/Estonia = 7
No clear mission for the civil service	Cyprus/Greece/Austria/Portugal/

	Sweden/Czech/Italy/Belgium = 8
Low morale of civil servants	Spain
Low salaries	Slovenia/Slovakia/Lithuania/ Spain/Czech/Hungary/Latvia/ <i>Bulgaria</i> = 7 plus 1
Bad working conditions	Austria/Czech
Insufficient training on civil service values and on standards of conduct	Cyprus/Ireland/Finland/Slovenia/Malta/ Greece/Portugal/Netherlands/United Kingdom/Belgium/Hungary = 11
Insufficient commitment and support with respect to ethics by the management	Finland/Malta/Greece/Slovakia/Portugal/ Lithuania/Germany/Czech/Poland/Estonia = 10
Increased contacts between the public and the private sector through the enhanced trend towards private-public partnerships	Denmark/Cyprus/Finland/Malta/ Austria/Sweden/Netherlands/Germany/ United Kingdom/Italy/Hungary <i>Bulgaria</i> = 11 (plus 1)

An empirical study in the German police, justice and border control confirms these results and shows that corruption appears in most of the cases where the two parties (the giver and taker of bribes) have a close personal relationship¹¹³. Most forms of corruption start with gifts or other free services e.g. free travel. Interestingly, in only 2.1% of all cases, corruption starts as an initiative of the civil servant. Instead, in 54.3%, it is the external actor who is initiating corruption (in 31.8% both parties play an initiating role)¹¹⁴. Among those who receive bribes, more than 66% are employed in the public service.

¹¹³ Federal criminal bureau (publisher), Estimations of Corruption in the Police, Judiciary and Customs [*Einschätzungen zur Korruption in Polizei, Justiz und Zoll*], Wiesbaden 2000, p. 182

¹¹⁴ Federal criminal bureau, Esitmates, op it., pp. 184



Source: Federal criminal bureau, corruption report, 30 June 2003

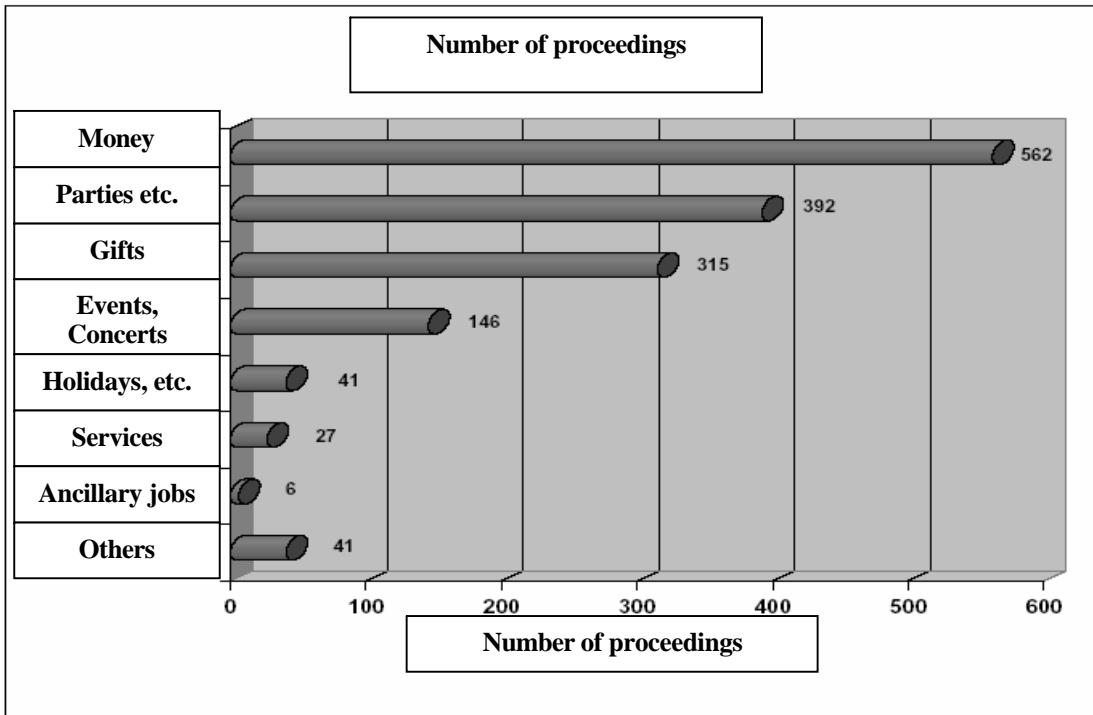
When looking at these figures, it is evident to think of encouraging job rotation as an effective instrument to avoid these forms of corruption.

What are the motives of persons initiating different forms of corruption? According to the study of the German police, judicial sector and border control, the motives differ from administration to administration. Whereas in the Police, the most important motive is material advantage (58.6%) and the avoidance of controls (51.4%), in the judicial sector it is to delay or avoid prosecution (57.9%).¹¹⁵

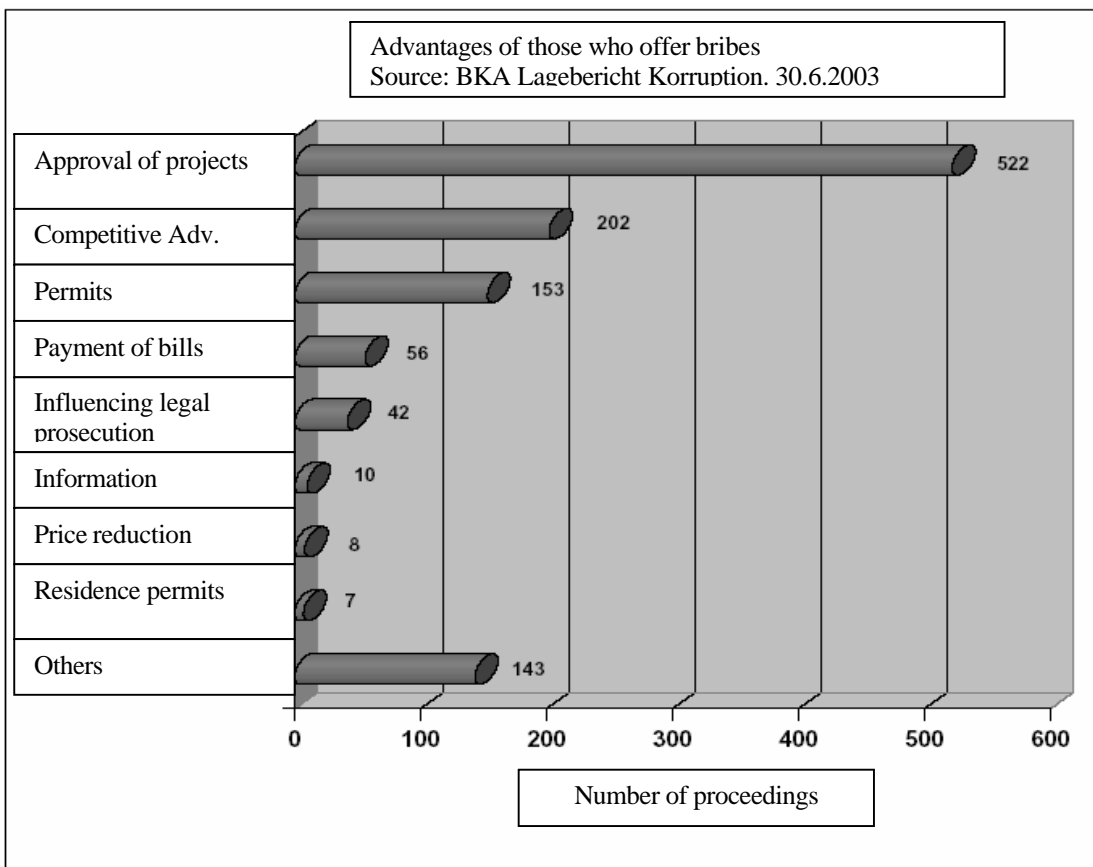
Motives for corruption	Police	Prosecutor	Prison	Border Control
	Achieving material advantage (58.6%)	Delaying avoiding prosecution (57.6%)	Achieving material advantage (60.0%)	Avoiding controls/checks (74.1%)
	Avoiding controls/checks (51.4%)	Achieving material advantage (55.9%)	Building up dependencies (56.7%)	Achieving material advantage (65.9%)

Another study relating to corruption in Germany mostly takes the form of money (cash).

¹¹⁵ Bundeskriminalamt, Einschätzungen, op it., pp. 184



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Those who offer bribes, mostly receive governmental contracts, permits or any form of competitive advantage.

2. How serious is corruption and fraud?

Unethical behaviour is expensive, demotivating and damaging to the legitimacy of the political and administrative system of a country. For a long time, it seems, European public services seemed to be a safe haven in a global world of corruption and fraud. At present, however, there is massive evidence that “corruption, in all its forms, is not unique to any one country”¹¹⁶. “One lesson is clear: very few are in the position to criticise anyone else on the issue of corruption”¹¹⁷. In addition, the statistics of Transparency International reveal that corruption is rife. Interestingly, northern European countries seem to have less problems with corruption than southern European states. It also appears from the statistics that the new Member States have more problems with corruption than the established Member States.

Corruption Index in the Europe of 26 countries (Malta not included)

Country	Index
Finland	9.7
Denmark	9.5
Sweden	9.3
Netherlands	8.9
Luxembourg, United Kingdom	8.7
Austria	8.0
Germany	7.7
Belgium	7.6
Ireland	7.5
France, Spain	6.9
Portugal	6.6
Cyprus	6.1
Slovenia	5.9
Estonia	5.5
Italy	5.3
Hungary	4.8
Lithuania	4.7
Greece	4.3
Bulgaria, Czech Republic	3.9
Latvia	3.8
Slovakia	3.7
Poland	3.6
Romania	2.8

Source: The Transparency International Corruption Perceptions Index 2003, http://www.transparency.org/pressreleases_archive/2003/2003.10.07.cpi.en.html

¹¹⁶ Source book, p. 15

¹¹⁷ Source book, p.16

Despite the tremendous problems in a number of the accession states, things are more complex when the problem is investigated in more detail. First of all, a number of empirical studies have revealed that corruption and fraud is very unevenly spread in the accession states. Whereas in some countries, corruption is very high in the political sector (Romania and Slovakia), the problem lies in public administration in other countries (Poland). In addition, corruption may fluctuate and unethical behaviour can vary in seriousness.

Perception of corruption in various areas. Percentages of those who say most or all are engaged in taking bribes and corruption in:

	Political	Administrative	Economic
Bulgaria	57%	50%	47%
Czech	51%	39%	74%
Hungary	42%	49%	61%
Poland	54%	62%	42%
Romania	68%	47%	58%
Slovakia	62%	54%	65%

Source: Dina S.Smeltz, Anna E.Sweeny, On the Take: Central and East European Attitudes Towards Corruption, October 1999, p.7

In addition, different sectors are faced with different problems in the accession and candidate states. Whereas some countries suffer from high degrees of corruption in the police, others have more problems in the field of licensing, tax collection or healthcare.

Bribery in the Public Services in selected Accession and Candidate States

	Police	Customs	Health-care	Education	Tax Collection	Licensing/Regulation
B	Yes	Yes	Yes	Yes	Yes	Yes
Cz	No, improving	No, improving	Yes	Yes	No, improving	Yes
Est	No, improving		No info	No info	No info	No, improving
Hun	Yes		Yes	No, improving	Yes	Yes
Lat	Yes	Yes	No, improving	No info	Yes	No, improving
Lith	Yes	Yes	Yes	No info	No info	No, improving
Pol	Yes	Yes, improving	Yes	Yes	Yes	Yes
Rom	Yes	Yes	Yes	No, improving	Yes	Yes
Slovak.	Yes	Yes	Yes	Yes	No info	Yes
Slov	No info	No, improving	Yes	No, improving	Yes	No, improving

Source: Susanne W. Stetzer, International Action Commissions, http://www.csis.org/eaac/corruption_overview.pdf

Bribery appears to be the most common and most significant problem in each public services area¹¹⁸.

Sensitive and vulnerable sectors in CEE states

Sector	Average perceived corruption in CEE in percentages
Hospitals	69
Lawyers	68
Business	64
Priv. Agencies	63
Police	61
Government	60
Judiciary	56
Parliament	53
Municipal Government	45
Banks	41
Universities	35
NGOs	29
Army	21

Source: Dina S.Smeltz, Anna E.Sweeny, On the Take: Central and East European Attitudes Towards Corruption, October 1999, p.6

¹¹⁸ Low salaries are often cited as a reason for corruption flourishing. Source: Susanne W. Stetzer, International Action Commissions, http://www.csis.org/eaac/corruption_overview.pdf

V. KEY INSTRUMENTS FOR AN EFFECTIVE STRATEGY TO PREVENT UNETHICAL BEHAVIOUR IN THE PUBLIC SECTOR OF THE 21ST CENTURY

1. The need for a multi-disciplinary and multi-dimensional approach

One of the main difficulties in combating wrongdoings in the field of integrity is that the factors of explanation are multiple and that they are found simultaneously at the individual level (problems handling money, profession-related problems, dubious social contacts, etc.), at the organisational level of the public sector (bad leadership, insufficient preventive measures, low salaries, etc.) and at the political economic level (no clear distinction between the executive and judiciary, etc.). This complexity must of course be taken into account when determining the most efficient instruments to minimise unethical behaviour. Unethical behaviour is not mainly due to a few dishonest individuals. Ethical behaviour of public officials depends to a large extent on the organisational, institutional and legal features in place. According to this assumption, breaches of integrity are primarily a consequence of a negative impact of specific opportunity and motivation structures such as a lack of efficient awareness and control mechanisms, bad working conditions, low civil service ethos, or simply the fact that the chance of being caught is rather small.

The relevant literature illustrates very well that proper behaviour in the public sector not only depends on one single instrument such as an effective disciplinary legislation or the setting-up of efficient control and monitoring bodies or an attractive code of conduct, but more widely on the existence of an overall national integrity system (Transparency International), or multipronged anti-corruption strategy (World Bank), or a multidimensional ethics infrastructure (OECD). The main characteristic of such a multidimensional approach is that ethics according to this view is considered a key principle of good governance. It is also influenced by the characteristics and interaction of the political and legal context, as well as by economic policy.¹¹⁹

1.1. Key contextual factors

In the various European states, the political system and culture differ according to factors such as the strength and scrutiny rights of parliament, party penetration of bureaucracies, freedom of the press, etc. In this sense, a critical press, clear and transparent rules on party financing and a watchful parliament have a positive effect on ethics in the public sector. Just to give two examples : almost all existing studies show that a high party penetration of the public sector is favouring patronage and favouritism, while a clear separation is fostering integrity.¹²⁰ It is also quite evident that the accountability of the public sector can be considerably strengthened through a parliament which takes its monitoring and controlling role seriously. In general, we can conclude that an in-depth study of the reasons for corruption in the public sector involves the need to study the role of institutional checks and balances between the executive branch, the

¹¹⁹ See for instance, The World Bank, *Anticorruption in Transition: A Contribution to the Policy Debate*, Washington 2000; OECD, *Trust in government*, Paris 2000; OECD, *Managing government ethics*, Puma Policy Brief N° 1, February 1997.

¹²⁰ See for instance, Yves Mény, Martin Rhodes, "Illicit Governance: Corruption, Scandal and Fraud" in: Martin Rhodes, Paul Heywood, Vincent Wright (ed.), *Developments in West European Politics*, Basingstoke 1997, p. 95-105;

legislative branch and the judiciary. The way power is institutionalised in the political system is to some extent determining the forms as well as the levels of corruption.¹²¹

Key elements of the political context
• Public trust and confidence in the political institutions
• Watchful civil society
• Freedom of expression for media
• Clear separation of power between the executive and the judiciary
• Efficient control function by the Parliament, e.g. by commissions of enquiry, permanent committees or on an ad hoc basis.
• Depoliticised public administration
• Sound and transparent party financing

A further crucial factor in creating a favourable environment for an ethical public sector is the setting-up of an independent judiciary with effective accountability institutions such as an internal audit system, commissions of inquiry, an ombudsman, etc. Independence in this context means that the heads of these institutions are subject to special non-political appointment and dismissal procedures and that the management of human and financial resources enjoys sufficient independence. One weakness of these institutions, which is pointed out in the literature, is that they are not focused enough on the role of investigating breaches of integrity, but tend to focus more on financial and performance auditing.¹²² Key requirements regarding the legal framework include the following :

Requirements regarding the judicial framework
• Independent and effective judiciary
• Independent prosecution
• Effective monitoring and implementation bodies, e.g. police
• Sound complaint and recourse mechanisms

The establishment of an ethical public sector is further encouraged by economic factors such as a well-functioning market economy, a competitive, independent and ethical private sector and an advanced legal framework for public procurement. In this context, it has been clearly shown that administrative corruption is higher in transition countries¹²³ where the transition path led to a concentration of economic power amid weak basic institutions.¹²⁴

¹²¹ Jens Chr. Andvig, Odd-Helge Fjeldstad (eds.), *Research on Corruption: A policy oriented survey*, Chr. Michelsen Institute (CMI) & Norwegian Institute of International Affairs (NUPI), Bergen/Oslo 2000, p.143

¹²² See in this context for instance, Robert Schwartz, *Breaches of Integrity and Accountability Institutions: Auditors, Anti-Corruption Agencies and Commissions of Inquiry*, Paper to be presented at the first meeting of the Study Group on Ethics and Integrity of Governance, Annual Conference of the European Group of Public Administration, September 2003, Oeiras, Portugal, p.10ff. Concerning an investigation of Supreme audit institutions (SAI) in several countries, the author comes to the conclusion, that the proportion of total SAI resources devoted to the function of investigating breaches of integrity and the proportion of total findings that deal with integrity is quite small.

¹²³ Transition countries in this context mainly involves the Central and Eastern European countries and the former Soviet Union.

¹²⁴ See World Bank, op. cit., p. 25ff.

Private sector economic policy and regulations
• Macro-economic stability
• Competition policy including public procurement rules
• Independent regulatory agencies
• De-monopolisation
• Tax simplification

1.2. Key legal and managerial instruments

Ethical behaviour is to a large extent favoured by the legal and organisational design of the public sector. Its protection depends on the one hand on the establishment of ethical principles in the constitutional and legal framework, and on the other hand on the overall management of ethics in the organisation and its inclusion in human resource management, leadership culture, distribution of responsibilities, etc. In this sense, ethics may be considered a legal and general management issue. One of the main assumptions of this study is that ethical behaviour is a typical horizontal policy and that an ethical public sector with a low level of corruption depends not only on the introduction of effective punitive measures, but more widely on guidance, prevention and instruments for increasing awareness. Consequently, the main task of effective instruments is not only to penalise wrongdoings, but to prevent them from happening and to encourage proper behaviour by guidance and orientation measures, such as training and the introduction of codes of conducts.¹²⁵ The following two tables provide an overview of the key political, organisational and legal instruments which may be used in this context.

¹²⁵ Antonio Bar Cendon, "Accountability and Ethics: The Role of Values and Legal Procedures in Raising Standards" in: International Institute of Administrative Sciences, *Accountability in Public Administration: Reconciling Democracy, Efficiency and Ethics*, First Specialised International Conference, Brussels 2000, p.63

Key civil service legislative and guiding instruments
• Constitutional provisions on ethics
• Disciplinary legislation based on clear and open criteria and procedures
• Conflict of interest rules
• Application of penal law for severe cases of unethical behaviour
• Codes of ethics, codes of conduct
• Whistleblowing and complaint mechanisms
• Asset declaration
• Reporting and regulation of additional jobs and activities
• Reporting of financial interests and of stock transactions
• Reporting of the acceptance of gifts and invitations
• Ombudsman
• Internal audit mechanisms
• Independent audits of financial accounts

However, specific attention must also be focused on preventive measures, which are intended to minimise conflicts of interests with the private sector, e.g. the reporting and registration of additional jobs or the acceptance of gifts. And given the fact that ethics is not constant and is influenced by processes of change in nearly all public sectors, this study also takes into consideration the added value as well as the limits of new preventive and orientation measures such as codes of conducts and whistleblowing procedures.

In the chapter on the challenges facing management with respect to integrity, the study will show that the proper behaviour of civil servants is also affected by the behaviour of political and administrative leaders and by working conditions such as low salaries.

1.3. The overall approach to ethics in the EU Member States and the European Commission

This study is based to a large extent on the hypothesis that an effective fight against wrongdoings requires a holistic approach. As has been described above, proper behaviour is fostered by an overall ethical-friendly environment, characterised by the fact that the variables are interdependent. This means, for instance, that it is much more difficult to promote integrity in the public sector where the separation of powers between the executive and the judiciary is blurred than is the case in a system with a clear division of powers. Circumstances have clearly shown, for instance, that even if low wages greatly increase the temptation for corruption, the increase of public sector wages alone cannot eliminate unethical behaviour.

Furthermore, various instruments must be in place to deal with different forms of misbehaviour. It seems evident that changing behaviour such as reporting sick when not ill, minimal effort and commitment or the use of working hours for private purposes, which can clearly be identified as unethical, may require different instruments than it is the case for accepting a bribe for doing someone a favour. The first set of behaviours might be the result of demotivation or bad leadership, while the second may be the result of a lack of monitoring capacities. In other cases, e.g. when officials are paid illegally for making certain decisions, it might even be difficult to

find any effective instruments, as it might be impossible to prove the act (Vergehen) even with increased monitoring.¹²⁶

What measures are favoured by the European states and the European Commission for encouraging proper behaviour on the part of civil servants? Is there an ethics policy and which instruments are considered to be the most effective? The answers to the questionnaire clearly illustrate that ethics is a topic of concern to the majority of states. In this context, only Slovakia stated that for the time being it would not be introducing a policy on safeguarding integrity in the public sector. With respect to the different instruments, a certain consensus exists in Europe about the significance of punitive measures to combat wrongdoings. Most Member States believe that punitive instruments are of the utmost importance in the fight against unethical behaviour. Nevertheless, it is interesting to note that 9 states believe that punitive measures are not among the most efficient instruments. In this context, it is also revealing to observe that among the 26 States and the European Commission, no state considers punitive measures alone as being sufficient to combat wrongdoings, while the overall majority has a strong preference for a combination of three or four different instruments.¹²⁷ Among these different instruments, *training* was considered by 22 states as being crucial for fostering integrity, *commitment by political leadership* by 19 states and *working conditions* by 16 states.

Instruments	Total number of states (26) and the European Commission
Punitive measures ¹²⁸	UK; Spain; Germany; Malta; Ireland; Luxembourg; Greece; Hungary; European Commission; Slovakia; Bulgaria; Cyprus; Estonia; France; Portugal; Latvia; Sweden; Netherlands
Codes of conduct	UK; Spain; Ireland; Greece; Hungary; European Commission; Slovakia; Bulgaria; Cyprus; France; Lithuania; Slovenia; Belgium; Denmark; Czech Republic; Italy; Netherlands
Training	UK; Spain; Germany; Malta; Ireland; Greece; Hungary; European Commission; Bulgaria; Cyprus; Estonia; France; Portugal; Lithuania; Austria; Slovenia; Poland; Belgium; Denmark; Finland; Italy; Netherlands
Commitment by political leadership	UK; Spain; Germany; Malta; Ireland; Hungary; European Commission; Slovakia; Bulgaria; Cyprus; Estonia; Portugal; Latvia; Austria; Slovenia; Poland; Denmark; Finland; Netherlands
Working conditions	UK; Spain; Germany; Luxembourg; Greece; Hungary; Slovakia; Bulgaria; Latvia; Lithuania; Austria; Slovenia; Poland; Denmark; Czech Republic; Italy
Suspension by independent body	Malta; European Commission; Bulgaria; Latvia;
Other, such as	Commitment by managers and incorporation of the values in the practical activities of the agencies (Finland); wide degree of openness and a strong widely shared culture of working for the common best (Sweden)

Furthermore, the answers concerning the intended reform measures show that the strengthening and improvement of the ethical framework is part of the future reform agenda of most of the states. Only Sweden, Germany, Luxembourg, France, Portugal, Ireland and the UK did not

¹²⁶ Jens Chr. Andvig, Odd-Helge Fjeldstad, op.cit., p.131.

¹²⁷ The proposed instruments in this context were punitive measures, codes of conduct, training, commitment by political leadership, working conditions, suspension by independent bodies and others.

¹²⁸ Both penal and administrative.

mention any further measures in this field for the near future. Examples of far-reaching new initiatives introduced during the previous and present decade include initiative by Estonia, Latvia, Slovenia¹²⁹, Malta, Ireland, Spain and Italy.

The aim of the Estonian anti-corruption strategy called “Honest State”¹³⁰ is to promote the existing code of ethics as well as encouraging awareness of ethical principles at all levels of the public service and in society as a whole. The envisaged tools are the introduction of further anti-corruption measures at municipal level, the integration of ethics modules into public service training programmes, guidelines for practical implementation of codes of ethics, the development of additional/organisation-specific codes for groups of civil servants particularly susceptible to corruption, as well as carrying out annual corruption surveys, etc. In its new strategy for the prevention of corruption for 2004-2008, the Latvian government also accepted a complex set of measures in this field, which include the strengthening of the independent body for the prevention of corruption and an amendment to legislation on financing of political parties, aimed at increasing transparency.

Substantial measures were introduced in the Ethics in the Public Office Act in 1995, the Standards in Public Office Act in 2001, the Local Government Act in 2001 and other legislation relating to unethical or corrupt practices. Alternative measures have been put forward in the Spanish proposal on the Improvement of Public Service, the principal objective of which is to strengthen political neutrality, impartiality, objectivity and moral integrity.¹³¹

Italy, too, has recently introduced new measures in this area, e.g. codes of conduct relating to sexual harassment, which have to be introduced by each administration in accordance with the latest collective agreements. Each administration has to appoint an officer having specific tasks who is in charged with counselling public servants and initiating formal and in formal procedures. Sexual harassment is considered a breach of the code and is punishable by disciplinary measures. A further example includes specific measures aimed at tackling mobbing. The latest national collective agreements require each administration to appoint a board to combat mobbing. This board must collect data, assess the causes and propose remedies. Breaches are punishable by disciplinary measures. A third example is the establishment of the High Authority¹³² for the prevention of corruption and other forms of illegal behaviour in public administration. The Authority operates according to the principle of transparency and has free access to administrative documents and public administration data bases. It reports periodically to the President of the Council of Ministers, the Justice Authority and the Court of Auditors.

One of the most common reform initiatives is the drafting or strengthening of codes of conducts or ethics (Denmark, Austria, Lithuania, Latvia, Estonia, Cyprus¹³³, Malta, Hungary¹³⁴), while most of the reform countries report a combination of legal measures and guidelines.

¹²⁹ There are special provisions connected with integrity plans in the anti-corruption law, which just came into force and are in the phase of implementation.

¹³⁰ It was approved by the Estonian Government in February 2004.

¹³¹ This project of reform, modernisation and change of the Public Administration was approved by the Government on 4 February 2000.

¹³² Law 16/1/2003. The Government is adopting the regulations about the organisation and the function of the Authority.

¹³³ It is planned to codify various provisions into a moral code.

2. Ethics: the legal framework. Basic principles

2.1. *Why ethics public sector ethics require specific protection: The establishment of ethical rules in the constitutional and legal framework*

In general, the legal instruments governing ethical behaviour in the EU states are varied. In most EU Member States, ethical behaviour is regulated in acts such as those relating to penal law, as well as in civil service laws or in disciplinary legislation and regulations.¹³⁵

The most traditional instruments aimed at combating wrongdoings and which exist in nearly all states¹³⁶ are penal codes and civil service laws, including disciplinary legislation. Before assessing these instruments with respect to their advantages and their contribution in the fight against wrongdoings, we will consider below the common and varying characteristics of disciplinary legislation in EU Member States.¹³⁷ Firstly, it is evident that all former 15 Member States have disciplinary legislation in some official form or other and that in the main, such legislation has the following objectives:

- Ensuring that civil servants perform their tasks in accordance with the instructions received;
- Guaranteeing the protection of civil servants in a procedure subject to judicial supervision, including the right to be heard;
- Removing civil service status from civil servants who have damaged their public law relationship and have committed a breach of loyalty through a disciplinary fault.

The main differences concern the way in which disciplinary matters are dealt with. There are differences in the definition of inappropriate behaviour, possible sanctions or procedures called for. But there are also two distinct categories of countries in this respect: countries applying special disciplinary legislation to civil servants and countries where the disciplinary measures are not so much regulated in the form of law but rather based on collective agreements or on rules similar to the conditions applied in the private sector. In Italy, for example, the national collective agreement lays down a procedure, which is unique among the states being considered. The action is brought to a single arbitrator chosen by the civil servant and the administration together. This person must have special qualifications and professional experience. During the development of the procedure, the disciplinary measurements are suspended. The procedure does not preclude bringing a successful legal action. In the United Kingdom on the other hand, civil servants do not have specific rights of appeal. Their rights are the same as those of other staff who lodge an appeal with the labour courts against certain decisions and acts of the employer. On the other hand, we can see that in countries where the disciplinary legislation differs from that in the private sector, civil servants generally have the right to appeal to specific administrative courts.

¹³⁴ The ethical code is planned to pass in the near future.

¹³⁵ See on this topic the chapter III.1. 'What are public service ethics.'

¹³⁶ While Slovakia indicated, that they would not have a policy on safeguarding integrity, Malta indicated that the only legal provisions in place would be regulations.

¹³⁷ See for instance, Danielle Bossaert, Christoph Demmke, Koen Nomden, Robert Polet, Civil Services in the Europe of fifteen, Trends and new developments, EIPA, Maastricht 2001, p. 243-250.

- The most common sanctions are warnings, reprimands, changes and/or cuts in salary, forced changes of positions and dismissal. In many countries, breaches of integrity are subject both to penal law and disciplinary procedures. In general, a distinction can be made between strict and flexible systems, which is also evident from the definition of disciplinary breaches. Such definitions are not mentioned in legislation applicable in Belgium, Denmark, France, Austria, Sweden and the UK, whereas they are laid down in legislation applicable in other countries.

As noted above, legal, punitive instruments are necessary and important tools to combat wrongdoings. They set minimum criteria for a professional and effective functioning of the public sector and establish clear procedures, mechanisms and sanctions for dealing with unethical behaviour, particularly with regard to serious cases of fraud and criminal activities. According to Bar Cendon, an ethical framework with a strong focus on punitive measures is best suited to highly formalised and regulated administrative systems, which correspond to the so-called bureaucratic or Weberian model and which are characterised by a rigid and narrow frame of action for individual civil servants. In these systems, Bar Cendon sees very little room for codes of conduct or ethics with a more informal character, because they require strict observance of the rules and mechanisms of control for the fulfilment of the civil servant's obligations¹³⁸. This view is supported by the fact that codes of conduct are far more popular in Anglo-Saxon administrations (where they were introduced earlier) than in Germany, Luxembourg or Portugal, for example). Generally speaking, one can also see that observance of ethics is linked to the practical application of a system of values by public officials rather than to the exercise of official written rules.¹³⁹

As regards traditional disciplinary law, the EIPA publication on civil services in the Europe of 15¹⁴⁰ member states also raises the question of to what extent current disciplinary law is outdated or otherwise. This criticism was not so much related to the efficiency of systems or the legal protection of civil servants, but focused on the adverse understanding of ethics in this law. For instance, according to the authors, the traditional disciplinary system had been designed to be applied to public servants who had fewer responsibilities, who left all important decisions and actions to their political superiors and who worked in very hierarchical conditions within the administration. In this context, the question arises of whether a civil servant who takes on decision-making tasks in a modern administration should be subject to more active discipline and to professional ethics.

The question of whether to introduce more positive instruments, e.g. codes of conduct, in addition to the traditional legal framework is crucial with regard to a civil service which is increasingly moving from a rule-based approach towards a result-based management. Within this context of change – where the individual civil servant has far more responsibilities (the New Public Management literature refers to the “empowered” civil servant) – ethics is also becoming more complex. Dehierarchisation and decentralisation also leads to more autonomy and

¹³⁸ Antonio Bar Cendon, op. cit., p.65.

¹³⁹ In this context, Dramer poses an interesting hypothesis by stating that management based on values is probably to be preferred because it stimulates moral creativity and responsibility. In addition, he believes that conversely management based on rules leads to moral laziness because it encourages individuals to solve moral problems by resorting to the available rules, of which there are many. Dramer, K., [Moral Reasoning in the Public Service](#), paper presented at the OECD symposium, 1997, p.4.

¹⁴⁰ Bossaert et al, op.cit., p. 243-250.

decisional and discretionary power, and consequently to the need for better guidance and orientation as well as for a greater awareness of what is ethically correct behaviour. Emotive questions (which are likely to gain in importance) in this respect are: is the current disciplinary legislation governing the behaviour of civil servants still sufficient to regulate the new managerial roles public officials are increasingly being required to play? To what extent is it possible to balance modern requirements of public management e.g. aiming for results, targets and higher output, with basic ethical goals such as due process, loyalty and integrity?

2.2. *The key role of conflicts of interest regulations: Differing and common trends in the EU states and the European Commission*

All civil service legislation in the 26 states and the European Commission include measures that strengthen the core civil service values of impartiality, neutrality and integrity, and which are aimed at preventing a collusion of private interests with the exercise of public duties. In this sense, conflicts of interest regulations constitute a specialised code applicable only to public officials. These regulations are characterised by high standards of morality, that go much further than the standard to which private employees would normally be expected to adhere. Their goal is not to punish wrongdoing, but to provide "safeguards which lessen the risk of undesirable action".¹⁴¹ In this context, legal provisions consist of a list of "shall nots" and are being put into place because each public sector employee – in addition to being a civil servant – is a shareholder, a member of an association, e.g. in the field of the environment or consumer protection, etc., or simply the son of a director of a tax consultancy.

In many respects, relations between the public and the private sector are very sensitive and give cause for unethical behaviour. With the increased contacts between those two sectors due to the increasing trend towards private-public partnerships, conflicts of interest situations are becoming more frequent. Nonetheless, it is difficult to find evidence of a resulting increase in corruption and fraud. The responses to the questionnaire illustrate no clear trend in this respect: nearly half the states (Malta, Sweden, Denmark, Germany, Austria, Bulgaria, Italy, United Kingdom, Finland, Hungary, Netherlands) perceive the increased contacts between these two sectors as being one of the three greatest obstacles to encouraging high ethical standards.

According to an OECD survey¹⁴², the main sources of conflicts of interest in OECD countries are:

1. Secondary employment in the private sector
2. Private-public partnerships
3. Shareholdings in an entity with a contractual or regulatory relationship with the government

This survey also shows that investments in political parties and trade unions are of less significance - although they are still mentioned. With regard to the question of which instrument is to be considered the most effective in preventing conflicts of interest, the responses showed a

¹⁴¹ On this topic, see for instance Frank Anechiarico, James B. Jacobs, *The Pursuit of Absolute Integrity*, Chicago and London, 1996, p.45-63.

¹⁴² Janos Bertok, "Managing conflicts of interest in OECD countries", in *Global Corruption Report 2003*, p.320.

combination of mechanisms, particularly those now in place in several states that raise awareness and ensure transparency. In addition, the survey underlined that more and more OECD countries are actively engaging in counselling and requesting disclosure of interests in writing so that potential situations may be identified. Although we should not underestimate the significance of these instruments with regard to creating a more open and transparent public sector, we have to say that they only become effective when the management of this information is guaranteed systematically and continuously. Otherwise, these instruments will only serve to explain or provide insight into an act of fraud after it has been committed.

The extent of the interest to be disclosed differs from country to country. It may range from a pecuniary interest to a personal non-pecuniary interest, such as membership of different charity organisations. The difficulty is in defining an interest which may raise an ethical problem. The declaration of private interests in a register is the most common mechanism for dealing with conflicts of interest. “The popularity of this mechanism seems due in part to the ease of implementation and the clear message it sends of a commitment to transparency in government”¹⁴³. Essentially, this mechanism requires the periodic declaration of all prescribed interests to a register of interests. In Ireland, for example, a number of public officials are required to declare any income (also of his/her family) in a register or to undertake a tax clearance obligation (for the Attorney-General and senior officials)¹⁴⁴. However, registers of interests are not accepted everywhere. For example, some countries believe that register are in conflict with fundamental rights (rights to privacy, personal rights, family rights, etc.).

It can also be observed that governments in general are placing a growing emphasis on conflict of interest regulations by introducing a greater diversity of rules in this field in their civil service laws. In some of the countries, provisions regarding potential conflicts of interest questions are also laid down in codes of conducts.¹⁴⁵ In this respect, the Committee of Ministers of the Council of Europe adopted a recommendation on codes of conducts for public officials¹⁴⁶ in 2000, which encourages European states to introduce guidelines relating to:

- Declaration of interests in sensitive fields
- Incompatible outside interests
- Political or public activity
- Gifts
- Reaction to improper offers
- Susceptibility to influence by others
- Misuse of official positions
- Information held by public authorities
- Public and official resources
- Integrity monitoring
- Supervisory accountability

¹⁴³ Transparency International, Gerard Carney, Working Paper: Conflict of Interest: Legislators, Ministers and Public Officials, on the webpage of TI.

¹⁴⁴ Standards in Public Office Commission, Guidelines on Compliance with the Provisions of the Ethics in Public Office Acts, 1995 and 2001, Dublin, January 2003

¹⁴⁵ For more information on this issue, see the chapter on new instruments under scrutiny.

¹⁴⁶ Recommendation No.R(2000)10.

- Leaving the public sector
- Dealing with former public officials

The answers to the questionnaire clearly show that most states are increasingly striving for a high degree of transparency with regard to the private lives of public officials. In Ireland, for example, specific information requirements have been introduced. These requirements include an obligation to register additional jobs, private income or shares, or an obligation to provide information about the jobs/activities of the partner, which may be in conflict with the civil servant's position.

Other rules refer to the acceptance of gifts and invitations in order to prevent unwanted external influence on decision making. This may include a dinner offered by a private firm or accepting a gift, which can involve a holiday tour to some attractive places offered by an applicant in a public procurement procedure or also a small present offered to a civil servant working in the environment administration when giving a presentation for a firm in the field of solar energy.

In a large group of countries (Cyprus, United Kingdom, Italy¹⁴⁷, Bulgaria, Ireland, Finland, Lithuania, Austria, Slovakia, European Commission, Germany, Estonia, Slovenia, Malta, Hungary, UK, Poland, Belgium, Latvia, Netherlands), it is strictly forbidden to accept gifts and invitations. In Ireland for instance, central government civil servants are not allowed to accept gifts where there is a possibility of or even a suggestion of a conflict of interest or corruption occurring.¹⁴⁸ In Greece, accepting any material favour or consideration from a person under review, now or in the future, is considered a breach of discipline in accordance with Article 107 of the Civil Servants' Code (Law 2683/99). In Finland, a civil servant may not demand, accept or receive any financial or other advantage, if this prejudices confidence in him or her or in an authority.

In some of these states (Cyprus, United Kingdom, Lithuania, Austria, European Commission, Germany, Slovenia, UK, Latvia, Netherlands), accepting gifts and invitations must be reported, too.

There are no regulations in this respect in France, Czech Republic, Luxembourg, Portugal, Spain, Finland or Sweden. In Denmark, no general rules are laid down, but specific rules may be applicable within certain areas or sectors, e.g. to certain posts within the Ministry of Foreign Affairs.

¹⁴⁷ According to a Ministerial Decree of 28.11.2000, Art. 3.

¹⁴⁸ Paragraph 8 of circular 15/79 refers.

Total number of states (26) and the European Commission	Obligation to report the acceptance of gifts and invitations.	Prohibition on accepting gifts and invitations.	Prohibition on accepting gifts and invitations above a certain amount	There are no rules in this field
Ireland	Yes	Yes		
Netherlands	Yes		Yes	
Luxembourg				Yes
Czech Republic				Yes ¹⁴⁹
United Kingdom	Yes	Yes	Yes	
Estonia		Yes		
Austria	Yes	Yes	Yes	
Cyprus	Yes	Yes	Yes	
Finland		Yes ¹⁵⁰		
Latvia	Yes	Yes	Yes	
Germany		Yes		
Lithuania	Yes		Yes	
Italy		Yes	Yes	
Greece		Yes ¹⁵¹		
Denmark				Yes ¹⁵²
Slovak Republic		Yes		
Spain				Yes ¹⁵³
Slovenia	Yes	Yes	Yes	
Belgium		Yes		
Poland		Yes		
Sweden				Yes
Malta		Yes		
France				Yes
Hungary		Yes		
Portugal				Yes
European Commission	Yes		Yes	
Bulgaria		Yes		

As noted above, a secondary job in the private sector constitutes a major conflict of interests. Consequently, a tax official working simultaneously as a tax consultant might face more potential conflicts of interest situations as if he acts as if he only performs his public duties. In order to

¹⁴⁹ The rules will be applied in the service regulation of directors general of the civil service on 1 January 2005.

¹⁵⁰ If this may reduce confidence in him or in an authority

¹⁵¹ According to Article 107 of the Civil Servant's Code (Law 2683/99), "the acceptance of any material favour or consideration coming from a person whose cases the civil servant is handling or is going to handle during the performance of his official duties", is considered a disciplinary breach.

¹⁵² There are no general rules, but within certain sectors specific rules may be applicable.

¹⁵³ However, the codes of conduct elaborated in some public organisations include written regulations on this issue.

avoid such high-level risks and to guarantee the loyal, neutral and proper exercise of public duties, the majority of states have introduced some restrictions on additional activities.

The above EIPA study¹⁵⁴(2000) for the Directors General of Public Administration has clearly shown that in the 15 former Member States, additional activities of public officials are governed by various common principles in most of the states. The first principle is that civil servants are required to dedicate themselves fully to only one position in the public sector and that additional activities should remain secondary. Emery discovered that nearly all national laws (in the Europe of 15) governing the civil service contain a provision similar to that in the French General Regulations, which states that public officials must devote all of their professional activity to the tasks entrusted to them.¹⁵⁵

In a number of states, civil servants are strictly forbidden to carry out private activities that are related to the position they hold in the public service. In Spain, civil servants are forbidden to serve on the boards of private companies whose activities are directly related to the organisation for which the civil servant in question works. Moreover, civil servants are prohibited from holding positions in companies that have been awarded licenses or contracts for public works or companies that provide public sector services. They are also forbidden to hold more than a 10% share in the capital of any of the above categories of companies.

The Estonian Public Service Act and Anti-Corruption Act imposes restrictions on membership of commercial associations, participations in enterprises, working for another employer, the conclusion of transactions including private dealings. There is however no general prohibition on officials having a paid activity parallel to their official duties, but permission is needed with respect to the nature and extent of the activity. The British civil service management code requires departments and agencies to ensure that staff seek permission before accepting any outside employment which might affect their work either directly or indirectly, and they must make appropriate arrangements for handling such requests. In Ireland, it is permitted to have another job provided there is no impact on the ability to perform the civil service job. Furthermore, legislation prohibits the total number of working hours from exceeding 48 per week.¹⁵⁶

In most of the other states, too, a ban has been imposed on certain additional jobs or activities. No such limitations exist in Malta, Denmark and Finland. However, in these states as in many other states, the common – second – principle is that additional jobs and activities must be reported or registered. In the British civil service, for instance, under section 4.3.4. of the civil service management code, departments and agencies must require staff to seek permission before accepting any outside employment which might affect their work either directly or indirectly and must make appropriate arrangements for handling such requests. In Ireland, Netherlands, Italy, Estonia, Sweden¹⁵⁷ and Austria these activities must even be published. In Latvia, too, the annual financial declarations of incomes of officials includes information related to additional jobs and

¹⁵⁴ Jean-Michel Eymeri, *Ethics in the Public Sector: Access of Civil Servants to private activities*, 35th Conference of the Directors-General of the Public Service of the Member States of the European Union, Strasbourg, 9-10 November 2000.

¹⁵⁵ Ibid., p.16.

¹⁵⁶ See Service Circular 16/36.

¹⁵⁷ Only valid for Members of the agencies boards.

activities and such information is publicly available. This requirement relates to political officials, members of parliament and deputies of local authorities. This shows that holding a secondary position is taken very seriously and that special prior authorisation is often required. In Spain, where this issue is subject to strict controls, this special authorisation applies to the following second positions:

Exceptions to the general prohibition against holding a second position in the Spanish public service
• Employment as an associate university lecturer on a part-time basis and for a limited period
• A university lecturer may be employed on a part-time basis in the health sector or by public research centres, provided that the second position falls within the area of specialisation of his university department
• Music teachers in the higher and professional conservatories may undertake other part-time activities in the public cultural sector
• Holding of elected positions in the legislative assemblies of autonomous communities or membership of local authorities
• Carrying out research activities of a temporary nature

In Spain, there are additional financial restrictions on holding more than one position in the public sector, i.e. the total pay of the two positions may not exceed that of a Director-General. Nor may the pay of the second position exceed that of the principal position by more than the following percentages: Group A (30%); B (35%); C (40%), D (45%), E (50%).

We can distinguish a third common principle, which is characterised by the fact that in general intellectual activities, e.g. research and literary, artistic or scientific work, are not forbidden, because they fall directly under fundamental human rights (freedom of thought and freedom of expression).

Total number of states	Reporting/ registration of additional jobs/activities	Is there a ban of certain additional Jobs/activities	Are additional jobs/activities published?	Is there an obligation to report financial interests/share transactions
Ireland		Yes		Yes
Netherlands	Yes	Yes	Yes	Yes
Luxembourg	Yes	Yes		
Czech Republic	Yes	Yes	Yes	
United Kingdom	Yes	Yes		Yes
Estonia	Yes	Yes	Yes	Yes
Austria	Yes	Yes	Yes	Yes
Cyprus	Yes	Yes	Yes	Yes
Finland	Yes			Yes ¹⁵⁸
Latvia	Yes	Yes		Yes
Germany	Yes	Yes		
Lithuania	Yes	Yes		Yes
Italy	Yes	Yes	Yes	Yes
Greece	Yes	Yes		Yes
Denmark				
Slovak Republic	Yes	Yes		Yes
Spain	Yes	Yes		Yes ¹⁵⁹
Slovenia	Yes ¹⁶⁰	Yes		Yes
Belgium	Yes	Yes		
Poland	Yes	Yes		Yes
Sweden		Yes	Yes	Yes ¹⁶¹
Malta	Yes			Yes
France	Yes	Yes		¹⁶²
Hungary	Yes	Yes		Yes
Portugal	Yes	Yes		Yes
European Commission	Yes	Yes		Yes
Bulgaria	Yes	Yes		Yes

Another instrument which helps prevent possible conflicts of interest through a greater transparency of private interests is the obligation to make public financial interests and transactions. In this context, various regulations have been introduced in the different states aimed at the target group in question.

¹⁵⁸ For top-level officials.

¹⁵⁹ For senior civil servants.

¹⁶⁰ There is no registration.

¹⁶¹ For some specified jobs, where the risk for conflicts of interest is obvious.

¹⁶² With the exception of very specific positions in keeping with these sectors.

In Spain, senior civil servants only are required to enter all financial interests, share transactions in a register, as well as their participation in societies, their goods and their patrimonial rights.

Private interests of top officials are also under scrutiny in Portugal. Within 60 days after taking office, officials must provide the Attorney General's office with a declaration of no impediment or incompatibility as well as a declaration of income.

Under the Irish Ethics in Public Office Act 1995, financial interests and share transactions must be reported if the interests of the person and the interests of his/her spouse or child could influence the person in relation to the performance of his/her functions, while certain monetary restrictions apply. In the UK, the declaration obligation includes any business interests (including directorships) or shareholdings or any other securities which they or members of their immediate family hold in so far as they are aware of them, which they may be able to further as a result of their official position.

The main criticism on this type of instrument concerns the fact that these reporting systems are usually too simplistic and reactive, as they merely require a public servant to report such interests when he/she is actually accused of a breach of ethics.¹⁶³ To make these instruments work, they would have to be more far-reaching and would have to contain the necessary means to make them effective, such as an adequate budget, the capacity to apply the law and independence. If such is not forthcoming, it would be difficult to detect lies and omissions. Moreover, the build-up of tens of thousands of unread financial disclosure forms would simply constitute an overreach of the panoptic vision of corruption control.¹⁶⁴

In concluding the consideration above conflict of interest rules, we can state that they may contribute to establishing a more open and transparent civil service, which is vital if legitimacy and citizen's trust is to be increased. Ideally, their strength should be their educational effect in helping civil servants to make the right choices in critical situations as well as to getting rid of those interests which could endanger the civil servant's public role. These instruments are mainly designed as preventive tools; in most cases the control aspect is quite weak.

3. The management challenge of integrity

3.1. Why a purely punitive approach is not sufficient. The significance of incentive-related instruments in the field of human resource management

A realistic perception of this survey must lead to the conclusion that although it is possible to control unethical behaviour by fighting it with repressive measures, it is an illusion to think that this approach alone is sufficient to create an honest civil service with motivated and ethical civil servants. The literature used in the context of this study illustrates that the enhancement of an ethical civil service at a time of change largely depends on a broader and more comprehensive

¹⁶³ See more on this topic, Stuart Gilman, *Realignment and Public Sector Ethics: The Neglected Management in the New Public Administration*, paper for the symposium "Ethics in the Public Sector: Challenges and Opportunities for OECD Countries", Paris 1997, p.13.

¹⁶⁴ With regard to this topic, see also Anechiarico, *op. cit.*, p.56ff.

approach, which includes managerial and structural aspects as well as personnel policy. In this context, Huberts distinguishes 5 different strategies¹⁶⁵:

- The *repressive* strategy focuses on assuring compliance by more severe sanctions and the extension of policing in the organisation;
- The *economic* strategy emphasises the necessity to diminish the financial and economic stimuli for fraud and corruption;
- The *cultural* strategy aims at changing the attitudes and values concerning ethics and integrity by raising awareness of the problem and through training and education;
- The *organisational* strategy aims at characteristics of the structure of the organisation, involving the improvement of control and supervision and personnel policies;
- The *political* strategy aims at combating more specifically leadership aspects, including the commitment by and the example given by the management of the organisation.

In the same way, the OECD approach stresses that an effective ethics infrastructure should at the same time aim to *control* (through a qualitative legislative framework and effective accountability and control institutions), *guide* (through codes of conducts and professional socialisation) and *manage* (through fair public service conditions and an overall coordinating body) civil servants. Furthermore, the organisation also stresses the key role of *commitment* by political leadership.¹⁶⁶

In the current literature¹⁶⁷, there is a growing and common understanding that a traditional rule- and control-oriented approach is not sufficient to foster integrity, and that it must be supplemented by a more active approach, which considers ethical behaviour a consequence of factors such as good working conditions, fair salaries, an open and motivating working atmosphere, well-functioning and active communication at all levels, and model role playing by political and administrative leaders.

¹⁶⁵ L.W.J.C. Huberts, J.H.J. van den Heuvel (eds.), *Integrity at the public-private interface*, Shaker Publishing, Maastricht 1999, p.8.

¹⁶⁶ OECD, *Building Public Trust: Ethics Measures in OECD Countries*, Puma Policy Brief No.7, Spring 2000.

¹⁶⁷ Philippe Vermeulen, "The Civil Servant, Society and the Citizen in Quest of good ethical behaviour", in: Annie Hondeghem and European Group of Public Administration (ed.), *Ethics and Accountability in a Context of Governance and New Public Management*, Amsterdam 1998, p.182; Katrien Robben, "The Recent Debate on Curbing Political Corruption", in: Annie Hondeghem and European Group of Public Administration (ed.), op.cit., p. 219ff; Antonio Bar Cendon, op.cit..

Main human resource management instruments
• Meritocratic system of recruitment
• Committed and accountable leadership
• Ethics training
• Adequate salary
• Motivational career development
• Performance evaluation
• Job security
• Specific provisions for staff in vulnerable positions (job rotation, screening of staff, sharing responsibilities among staff members, etc.)

According to this approach, ethics is not a separate policy, but it is closely intertwined with the organisation and management of the public organisation, while a exists strong link between the ethical/unethical behaviour of civil servants and the specific institutional and organisational features.

As compared to a purely legal approach, which aims to ensure control via a clear legal framework with investigation and sanction mechanisms for cases of breaches of rules, this approach would seek to promote proper behaviour by setting-up a civil service, based on a combination of preventive and punitive instruments. In this context, Vermeulen¹⁶⁸ mentions factors such as clear organisation objectives, the use of a professional and moral code, dialogue, the constant evaluation of policies and those involved and a correct and consistent leadership as being crucial for fostering the internal legitimacy of the civil service.

The OECD¹⁶⁹ distinguishes two completely different systems with regard to ethics, and more precisely between a *compliance-based* approach and an *integrity-based* approach. The difference between both is characterised by the fact that the first one is very much top-down and focuses on rules and laws leaving little room for individual decisions. The second approach is focused on reaching high ethical standards by encouraging commitment to ethics through greater awareness and motivation-stimulating instruments, and by relying on the responsibility of the official in question. But these are primarily theoretical concepts and the problem in practice seems to be finding the right balance between coercion and motivation. Moreover, this must be seen against the background of a civil service which is increasingly moving from a rule-based approach towards a result-oriented public philosophy, characterised by a stronger autonomy and responsibility of individual civil servants.

¹⁶⁸ Vermeulen, op.cit., p.182-183.

¹⁶⁹ Gilman, op.cit., p. 5.

3.2. *The key role of leadership*

The hypothesis that organisational and institutional features are significant factors in promoting ethical behaviour is largely supported by recent research as will be shown below. Among these features, a key role must be attributed to leadership to serve as a model for proper behaviour and to implement and enforce the rules and laws. If this is not the case, a high quality legal framework may be in place which will never be enforced adequately due to lack of support by the political will and the top officials. Consequently, if politicians do not observe the law themselves, it is hardly likely that they will have the authority to make others do so.¹⁷⁰ Furthermore, key prerequisites of good leadership are high standards of accountability and transparency. As will be explained below, the type of leadership also has considerable impact.

Another important role of leadership is to demonstrate fundamental values and, in particular, to contribute to the spread of the civil service ethos. In this context, the answers to the questionnaire are also quite revealing in the sense that more than one third of the countries mentioned leadership aspects as being among the three most relevant obstacles to encouraging high ethical standards.

Obstacles associated with leadership¹⁷¹	Total number of countries (26) and the European Commission
Low civil service ethos or no shared values	Poland, Slovenia, Lithuania, Estonia, Portugal, Belgium, Sweden
No clear mission for the civil service	Austria, Italy, Cyprus, Portugal Belgium, Czech Republic, Greece, Sweden
Insufficient commitment and support for ethics by the management	Poland, Malta, Germany, Slovakia, Estonia, Portugal, Czech Republic, Finland, Greece

Leadership as a crucial instrument in fostering an ethical civil service is also supported by recent surveys. In this context it is interesting to mention a study recently carried out in the Swiss federal administration,¹⁷² according to which control and knowing one's rights and obligations were not mentioned as the most important factors for irregular behaviour, but rather management mistakes, recruitment mistakes and poor organisation of competences¹⁷³.

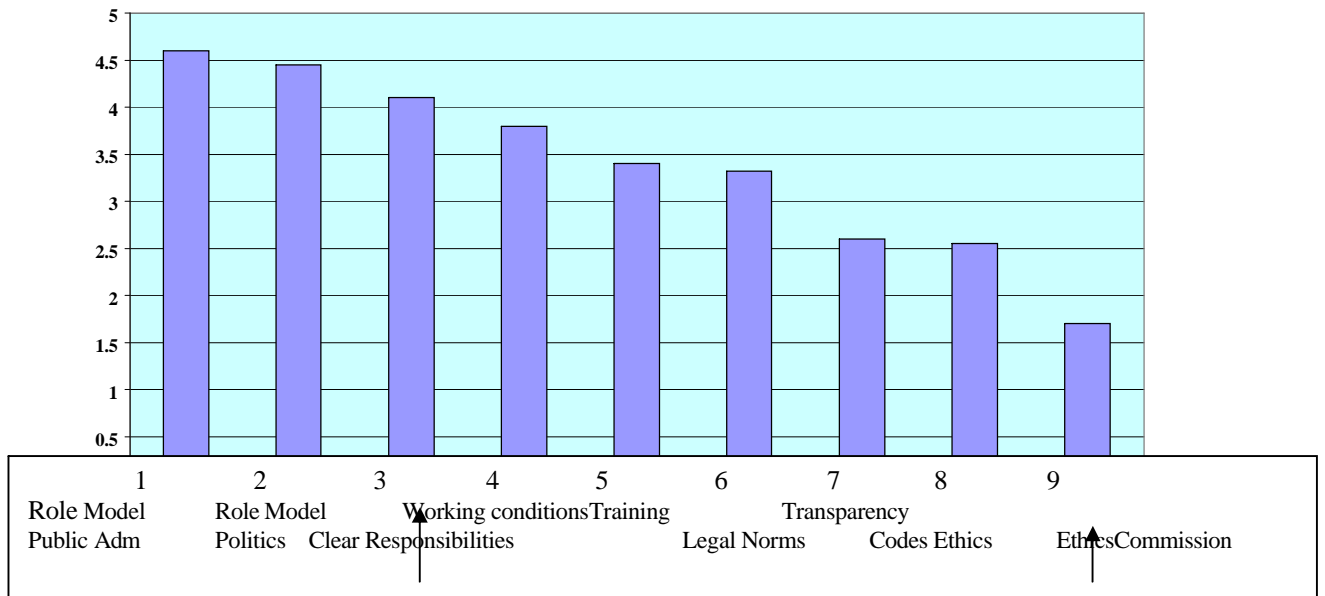
Instruments to enhance ethical behaviour in the public service

¹⁷⁰ Robben, op.cit., p.219.

¹⁷¹ The other challenges mentioned include: Corruption, bribery or other criminal activities; low morale of civil servants, low salaries, bad working conditions; insufficient training on civil service values and on standards of conduct; the increased contacts between the public and the private sector through the enhanced trend towards private-public partnerships.

¹⁷² *Ethik im öffentlichen Dienst*, Report of the Parliament's administrative supervisory authority for the attention of the Audit Committee of the National Council of 30 October 1998. The report presents the outcome of an empirical study and is based on the results of 12 guided interviews with the Swiss Personnel Department, those responsible for personnel of the secretariats-general of the Departments, the Federal Chancellery and three selected offices and federal offices. All data were analysed and evaluated according to methods of qualitative and quantitative content analysis.

¹⁷³ The relevant question in this respect was what the interviewees believed were the main causes of corruption and other breaches of rules.



instruments for the promotion of ethics in the public service. According to the experts who were asked, the exemplary behaviour of the administrative management and the political decision-makers as well as transparent rules about responsibility were the three main instruments promoting ethical behaviour in the public service.¹⁷⁴

The results of this study were also confirmed by another study¹⁷⁵ which was carried out in the Netherlands and concerned the effectiveness of 21 anti-corruption strategies. In this study, too, it is interesting to see the key role given to the administrative and political management. In this sense, 86.9% are of the opinion, that *more commitment by politicians* is a key variable to combat unethical behaviour (*internal control and supervision*: 86.5%).

It is also rather revealing – but also logical – that the variable “*example given by management at the top*” (80%) also scores relatively high. On the other hand, *more severe penal sanctions* (64,2%) and *extension of police and judiciary* (57,1%) are also important instruments, but were mentioned less among the experts. Other instruments are characterised by their relative significance in the fight against corruption: *public information campaigns* (71.6%); *code of ethics for politicians and civil servants* (73.1%); *better protection for whistleblowers* (74.2%) and *stronger selection of public personnel* (73.2%).

¹⁷⁴ *Ethik im öffentlichen Dienst*, op.cit., p.37-38.

¹⁷⁵ L.W.J.C. Huberts, "What can be done against public corruption and fraud: Expert views on strategies to protect public integrity" in: *Crime, Law & Social Change* 29 (1998), p.209-224. This study is based on the results of a survey in which 257 experts from 49 countries participated. These experts are scientists (38%), representatives from the police and the judiciary (28%), from the civil service and anti-corruption agencies (12%), auditors, controllers, accountants (10%) and businessmen and consultants (8%). In view of the goal of this study, only the responses from the experts from the higher income countries were taken into account.

Expert panel views on effectiveness of 21 anti corruption methods (percentage of respondents considering the method very effective).

Strategy	Higher income country (opinions of 190 experts)
Economic	
Reasonable standard of living	50%
Higher salaries for politicians/public servants	34.4%
Less government/privatisation	27.9%
Making banking and finance more transparent	69.9%
Educational	
Public information campaigns	71.6%
More public exposure	76.6%
Changing family attitudes	37.1%
Influencing attitudes of public servants	76.8%
Public culture	
Example given by senior management	80%
Code of ethics for politicians and civil servants	73.1%
Better protection for whistle blowers	74.2%
Organisational/bureaucratic	
Rotation of personnel	51.6%
Internal control and supervision	86.5%
Improved selection of public personnel	73.2%
Political	
More commitment by politicians	86.9%
Transparency regarding party finances	80.3%
Example given by senior management	80%
Greater division of public powers	48.4%
Less government/privatisation	27.9%
Repressive/judicial	
More severe penal measures	64.2%
Extension of police and judiciary	57.1%
Creating independent institutions	75.1%
Combating organised crime	77.3%
Making banking and finance more transparent	69.6%

The crucial significance of leadership in combating unethical behaviour is best illustrated by the following table, which ranks *more commitment by politicians* and *example given by management* as key instruments in this respect.

Most effective strategies for fighting public corruption and fraud¹⁷⁶

Methods	Effectiveness Higher income country (190)
More commitment by politicians	1
Internal control and supervision	2
Transparency of party finances	3
Example given by senior management	4
Influencing attitudes of public servants	5
Combating organised crime	6
More public exposure	7
Creating independent institutions	8
Improved selection of public personnel	10
Reasonable standard of living	17

There is substantial evidence that unethical behaviour is mostly an elitist problem related to leadership. In Germany (a country with a rather traditional public service structure) for example,, 30.3% of all those receiving bribes occupy leading positions¹⁷⁷. Almost all those offering bribes (87.1%) hold senior positions (owner of companies, directors, senior employees)¹⁷⁸.

These figures emphasise the need to concentrate on the role of senior officials in the debate about ethics, particularly as important human resource management reforms in the Member State concern the role, nomination and status of senior officials.

In the past few years, the greatest developments and changes regarding the status of public officials have related to senior officials or managers in the public service. This group has experienced important changes to their status and roles. In a growing number of countries, senior officials are now recruited in open competition (in order to guarantee a fair selection process and reduce political influence) and offered limited contracts. In 2001 in Denmark, for example, “about 19% of all division heads had fixed-term contracts”¹⁷⁹. In Belgium, too, senior officials are nominated for a limited period. In the United Kingdom, approximately 40% of all senior positions are open to competition. In Sweden, only 5% of all public employees enjoy a life-tenure. The rest (95%) are employed on permanent contracts. In some Member States, it is also possible to dismiss senior officials if they do not reach their objectives and targets.

This combination – more mobility between senior officials from the public and private sector and the move away from the life-time principle – will change the culture of the traditional civil service. The present challenge is how to preserve specific ethical values in a changing environment. Given “that senior public servants are increasingly likely to be working under contract, without the security of permanent tenure, what is needed to protect the service against further politicisation? (..) Is the ability to give “frank and fearless” advice compromised if officials have no job security?”¹⁸⁰.

¹⁷⁶ Huberts (1998), op.cit., p.219.

¹⁷⁷ This figure applies to the situation in the private and public sector. Bundeskriminalamt, Lagebild Korruption, Bundesrepublik Deutschland, 30.6.2003, p. 32

¹⁷⁸ Ibid

¹⁷⁹ OECD Public Management Service, Preliminary Data and Tables, 2002

¹⁸⁰ Ti-Source book, op cit, p. 109/110

However, it is still too early to evaluate the effects of these new developments on the ethical behaviour of civil servants. On the other hand, our survey has clearly shown that Member States are increasingly concerned about the impact of greater mobility and contact on the ethics of civil servants.

A further interesting question to be considered in this context is: which type of leader encourages which type of behaviour. Needless to say, this is a difficult question to which there is no easy answer, particularly as there are a multitude of different leadership types and styles. Huberts¹⁸¹, by referring to Badaracco and Ellsworth, distinguishes between political, directive and value-driven leadership. He arrives at the not very surprising conclusion that integrity in the public sector can only be encouraged by leaders with integrity and by a leadership which is characterised by

- A consistent and coherent set of distinct objectives
- A clear set of values
- Correct behaviour
- Charisma
- Professional management

None of these ideals seem to correspond to the requirements entirely, although the directive leader, whose management style is characterised by a top-down approach with clear objectives, and the value-driven leader, whose leadership is based on unambiguous moral principles, score higher. In comparison, the characteristics of the political leader, whose style is characterised by adaptation, negotiation and manipulation skills, is least suited to leadership which encourages ethical behaviour on the part of civil servants.

Another much broader survey¹⁸² by Karin Lasthuizen, Leo Huberts and Muel Kaptein analyses the impact of the three following leadership styles and their relationship to specific forms of integrity violations:

1. *Role modelling by setting a good example to employees;*
2. *Strictness in order to tackle employee misbehaviour; and*
3. *Openness in order to discuss problems and dilemmas.*

¹⁸¹ L.W.J.C. Huberts, J.H.J. van den Heuvel (eds.), *Integrity at the public-private interface*, Shaker, Maastricht 1999, p. 18; Joseph L. Badaracco and Richard R. Ellsworth, *Leadership and quest for integrity*, Harvard Business School, Harvard 1993.

¹⁸² Leo Huberts, Muel Kaptein, Karin Lasthuizen, *Leadership and Integrity Violations at Work: A Study on the Perceived Impact of Leadership Behaviour on Integrity Violations within the Dutch Polic Force*, Paper for IRSPM VIII 2004, Budapest March 31-April 2, 2004. The article is based on the results of a survey, which has been carried out among 3 125 police officers in the Netherlands. They have been asked about their perceptions of the extent of integrity problems at their working place and the way they perceive supervisory leadership in their organization. The authors distinguished between 10 different integrity breaches ranging from corruption, fraud and theft, conflict of interest through gifts and conflict of interest through jobs, improper use of violence, other improper methods of policing, abuse and manipulation of information, discrimination and sexual harassment and waste and abuse of organizational resources, private time misconduct.

The most interesting result of this study is that specific types of integrity violations demand specific leadership behaviour. In addition, the relationship between these three leadership features and specific integrity violations is demonstrated. In this respect, the main findings of this study can be summarised as follows. 1. The ideal type of leadership in the sense that effective curbing of unethical behaviour would be characterised by all three leadership characteristics. 2. Role modelling is especially effective in dealing with unethical behaviour in interpersonal relationships. 3. Strictness is quite important in dealing with ethical questions regarding the misuse of organisational resources. 4. Openness is more important when role modelling and strictness have little or no influence on unethical behaviour. What is quite revealing with regard to the question of finding the right balance between a compliance-based approach and an integrity-based approach is that the significance of openness for curbing integrity violations is of lesser importance, while strictness and role modelling have approximately the same impact.¹⁸³

Type of leadership	Relatively strong effect
Role modelling or setting a good example	Internal favouritism, internal fraud, discrimination, sexual harassment, gossiping
Strictness of managers in tackling misbehaviour of employees ¹⁸⁴	Waste as well as abuse of internal resources, gossiping, abuse of information, accepting substantial gifts, theft of resources, internal fraud, internal favouritism
Openness	Internal favouritism

The findings of this survey¹⁸⁵ are interesting in many respects in the context of this study. A first conclusion is that due to the different correlation between integrity violations and management styles, the EU Member States (including Bulgaria) and the European Commission would need different styles of leadership according to the dominant type of unethical behaviour – or if we interpret the results of this study in broader terms – according to the level of unethical behaviour and corruption. Consequently, states where unethical behaviour relates mainly to internal corruption such as favouritism/nepotism or poor treatment of colleagues or citizens (internal corruption, discrimination and sexual harassment), would need a leadership type that focuses on role modelling or setting a good example for employees. On the other hand, states with corruption such as fraud, theft, waste and abuse of organisational resources, abuse and manipulation of information, conflicts of interest through gifts, would require a stricter type of leadership.

If we start from this hypothesis, it would considerably relativise the possibilities of transposing best practice models in the field of leadership from one country to another - or at least if a careful analysis of the specific factors has not taken place beforehand. This is even more applicable bearing in mind that certain values and norms can only be transposed successfully if there is a receptive environment.

¹⁸³ Ibid., p.13.

¹⁸⁴ This type of leadership impacts most in cases, where the organisational properties and resources are at stake.

¹⁸⁵ Although the authors are well aware of the limits of this research and this all the more since it is only based on the Dutch police force, they found it rather interesting to present the revealing findings to the Directors General and to deduct some more general conclusions in this respect, which serve very well the purpose of this study.

A second interesting and more general conclusion which we can deduce from these findings and which supports the studies of the World Bank¹⁸⁶ in this field is that in general, instruments to combat unethical behaviour must be closely linked to the nature of unethical behaviour, which differs in different countries. In this context, it could mean that “soft” or non-repressive instruments that rely chiefly on responsible and professional civil servants, e.g. codes of conduct, training, etc., would mainly be successful in countries where corruption and unethical behaviour takes place primarily at internal and interpersonal level. Conversely, we could conclude that the fight against unethical behaviour in countries characterised by forms of corruption such as conflicts of interest, fraud and theft etc. must be focused primarily on instruments with a punitive, repressive character.

3.3. *Which human resource management aspects should be used to foster ethics in the public sector?*

Leadership is one important component of human resource management that may contribute to an ethical civil service, but there are others as well. It goes without saying that the impact of salaries on the behaviour of civil servants in the 25 states and the European Commission is an interesting question. An analysis of the surveys in this field provides the following results.

In general, research¹⁸⁷ illustrates that we can only attribute a limited significance to higher salaries in the fight against unethical behaviour, and more so when not combined with other measures. In their empirical analysis of the link between public sector salaries and the level of corruption, Rijckeghem and Weder¹⁸⁸ observed a negative impact of wages on corruption when public sector wages are relatively low compared to those of the private sector. In fact, our study clearly shows that the accession states are very concerned about the impact of current low salaries on ethical behaviour in their national public services. Indeed, salaries in some accession states – compared to the salaries paid for comparable position in other Member States and in the private sector – are far too low. But will raising salaries alone improve the situation? How important is the salary factor?

The above study by Rijckeghem and Weder arrives at the conclusion that fighting corruption on the basis of wage incentives only could be extremely costly to the authorities and that it would probably have only a limited impact if not combined with other instruments. So they conclude that “if public sector wages were doubled, the corruption index of a country will be improved by the order of 2 points in the corruption index (CPI) of Transparency International”. This of course means that very large salary increases would be needed to eliminate corruption. Other studies, e.g. by Rauch and Evans¹⁸⁹, find no clear evidence of an impact of salary level on corruption in the public sector.

¹⁸⁶ World Bank, op.cit., p. 25ff.

¹⁸⁷ This statement is mainly based on Jens Chr. Andvig, Odd-Helge Fjeldstad et al, op.cit., p.108ff.

¹⁸⁸ Rijckeghem Caroline van, Beatrice Weder, "Corruption and the rate of temptation: Do low wages in the civil service cause corruption", Working Paper WP 97/73, International Monetary Fund, Washington D.C. 1997, in Jens Chr. Andvig, Odd-Helge Fjeldstad et al; op.cit., p.108ff. They based their study on a sample of 28 countries.

¹⁸⁹ James E. Rauch, Peter B. Evans, "Bureaucratic structure and bureaucratic performance in less developed countries", in *Journal of Public Economics*, vol. 75, p. 49-71.

Another study¹⁹⁰ in this field, which raises the question of effective measures to ensure fair treatment for citizens in the Czech Republic, Slovakia and Bulgaria, also supports the hypothesis that wages are only one means of encouraging ethical behaviour among civil servants towards citizens, and that its importance varies according to the context. Naturally, the three case studies are of relevance here, because all three countries face considerable problems relating to unethical behaviour.¹⁹¹

Single most effective means of ensuring fair treatment for citizens¹⁹²

Single most effective....	Czech Republic (%)	Slovakia (%)	Bulgaria (%)
Higher salaries for officials	11%	18%	30%
Better training for officials	21%	26%	12%
Better appeal/complaints procedures	6%	5%	5%
Less official forms/documents	17%	10%	3%
Ensure that the official signs a code of conduct	5%	7%	5%
Display citizens' rights in offices	3%	3%	3%
More openness/require officials to explain	7%	6%	6%
Encourage officials to expose wrongdoings	1%	3%	2%
Stricter controls/penalties for officials	28%	21%	32%
Stricter penalties for those offering bribes	2%	2%	3%

The first table reveals a different situation in the three countries. While the Czech Republic and Bulgaria opt for stricter controls, Slovakia considers better training for civil servants as the most efficient remedy for unfair treatment of citizens. In two of the three countries, stricter controls and better training rank highest, while higher salaries score in Bulgaria nearly as high as stricter controls. These differences underline that the significance of salaries or at least the perception thereof may also vary according to the context, and may be more effective in combating unethical behaviour in one context than in another. In the other two countries, higher salaries seem to be important (Czech Republic: 4th position; Slovakia: 3rd position), but of less so than better training for civil servants.

¹⁹⁰ William L. Miller et al., "What is to be done about corrupt officials? Public opinion and reform strategies in post-communist Europe", in: *International Review of Administrative Sciences*, Vol.65 (1999), p.235-249. The authors also refer to the Ukraine, but which the authors of this study didn't take into account, because it would go beyond the aim of this study.

¹⁹¹ These three countries have the following ranking according to the statistics of Transparency International: Slovakia (rank 59), Czech Republic (rank 54) and Bulgaria (rank 54).

¹⁹² The study is based on 4778 interviews with national representative samples in the winter 1997-1998.

Not necessary or actually harmful?

Not necessary....	Czech Republic (%)	Slovakia (%)	Bulgaria (%)
Higher salaries for officials	34%	29%	6%
Better training for officials	13%	4%	4%
Better appeal/complaints procedures	15%	8%	5%
Less official forms/documents	12%	8%	8%
Ensure that the official signs a code of conduct	24%	20%	21%
Display citizens' rights in offices	19%	15%	13%
More openness/require officials to explain	16%	17%	9%
Encourage officials to expose wrongdoings	26%	26%	12%
Stricter controls/penalties for officials	10%	8%	2%
Stricter penalties for those offering bribes	19%	20%	14%

The results of the second table support the hypothesis that the significance of higher salaries in ensuring fair treatment of citizens is not perceived in the same way in all the states. In Bulgaria, only 6% are of the opinion that this is not necessary or even harmful, while in the Czech Republic the same figure is 34% and in Slovakia 29%. According to the second table, higher salaries are of even less importance than in the first table. The considerable significance of stricter controls/penalties for officials is also confirmed in the sense that compared to the other variables, only a minority agrees that it does not play a major role.

The responses to our questionnaire confirm the above trends. Only 8 states (Czech Republic, Spain, Bulgaria, Lithuania, Slovakia, Slovenia, Hungary, Latvia) including the European Commission perceive low salaries as being among the three largest obstacles to encouraging high ethical standards in the civil service. And what is very surprising is that among those eight are six [sic] accession states and one candidate state. The answers given to this question show a clear East/West division, which seems to be more than evident. In a number of these countries, poor salaries, “below the level of living wages” lie at the heart of corruption. One may doubt whether public employees in central and eastern European countries can rely purely on the motivating power of the public ethos. What’s more, “any suggestion that the personal rewards offered by the ethos should be seen as recompense for low pay and poor working conditions for public servants should be rejected.” In addition, "the public service ethos should never be offered as an excuse for treating public service works less well than others".¹⁹³ Other states (Greece, Finland, Belgium, UK, Ireland, Portugal, Cyprus, Lithuania, Slovenia, Malta, Hungary, Netherlands) reveal the same perception of insufficient training.

One of the most interesting findings with respect to human resource management in this questionnaire is the perception of the significance of training: The overall majority (22 states)

¹⁹³ The United Kingdom Parliament, Select Committee on Public Administration, The Public Service Ethos, Seventh Report, 13 June 2002.

mentioned training as being among the most efficient instruments in combating wrongdoings, while 16 states thought the same applied to working conditions.¹⁹⁴ But it is curious that only 3 states believe that poor working conditions are among the three biggest obstacles in reducing unethical behaviour in their civil services. This leads to the conclusion that most states find that working conditions in their country are sufficient to support ethical behaviour.

In addition to fair salaries, sufficient training and good leadership, there are other measures in the field of human resource management which promote integrity in the public sector by motivating civil servants in their work and with respect to their entire career. Key incentive instruments or instruments which may minimise risk of unethical behaviour of staff in vulnerable positions include the following. Fair selection and recruitment procedures, objective promotion criteria, opportunities for job rotation and enrichment, clear description of tasks, transparent division of responsibilities, separation of competencies, screening of staff, and sharing responsibilities among staff members.

¹⁹⁴ See table under the chapter about the overall approach towards ethics in the EU Member States and in the European Commission.

Human resource management instruments intended to minimise the risks of unethical behaviour in vulnerable positions

Human resource management instruments...	Total number of states (26) and the European Commission
Job rotation	Portugal, France, Estonia, Cyprus, Bulgaria, European Commission, Germany, Slovenia ¹⁹⁵ , Malta, Poland, Ireland, UK, Belgium, Greece, Sweden, Netherlands, Latvia
Separation of competences	Portugal, France, Estonia, Cyprus, Italy, Bulgaria, Austria, Slovakia, European Commission, Germany, Slovenia, Malta, Poland, Hungary, Ireland, UK, Belgium, Denmark (only in certain sectors), Czech Republic, Sweden, Netherlands, Latvia
Screening of staff	Portugal, France, Cyprus, Italy, Austria, European Commission, Poland, Hungary, Ireland, UK, Belgium, Sweden, Netherlands
Sharing responsibilities among staff members	Estonia, Cyprus, European Commission, Germany, Slovenia, Malta, Poland, Hungary, Ireland, UK, Belgium, Czech Republic, Greece, Sweden ¹⁹⁶ , Netherlands, Latvia
No specific provisions	Spain, Lithuania, Luxembourg, Finland,
Other provisions	Introduction of the one-stop shop concept (Bulgaria); Greater supervision, identification of positions susceptible to corruption (Germany)

This table illustrates that the majority of states have introduced at least one or more provisions to minimise the risks of wrongdoings of staff in vulnerable positions. A recent example includes the new mobility rules of the European Commission, which make job rotation compulsory after approximately five years for jobs relating to the award of contracts, grants, determining rights and obligations, etc.

The significance of these measures must be seen against the background of a changing civil service, where civil servants are increasingly exposed to the risk of being corrupted by excessive contacts with the private sector as a consequence of an enhanced trend towards private-public partnerships, outsourcing and privatisation. Even if there is little evidence¹⁹⁷ of a clear link between an increase of corruption/unethical behaviour and the growing contacts with the private sector, it nonetheless seems evident that recent public sector trends as well as new flexibility trends in human resource management are confronting European civil services with new ethical challenges.

¹⁹⁵ In preparatory phase

¹⁹⁶ No single person should take a decision in the exercise of power or in handling economic resources.

¹⁹⁷ Patrick von Maravic, How to analyse corruption in the context of public management reform? Paper to be presented at the first meeting of the Study Group on Ethics and Integrity of Governance, EGPA Conference September 2003, Oeiras, Portugal.

The OECD identified the following eight forces¹⁹⁸ which currently affect public service ethics and conduct:

- **Working with limited resources** as a consequence of downsizing trends such as public sector freezing in many countries
- **Higher citizen demands** or the pressures for more and better quality services
- **Restructuring the public sector** or the trend towards the creation of autonomous agencies characterised by large managerial autonomy.
- **A devolved and discretionary management environment** or the trend to devolve managerial authority to individual managers.
- **Public/private sector interface** or the increased contacts between the two sectors
- **Working in a fishbowl** or greater transparency in government operations¹⁹⁹
- **Changing social norms** or the increasing complexity and individualisation of society
- **Changing international environment** or increased contacts of civil servants in different administrations with potentially different ethical standards

With respect to human resource management, these trends correspond to changes in the field of employment conditions, such as job security, pay and promotion schemes. And even if these changes are characterised by more attractive working conditions, such as performance-related pay and promotion or incentives for job expansion and enrichment, they also represent potential negative effects, such as reduced job security or demotivation as a consequence of the differentiation of pay scales. In terms of ethics, these changes can lead to different scenarios, which also depend on the way these reforms are being implemented. As there is no direct causal link between these new trends in human resource management and unethical behaviour, it is perfectly possible in an initial scenario that civil servants stay loyal to or behave properly towards the organisation or may even become whistleblowers.²⁰⁰ But if we consider a second more critical scenario, we may also arrive at a slightly different conclusion. This approach highlights the "unintended consequences" (Maravic) of administrative reform on public employees. It starts from the assumption that reform strategies have an impact on the motivation, opportunity and possibility to act corruptly and that negative changes in the pay, promotion and discretion of civil servants can contribute to increasing uncertainty and alienation among employees, which can easily lead to disloyal and corrupt behaviour if the official in question has the opportunity to do so.²⁰¹ According to this assertion, the motivation for unethical behaviour is related more generally to the institution's capacities to integrate – which would consequently place greater emphasis on human resource management geared towards motivation in order to combat wrongdoings.

¹⁹⁸ OECD, *Ethics in the Public Service, Current Issues and Practices*, OECD-PUMA, Public Management Occasional Papers, n° 14, 1996, p. 17-25.

¹⁹⁹ It can be argued that the increase of cases related to unethical behaviour can partly be explained by the greater transparency and scrutiny.

²⁰⁰ Maravic, op.cit., p.11.

²⁰¹ Ibid., p.7.

4. New instruments under scrutiny

4.1. *Where are codes of conduct being introduced and how is this taking place?*

In comparison to punitive measures, which in the event of non-compliance with ethical principles are characterised by sanctions, the main function of codes of conduct²⁰² is to guide civil servants and to increase awareness in relation to the moral aspects of their tasks. One of their major goals is to increase ethical sensitivity and judgement and to provide clarity regarding responsibility. As compared to laws, which are binding, a code of conduct is a much milder instrument to combat wrongdoings in the sense that it does not have such an imperative character and that it complements existing legislation and regulations. Bar Cendon describes codes of conduct as "provisions of a positive nature, which establish ethical principles, standards and guides for daily operation and stimulate the reward of good behaviour".²⁰³ They are mostly suited to fight mild forms of misbehaviour and are in many ways a direct response to a dynamic and changing civil service environment, which calls for clearer guidance for civil servants. This is also underlined by the fact that most codes of conduct in EU Member States have only recently been adopted.

Codes of conduct may take different forms. According to Kernaghan, one can place them on a continuum between the two extremes of a Ten Commandments approach and a Justinian approach. While a Ten Commandments model is characterised by a limited number of principles, as is the case with the seven principles established by the Nolan Committee in the UK in 1995, the Justinian Code is much more comprehensive and detailed in scope.²⁰⁴ If we look at the different topics which are dealt with by the codes of conduct in the EU Member States, Bulgaria and the European Commission (table below), we can see that most of them correspond to the second type. An example of the first model is Estonia, where the code of ethics comprises 20 principles relating to the duties of officials, setting out general standards for the behaviour of civil servants.

The responses to the questionnaire are interesting, because they show huge differences with regard to the legal nature of the codes of conduct. We find, for instance, in countries such as Hungary, Czech Republic and Slovenia²⁰⁵ the classical code of conduct characterised by mere recommendations and no sanctions, while this is not always the case in other states and the European Commission, where the character depends on the form under which they were adopted. In Malta, for example, the Public Service Act includes codes of ethics and provisions on whistleblowing.

²⁰² On this topic, see for instance, Alan Lawton, *Developing and implementing codes of ethics*, paper presented to EGPA Annual Conference, Lisbon 3rd- 6th September 2003; Antonio Bar Cendon, op.cit., Transparency International, Source Book 2000, op.cit.; Eleanor Glor, 'Codes of conduct and generations of public servants', in: *International Review of Administrative Sciences*, Vol.67, London 2001, p. 525-541; M. Maguire, *Ethics in the Public Service - Current Issues and Practice*, Paper presented to the EGPA Annual Conference 'Ethics and Accountability in a Context of Governance and New Public Management.

²⁰³ Antonio Bar Cendon, op.cit., p.65.

²⁰⁴ Lawton, op.cit., p.5.

²⁰⁵ The Slovenian answer indicates that the legal nature of the code is somehow unclear, but that it doesn't provide any sanctions.

In Italy, for example, codes of conduct have an additional disciplinary value as they may result in disciplinary infringements. Such codes are included as an annex to collective agreements. In Estonia, where the code of conduct forms an annex to the Public Service Act, civil servants are under pressure to observe this code more strictly. For instance, each official is required to take an oath of office and sign the code on entering public service, thereby declaring adherence to the principles expressed in the code. In other countries, codes of conduct appear under different guises. In Slovakia, they take the form of service regulations, as is the case in Lithuania, while in Sweden, they are similar to any agency-level decision. In the UK, the codes form part of the conditions of employment of all civil servants and are therefore enforceable under employment law. In the European Commission they are included in the staff regulations. A further interesting example is Ireland, where a code is also admissible in any proceedings before a court, a tribunal or the Standards in Public Office Commission.²⁰⁶ They are also deemed to be included in the terms or conditions of employment of a civil or a public servant to whom a code of conduct relates requiring that person to be guided by the code. And in France, which has no code of conduct as such, various general staff rules governing civil servants - laws and regulations - concern ethical principles. Last but not least, the German codes of conduct comply with the recommendations to implement the directive of the Federal Government of 17 June 1998 regarding the prevention of corruption in the federal administration, while the behaviour of civil servants is in general governed by relevant provisions of the laws and regulations for federal officials such as for instance the Federal Civil Service Act (*Bundesbeamtengesetz*), the Federal Regulation on Outside Activities (*Bundesnebenständigkeitsverordnung*) etc.

While most states declare in their responses to the questionnaire that they have adopted such a code, only Greece, Luxembourg, Denmark²⁰⁷, Austria, Spain and Portugal state that such instruments do not exist in their country.

The following table shows that the subjects dealt with by these codes vary in the different states. It can also be observed that some of these are also regulated by the Civil Servants Act in some countries.

²⁰⁶ An independent statutory body established to investigate contraventions of ethics acts 1995 and 2001.

²⁰⁷ A code of conduct is currently being drawn up.

Subjects covered by the code of conduct/ethical code applicable to central government

<ul style="list-style-type: none"> Acceptance and/or presenting of gifts and favours to business acquaintances 	Malta, Germany, Ireland, Hungary, Slovakia, Cyprus, Belgium, Czech Republic, Finland, Slovenia, Sweden, Netherlands, European Commission, UK, Latvia, Poland, France, Bulgaria,
<ul style="list-style-type: none"> Reporting and registration of additional jobs and/or activities (including consultancy activities) 	Malta, Germany, Ireland, Cyprus, Belgium, Finland, Slovenia, Sweden, Italy, Netherlands, European Commission, UK, Latvia, Poland, France,
<ul style="list-style-type: none"> Banning of – certain – additional jobs and/or activities (including consultancy activities) 	Germany, Ireland, Cyprus, Belgium, Slovenia, Italy, Netherlands, European Commission, UK ²⁰⁸ , Latvia, Poland, France, Bulgaria,
<ul style="list-style-type: none"> Publication of additional jobs and/or functions 	Germany, Cyprus, Belgium, Czech Republic, Slovenia, Sweden ²⁰⁹ , Italy, Netherlands, European Commission, Latvia, Poland,
<ul style="list-style-type: none"> Reporting of financial interests 	Malta, Cyprus, Belgium, Finland, Sweden, Italy, Netherlands, European Commission, UK, Latvia, Bulgaria,
<ul style="list-style-type: none"> Contracting consultants, interim managers, etc. who were formerly staff 	Germany, Ireland, Belgium, Slovenia, Italy, Netherlands, European Commission, Latvia, Poland, Bulgaria,
<ul style="list-style-type: none"> Purchasing and procurement 	Germany, Ireland, Cyprus, Belgium, Czech Republic, Slovenia, Sweden, Italy, Netherlands, European Commission, UK, Latvia, France, Bulgaria,
<ul style="list-style-type: none"> Acceptance of luncheons and dinners offered by business relations 	Malta, Germany, Ireland, Hungary, Belgium, Czech Republic, Sweden, Italy, UK, Latvia, Lithuania, Bulgaria,
<ul style="list-style-type: none"> Use of company credit cards 	Germany, Belgium, Slovenia ²¹⁰ , European Commission, UK, Latvia,
<ul style="list-style-type: none"> Business travel (expenses) 	Germany, Cyprus, Belgium, Slovenia, Italy, European Commission, UK, Latvia,
<ul style="list-style-type: none"> Private use of service provisions (photocopiers, computer and communications, stationery) 	Malta, Germany, Ireland, Cyprus, Belgium, Czech Republic, Slovenia ²¹¹ , Italy, Netherlands, European Commission, UK, Latvia, Lithuania, Bulgaria,
<ul style="list-style-type: none"> Dealing with confidential information 	Malta, Germany, Ireland, Hungary, Slovakia, Cyprus, Estonia, Belgium, Czech Republic, Finland, Slovenia, Sweden, Italy, Netherlands, European Commission, UK, Latvia, Lithuania, Poland, France, Bulgaria,
<ul style="list-style-type: none"> Engagement in political activities 	Malta, Germany, Ireland, Hungary, Slovakia, Cyprus, Belgium, Czech Republic, Slovenia, Italy, European Commission, UK, Poland, Bulgaria,
<ul style="list-style-type: none"> Payment for work on behalf of bodies outside the organisation 	Malta, Germany, Ireland, Cyprus, Czech Republic, Italy, European Commission, UK, Latvia, Bulgaria,

²⁰⁸ This is implicit in the requirements governing the reporting and registration of external interests.

²⁰⁹ The additional jobs for members of agency boards will be published in the financial annual report.

²¹⁰ More concrete regulations are to be found in the Budget Execution Act and internal regulations.

²¹¹ Additional and specific provisions are to be found in the governmental decree and internal acts.

A further major difference between the EU Member States, Bulgaria and the European Commission is the level at which this code has been adopted as well as the target group to which it refers.

Level of adoption of the code of conduct

• Level of central government	Malta, Germany, Hungary, Slovakia, Cyprus, Belgium, Czech Republic, Finland, Slovenia, Sweden ²¹² , Italy, European Commission, UK, Latvia, Poland, France, Estonia, Bulgaria ²¹³ ,
• Level of decentralised government, e.g. operational level	Belgium, Czech Republic, Slovenia, Netherlands, UK, Latvia, France, Estonia,
• Model code provided by central government, which may be adopted by public organisations	Malta, Germany, Hungary, Cyprus, Czech Republic, Finland, Italy, UK ²¹⁴ ,
• Every public organisation has its own code of conduct/ethical code	Czech Republic, Sweden ²¹⁵ , Italy ²¹⁶ , Netherlands, European Commission ²¹⁷ ,
• There are no codes of conduct	Luxembourg, Portugal, Denmark, Austria, Greece, Spain,

This table clearly shows that most of the codes of conduct are drawn up by central government, while in 8 countries, this competence is delegated to a decentralised or operational level. In Hungary, for example, there is no ethical code which is applicable to the whole Hungarian public administration. In some of the countries specific codes exist aimed at different target groups. In Ireland, for instance, new codes have been drafted or are in the process of being introduced for members of government, directors and members of staff in public bodies, local authority employees, local government councillors, and health sector staff. Rules of behaviour for civil servants are set out in Department of Finance circulars known as the Personnel Codes. While not superseding the existing circulars contained in the Personnel Codes, a draft Civil Service Code of Standards and Behaviour sets out in a single document the main principles governing the behaviour of civil servants and the values to which the civil service should aspire.

In the UK, too, there are a variety of more specific codes intended for special advisers, non-departmental public bodies and for ministers, etc. An interesting provision is contained in the Ministerial Code, which stipulates that ministers are required to uphold the political impartiality of the Civil Service and not to ask civil servants to act in any way which would infringe the Civil Service Code.

In addition, a different ethical framework exists for local government, which is based in the Local Government Act 2000. Under this act, all local authorities are required to adopt a local code of

²¹² There is a commonly accepted culture/code that a single public official shall not accept gifts to a value above the level due to taxation (i.e. some 300 SEK)

²¹³ At all levels of public administration, i.e. central, regional and local.

²¹⁴ For example in relation to Non-Departmental Public Bodies.

²¹⁵ This would of course demand a local agreement with the unions.

²¹⁶ Each institution can adopt its own code, on the basis of the code adopted (integration and specification) by the Department for public administration (Ministerial Decree 28.11.2000).

²¹⁷ Every European Institution

conduct, which must be based on a model code prescribed by government. The 2000 Act also created the Standards Board for England, an independent body which appoints ethical standards officers who have powers to investigate allegations of breaches of the code. Other examples in this context include Malta, where different codes have been adopted for employees, ministers, directors of public corporations and other entities, or Latvia, with its special professional ethics codes for special public sector professions and institutions. An example of organisational differentiation is for instance Sweden, where each public organisation may have its own code of conduct or ethical code, and therefore has the possibility to implement such a code.

4.2. Main conditions for effective functioning and implementation

One of the main weaknesses of codes of conduct is that in most cases, they are characterised by weak enforcement mechanisms as compared to other instruments. This means that on the one hand that they are more vulnerable to non-observance and violations, and on the other hand their successful implementation depends to a large extent on the existence of an environment of trust and being able to ensure the organisational adherence to a code.

The literature²¹⁸ relating to this topic largely agrees on the conditions of how to encourage the setting up of codes which have the necessary authority to be respected by staff.

A significant factor to consider is consultation with key stakeholders in the development phase, or in a more general way, the involvement of staff or staff representations in the drafting of such a code. In this context, a report about the implementation of codes of conduct in the private sector²¹⁹ identifies the fact that only 43% of companies involved staff in developing such codes as one of the significant failures for successful implementation. In this respect, the responses to the questionnaire are also quite revealing: They show that officials were represented in this process in some way or other in only half of the countries and the European Commission.

²¹⁸ See the references above.

²¹⁹ Transparency International, *op.cit.*, p. 149.

Involvement of employees and/or – political – representatives in drawing up codes of conduct.

<ul style="list-style-type: none"> • The employees – works – council or labour unions 	Hungary, Cyprus, Belgium, Denmark, Finland, Slovenia, Sweden, Netherlands, European Commission, UK, Poland, France, Ireland ²²⁰ , Germany
<ul style="list-style-type: none"> • The bodies of – political – representatives (e.g. city councils) 	Cyprus, Belgium, Denmark, Netherlands, UK ²²¹ , Latvia, Lithuania,
<ul style="list-style-type: none"> • No involvement 	Slovakia, Portugal, Italy, Estonia, Bulgaria, Malta

A further prerequisite for an effective code of conduct is that its content is expressed in such a way that it can easily be understood and implemented by the relevant target group. This hurdle can easily be overcome by drafting a code, which is clear, consistent, comprehensive and which has practical application. Consistency means that it harmonises with existing legislation and procedures, while clarity should aim at minimising ambiguity.²²²

Research²²³ in this context goes even further and sees a link between the effectiveness of codes of ethics and generation-related factors. The main arguments are that codes of conduct, in order to function well, must be adapted to the mentality of a generation and that substantial differences in values exist between the different generations. Consequently, there is a risk that existing codes are not convincing enough or do not have the required authority to guide civil servants in their behaviour. This may apply even more if the values contained in the codes of conduct are not supported by the political and administrative leaders. For instance, the younger generations' beliefs are far more focused on individuality, innovation and economy and not so much on authority, law and order. As a result, these beliefs should be taken into account in the code.

Furthermore, the effectiveness of codes might be weakened if they do not reflect the organisational culture in an adequate way. In this context, it is not wise to copy codes from one organisation to another or to transpose a code without taking into account key environmental factors. In a worst case scenario, this may lead to public officials being tempted to follow the example of others (even if such contradicts the formal guidelines) and to observe the content of the code only as a second step.²²⁴

A further significant factor for guaranteeing an effective functioning of codes relates to the implementation phase. Quite often, drafting of codes of conduct is looked upon as being an end in itself. This is only the first step, and in order to make the code a viable document and part of the organisational culture, an appropriate way must be found of making staff aware of the code.

²²⁰ Central Government Civil Service.

²²¹ For example the Public Administration Select Committee of the House of Commons.

²²² Lawton, op.cit., p.4.

²²³ Eleanor Glor, 'Codes of conduct and generations of public servants', in: *International Review of Administrative Sciences*, vol. 67, 2001, p. 525-541;

²²⁴ C.L., Jurkiewicz, *The Phantom Code of Ethics vs. The Formal Code of Ethics: The Battle between right and wrong amidst a culture of reform*, Paper delivered at the first specialised international conference of the IIAS, Sunningdale, UK, 12-15 July 1999, in: Bar Cendon, op.cit..

Dissemination of codes of conduct

Internet	Malta, Hungary, Slovakia, Belgium, Finland, Slovenia, Italy, Netherlands, UK, Latvia, Lithuania, Poland, France, Estonia, Bulgaria, Ireland, Germany,
Intranet	Malta, Hungary, Belgium, Czech Republic, Finland, Italy, Netherlands, European Commission, UK, Poland, France, Estonia, Bulgaria, Ireland, Germany,
Brochure	Malta, Slovakia, Belgium, Czech Republic, Finland, Italy, Netherlands, Poland, France, Bulgaria, Ireland, Germany,
Personnel employee/advisor	Czech Republic, Italy, Latvia, Lithuania, Estonia, Germany,
Individual mailing	UK ²²⁵ ,

But an effective communication and implementation of the standards of behaviour contained in the codes of conduct is not restricted to broad dissemination. Other key elements aimed at ensuring organisational adherence to the code include sensitive training measures and monitoring activities. Consequently, the above report²²⁶ arrives at the conclusion that fewer than half of the private sector companies in the survey had introduced minimum institutional infrastructure (e.g. helplines or hotlines) for reporting suspected misconduct. Although the above relates to the private sector, the need to monitor implementation is just as important in the public sector.

4.3. *The significance of rules on whistleblowing*

A key question in the field of ethics is which possibilities (e.g. reporting anonymously or to an independent commission) should be available to civil servants if they discover wrongdoings and what are the best means of protecting civil servants in such cases. Very often, civil servants hesitate to report cases of unethical behaviour for fear of negative consequences such as dismissal or a negative impact on their careers. It would seem to be in the interest of the official and the public organisation to establish clear procedures that facilitate the reporting of wrongdoings. If there are no such internal rules, civil servant concerned may opt to report to the media – which does not always lead to a constructive solution and which can easily damage the reputation of the public sector. It is important in this respect that reporting administrative abuses does not entail the victimisation of the whistleblower, and that instruments are in place to uncover these abuses.

However, this subject needs to be handled very carefully and human resource managers should be aware of certain negative impacts. For instance, an employee who blows the whistle on his department might himself be the subject of a disciplinary procedure by this same department. In this case, the whistleblowing procedure must not result in a postponement of the disciplinary procedure, and such procedures must not be used to harass supervisors²²⁷. However, such considerations must not prevent public administrations from introducing such procedures as these

²²⁵ All civil servants are given a copy of the code upon appointment

²²⁶ Transparency International, op.cit., p. 149ff.

²²⁷ Anechiarico, op.cit., p.69.

are necessary to protect civil servants from suffering discrimination as a consequence of whistleblowing.

A look at the practices in the EU Member States, Bulgaria and the European Commission shows that they have introduced different procedures to report suspicions of integrity breaches. These initiatives range from the possibility to report to the management at one extreme to the introduction of legal protection for whistleblowers with an independent commission at the other .

Whistleblowing procedures are defined as special mechanisms outside the chain of command, by which civil servants can lodge complaints if they have significant evidence of possible wrongdoings and are required to act.

Procedures to report suspicions of integrity breaches

• It is possible to report anonymously	Slovakia, Portugal, Slovenia, Sweden, Austria, European Commission, UK, Latvia, Bulgaria,
• It is possible to report to the management	Hungary, Slovakia, Cyprus, Portugal, Czech Republic, Slovenia, Sweden, Netherlands, Austria, UK, Latvia, France, Luxembourg, Bulgaria, Ireland, Germany, Malta,
• It is possible to report to a special integrity officer	Slovenia, Netherlands, European Commission, UK, Latvia, Germany,
• It is possible to report to an independent commission	Cyprus, Slovenia, Netherlands, European Commission, UK, Ireland, Italy ²²⁸ , Malta,
• The experiences of the independent commission are disclosed	Cyprus, Slovenia, Netherlands, UK,
• The management is obliged to inform the whistleblower about the outcome of its investigations and the steps taken	Netherlands, European Commission, UK, Latvia,
• Legal protection for whistleblowers	Slovenia Sweden, Netherlands, European Commission, UK, Latvia, Germany,
• There are no whistleblowers provisions	Hungary, Slovakia, Portugal, Belgium, Denmark, Czech Republic, Finland, Austria, Greece, Spain, Lithuania, Poland, France, Estonia, Luxembourg, Bulgaria,

This table shows that the different states have opted for different solutions to report suspicions of integrity breaches. In more than half of the states, no whistleblower provisions exist as such. Some accession refer to old communist traditions when they consider whistleblower provisions: Whistleblowing is easily associated with political spies and betrayal. However, some changes are expected in the future. In Estonia for instance, such a provision is foreseen in its anti-corruption strategy “Honest State”, while Hungary plans to introduce an ethical advising system. Furthermore, Slovenia considers its current procedure as insufficient.

²²⁸ According to law n° 165/2001, art.55, a special office is in charge to receive reports and to institute the procedures to apply disciplinary measures. Each manager reports to this office in case of disciplinary infringements committed by the staff assigned to his direction. This law also lays down, that in case of a controversy, the public servant can start legal proceedings to a single arbitrator.

The most extensive procedures have been adopted in the UK, the European Commission and in the Netherlands as well as in Sweden, where it is explicitly forbidden to try to trace an employee that has informed media about matters relating to the organisation.

VI. QUESTIONNAIRE: ETHICS IN THE PUBLIC SERVICE

Ethics in the Public Services of the Member States of the European Union

The ethical framework

The following questions refer to (legal) instruments which can be used when enhancing ethical standards in the field of public service. Codes of conduct or ethical codes are considered to be some of the most important instruments in this field. They give concrete expression to the idea of integrity and contain standards and values with which public organisations and staff should comply.

- 1a Does your country have a policy on safeguarding integrity in the public sector?
- Yes
 - No, not yet (go to question 2)
- 1b. If so, has your policy been implemented in legal provisions?
- in the Constitution
 - in act(s) (i.e. penal code) or special law(s) such as in a civil service law
 - in regulations
- 2a. Does your Government or other authorities use a code of conduct or an ethical code with which public organisations and staff must comply?
- Yes, at the level of central government
 - Yes, at the level of decentralised government, e.g. operational level
 - Yes, our central government has provided a model-code which may be adopted by public organisations
 - Every public organisation has its own code of conduct/ethical code
 - There are no codes of conduct/ethical codes
- 2b. If they exist, what is the legal nature of these codes of conduct and codes of ethics?
-
-
3. Which subjects are covered by the code of conduct/ethical code which applies to central government?
- Acceptance and/or giving of gifts and favours to business acquaintances
 - Reporting and registration of additional jobs and/or activities (also including consultancy activities)
 - Banning of (specific kinds of) additional jobs and/or activities activities (also including consultancy activities)
 - Publication of additional jobs and/or functions
 - Reporting of financial interests
 - Contracting consultants, interim managers etc. who were formerly staff
 - Purchasing and procurement
 - Acceptance of luncheons and dinners on the account of business relations

- Use of 'company' credit cards
- Business travel (expenses)
- Private use of service provisions (photocopiers, computer and communications, stationery)
- Dealing with confidential information
- Engagement in political activities
- Payment for work on behalf of bodies outside the organisation
- Other:

4a Do you plan to introduce measures in the field of ethics in order to prevent unethical behaviour?

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4b. If so, what form do they take?

- Legal measures
- Guidelines
- Administrative reforms
- Other: please specify

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5. If available, could you please provide statistics about the developments in the field of unethical behaviour and corruption

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Implementing standards and values in organisations and issuing codes of conduct may reduce integrity breaches by staff members. However, organisations themselves also bear responsibility to avoid or minimize the risk that staff are exposed to situations or circumstances in which they may be prone to unethical behaviour and provide protection as to that. Functions (e.g. involving financial contracting, procurement etc.) which are vulnerable in this matter must be identified and their risks known to the management.

6. Which of the following provisions do you use in certain circumstances to minimize the risks of unethical behaviour of staff in vulnerable positions (you may tick more than one)?

- Job rotation
- Separation of competences
- Screening of staff
- Sharing responsibilities among staff members
- No specific provisions
- Other:

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To prevent public servants from conflicts of interest you may have specific rules that impose obligations on staff to report additional jobs or interests which pose a threat to due functioning of a staff member. Some additional jobs or private activities are non-permitted.

7. Do you apply specific rules with regard to:

- Reporting and registration of additional jobs and activities?
- Is there a ban of certain additional jobs or activities?
- Are additional jobs and activities of civil servants published?
- Is there an obligation to report financial interests and stock transactions?
- Other:

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The acceptance of gifts and invitations to public officials may influence decision making. As a prevention specific rules may exist.

8. Which of the following special rules do you apply in order to prevent unwanted influencing of decision making?
- The obligation to report the acceptance of gifts and invitations
 - A prohibition to accept gifts and invitations
 - A prohibition to accept gifts and invitations with a value above a certain amount of money
 - There are no rules with regard to the acceptance of gifts and invitations
 - Other rules:

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Public organisations benefit when breaches of integrity (corruption, fraud etc.) are reported to the authorities so that violations may be investigated and measures may be taken. Organisations may have a procedure to deal with situations in which staff members want to make a report (so-called whistleblowing). Sometimes one should turn to an <integrity officer> in the organisation who is charged with dealing with integrity matters in a confidential way.

- 9a. Does a formal procedure exist to report suspicions of integrity breaches (whistleblowing) and if so, which elements and possibilities can be distinguished (you may tick more than one)?
- It is possible to report anonymously
 - It is possible to report to the management
 - It is possible to report to a special integrity officer
 - It is possible to report to an independent commission
 - The experiences of the independent commission are disclosed
 - The management is obliged to inform the whistleblower about the outcome of its investigations and the steps taken
 - Is there a legal protection provision for <whistleblowers>?
 - There is no <whistleblowers provision>

- 9b. Is there any appeal procedure relating to integrity breaches?
- Yes
 - No

- 9c. If yes, comment briefly on the procedure:

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Cultural and other factors

This part of the questionnaire refers to the question how ethical standards and values can be integrated in the organisation (e.g. through formal legislation, guidelines, notes or brochures) and how existing or additional instruments can be used to enhance integrity (e.g. in job evaluation and ,appraisal training and courses). In other words, how to increase the awareness of integrity of staff.

10. In which way does your Government draw attention to the interest of integrity? (Please tick the most relevant options)
- In brochures
 - Information on the intranet
 - Internal publication
 - Education and training courses
 - Dilemma training
 - Information sessions and work shops
 - In job evaluation and appraisal
 - Explanation of the policy on integrity on the occasion of the introduction of new staff
 - Involving the staff in drawing up the code of conduct
 - Report to the employees (works) council
 - Report to the body of (political) representatives
 - In annual budget publications and reports
 - None
11. In which way is the code of conduct published to staff of governmental agencies? (You may tick more than one option)
- Internet
 - Intranet
 - Brochure
 - Personnel employee/advisor
 - Individual mailing
 - There is no code of conduct
12. Have enquiries been made (e.g. an audit) within governmental agencies in 2002 or 2003 with regard to actions, functions and procedures which are vulnerable in terms of integrity?
- Yes, periodical
 - Yes, incidental
 - None

- 13a. Are the employees (works) council, labour unions and/or the body of (political) representatives involved in the development of the policy on integrity in your country?
(You may tick more than one option)
- Yes, the employees (works) council or labour unions
 - Yes, the bodies of (political) representatives (e.g. city councils)
 - No involvement
- 13b. If so, with regard to which of the following subjects:
- Drawing up codes of conduct
 - Drawing up regulations with concern to reporting on additional jobs and financial interests
 - Evaluation and accountability for the way the policy on integrity is executed
 - Not applicable
14. Which are the biggest challenges to foster high ethical standards in your civil service?
Please mark the three most relevant challenges.
- Corruption, bribery or other criminal activities
 - A low civil service ethos or no shared values
 - No clear mission for the civil service
 - A low morale of civil servants
 - Low salaries
 - Bad working conditions (such as time-limited contracts, low job security, no career prospects etc.)
 - Insufficient training on civil service values and on standards of conduct
 - Insufficient commitment and support of the topic of ethics by the management
 - The increased contacts between the public and the private sector through the enhanced trend towards private-public partnerships
15. Which are, according to you, the most efficient instruments to combat wrongdoings in the field of integrity?
- Punitive measures (both penal and administrative)
 - Codes of conduct
 - Training
 - Commitment by political leadership
 - Working conditions
 - Suspension by independent body
 - Other, such as
- 16a. In your experience, do new reform measures in the field of public management (e.g. improving mobility between the public and private sectors, decentralisation of responsibilities etc.) increase or decrease the risk of unethical behaviour in the civil service
- increase the risk of unethical behaviour in the civil service
 - decrease the risk of unethical behaviour in the civil service

16b. Please comment (give examples) to the extent on the increase or decrease

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17. All public services in the Member States have specific administrative traditions, styles and « administrative cultures ». What do you think is the link between the image and the administrative culture of the civil service in your country and ethical behaviour.

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Practical information:

Your answers, in English, French or German, should be returned by electronic mail by 15 March 2004 at the latest to:

the European Institute of Public Administration (EIPA), for the attention of the person in charge of the study, Dr Christoph Demmke, Associate Professor (c.demmke@eipa-nl.com), tel.: 0031 43 3296225 or 0031 3296 320, and for the attention of Danielle Bossaert (d.bossaert@EIPA-nl.com) , tel.: 0031 43 3296 367

the Irish Ministry of Finance, for the attention of Scline Scott (Scline.Scott@finance.gov.ie)

Distribution of results:

A summary report will be distributed to all delegations before the meeting in Ireland and – possibly – put on the Eipa- and or Circa web site.

Layers of Integrity

Society

- Religion, Philosophy
- Values and norms
- Culture
- History
- Political and legal system

Human Rights

National legal, political and administrative system

- Constitution
- Trust in the political system and public sector
- Openness and transparency
- Efficiency and effectiveness
- Separation of powers
- Reliable and effective judicial and control system (e.g. police)
- Political leadership and commitment

Democracy

National Public Service

- Image of the public service
- Working conditions
- Transparency of decision-making process
- Control
- Political leadership
- Codes of conduct
- National regulations
- Whistleblowing
- Disciplinary legislation

Accountability

Good Administration

Organisational level

- Culture, communication, transparency, control, guidelines (codes of ethics)
- Human resource management, working conditions, training, procedures, leadership, role models, job rotation, recruitment

Rule of law
Fairness

Efficiency

Effectiveness

Individual level

- Individual ethics, personal philosophy, community values, professional values etc.