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The Adoption of the Ethics Framework in EU Member States

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Introduction

The aim of this paper is to discuss the reception, incorporation and implementation of the Ethics Framework in the EU Member States. Based on the findings of a recent study on the current situation of public-service ethics in the EU countries (Moilanen & Salminen 2007), the paper sheds light on how well the national integrity systems reflect the standards set out in the general guidelines proposed in the Ethics Framework. It considers issues pertaining to core values and standards of behaviour as well as issues relating to implementation and enforcement. Finally, in addition to the significance of the Ethics Framework, the paper also discusses the main future issues and priorities concerning public-service ethics that require the most attention as envisaged by the respondents in their respective countries.

Before turning to the objectives of the paper, however, a description of the study on which this paper is based as well as the methodology employed in this study is presented. A short account of the Ethics Framework is also given with a view to facilitating an overall picture of it prior to its subsequent discussion.

Overview of the study and its methodology

The aim of the study referred to in this paper was to offer an overview of the current situation of public-service ethics in the EU Member States. It sought to capture the changes that had occurred since the introduction of the Ethics Framework and discuss the various measures that had been taken to promote public-service ethics by the member countries since 2003. Commissioned by the Ministry of Finance and the Finnish Presidency, it was conducted by Senior Assistant Timo Moilanen of Helsinki University and Prof. Ari Salminen of Vaasa University in cooperation with the European Public Administration Network (EUPAN) and its Human Resource Working Group (HRWG). The research was in fact a follow-up to the earlier study carried out in March 2004 by Bossaert and Demmke (2005). A full report of the research project entitled "Comparative Study on the Public-service Ethics of the EU Member States" was later published in January 2007¹.

The research project started in April 2006 and was completed in November that year. The findings are based on the 28 responses received to the survey questionnaire covering all 27 EU member states and the European Commission. The questionnaire was addressed to the state representatives working in the HRWG. Though replies to some questions were necessarily subjective in nature, the respondents were requested to answer in a manner so that their answers should reflect to the extent possible a broad view within their administration. In most cases, the HRWG representatives themselves filled out the questionnaire. In some cases, they forwarded the questionnaire to some expert or a group of experts. Generally speaking, the expertise and experience of the respondents was adequate to answer the questionnaire. The electronic questionnaires were returned to the researchers by email. The response rate to the questionnaire was 100 per cent. The results of this project apply very well to the national state central administrations but are less precise concerning the regional and local administrations.

Ethics Framework

The Ethics Framework is a voluntary, non-legally binding European Code of Ethics². It reflects the basic common values and standards which member states consider important for the proper functioning of public service. It comprehensively discusses the general core values, specific standards of conduct, actions to safeguard integrity and measures on handling situations where there has been possible violation of ethics. It helps to structure the discussion on public-service ethics and it serves as a toolkit or general guideline for the development of codes of conduct at a national and sub-national level. It was the Directors General responsible for the Public Administration who in their meeting in November 2004 agreed on the common values included in the Ethics Framework and invited each member state to consider how best to communicate the document to the public services. We will be discussing the content of the Ethics Framework in more detail throughout the latter part of this paper. However, it is good to note here that the Ethics Framework is not a unique document as such. In fact, the last decade has seen a number of

¹ The full report can be downloaded from the following internet address:

http://www.vm.fi/vm/en/04_publications_and_documents/01_publications/04_research/20070226Compar/Comparative_Study_on_the_Public_Service_Ethics_netti.pdf

² Ethics Framework is available on the CIRCA website (<http://forum.europa.eu.int/>). It has also been published in Bossaert & Demmke (2005, 253-267).

frameworks and codes of conduct for public officials. For example, Council of Europe has given its Model Code of Conduct for Public Officials [Recommendation No. R (2000) 10], European Parliament has adopted a resolution (6.9.2001) approving the European Code of Good Administrative Behaviour for European Union's institutions and bodies, OECD has published its Guidelines for Managing Conflict of Interest in the Public Service (2005), and United Nations has published its International Code of Conduct for Public Officials (A/RES/51/59, 12.12.1996). Despite some differences in their emphasis, these codes share their basic premises (compare Bossaert & Demmke 2005, 170-171).

Codes of conduct in EU member states

A well-written and well-implemented code of conduct is a useful instrument that clarifies the values and standards of official behaviour. In administrative ethics a distinction between code of ethics, code of conduct and code of rules and regulations is often made. Code of ethics discusses the principles of official behaviour, and it is typically very abstract. At the other extreme, code of rules and regulations sets the behavioural expectations and disciplinary consequences, and it is therefore highly concrete. The code of ethics is associated with the "high-road" or integrity-based ethics regime, while the code of rules and regulations is associated with the "low-road" or compliance-based ethics regime. Code of conduct lies in-between these two extremes: it contains mid-level norms that set both aspirational values and expectation values. Therefore, their level of abstractness varies from moderately abstract to moderately concrete. This distinction is a heuristic device and in practice these terms are used in a more or less interchangeable way. (Van Wart 2003, 333-334.)

In this paper we have adopted a distinction between a *value statement* and a *code of conduct*³. The reason for this is that in most cases the term 'code of ethics' was found to be too strong. Most of these documents that comprised one or two pages claimed to be ethical codes but they did not clearly specify ethical principles. Therefore, it was considered better to refer to them as value statements in this context. Value statements are used to announce the core values but they usually do not provide detailed rules on how to adopt these values in practical situations. For example, value statements generally state that transparency is a core value, but value statements do not provide guidelines on, for instance, how open civil servants can be towards the public on matters that are still under preparation. These kinds of guidelines or detailed standards of behaviour can be found from the code of conduct. A code of conduct can be seen as an extended value statement that transforms the values into practice.

Most of the member states have introduced a value statement or a code of conduct. Although these tools are not mutually exclusive and can be used simultaneously, the code of conduct generally includes the core values, thus eliminating the need for a separate value statement. These tools can be used on many levels: there may be a general code of conduct, branch-specific codes of conduct and agency-specific codes of conduct. General codes apply to all civil servants working in the central state administration, whereas branch-specific codes apply to civil servants working in a particular branch or sector of government, such as the judicial branch. Agency-specific codes apply only to the civil servants of a particular organisation in question.

According to the responses received from the member states, all these different options are indeed utilised. Based on the information gained from the data, half of the countries use general value statements and the other half use general codes of conduct. In seven cases both tools are used simultaneously, despite the fact that a code of conduct typically covers the issues contained in value statements. Also, the branch-specific value statements and codes and the agency-specific value statements and codes were frequently used. However, member states operated more on general level than on branch-specific or on agency level. For example, according to the terminology adopted in this paper, Estonia relies on a general-level value statement⁴, while Greece has adopted a general code of conduct. In Denmark the Ministry of Foreign Affairs (Danida) uses a code of conduct for persons related to foreign services. Slovenia has separate codes of conduct for personnel working in police and customs. In many countries the individual organisations have formulated their own agency-specific codes, too. In the Netherlands all government organisations are

³ Actually the term value statement is more used in business ethics, where a distinction is made between statement of core values, codes of conduct and corporate philosophy. These three concepts are seen as different types of codes of ethics (Boatright 2003, 399-400).

⁴ For more detailed analysis of the situation in Estonia see Saarnit (2006). See also Palidauskaite (2006), who compares the codes of conduct adopted in the Central and East European countries.

required to pursue an integrity policy, which includes a mandatory integrity code of conduct. Only in Cyprus, Luxembourg and Portugal there seems to be no statement of official ethics in the forms of separate value statement or code of conduct.

However, there is a need to be cautious in interpreting these findings. There are no good reasons for assuming that the number of value statements or codes of conduct would lead to better public-service ethics as such. The situation may in fact be more complex. In some countries, core values and basic standards might already be explicitly defined in the legislation, such as in the Civil Service Act. Furthermore, if there has not been coordination between the codes set at the different levels of government (i.e. general, branch-specific and agency-specific), the codes might be overlapping and even contradictory, thus creating confusion rather than offering any clear guidance. There also seems to be different interpretations with regard to what constitutes a code of conduct. In many cases, respondents considered that a document could not attain the status of code of conduct unless it had been passed by the Parliament (law) or accepted by an authority such as the Council of the State (directive or a decision in principle) or State Employers Office (staff regulations). In some cases respondents referred to a document that had not been officially authorised but had a de facto status of a code⁵.

In most cases, the code of conduct restates and elaborates the values and principles already embodied in legislation. This is useful since the relevant values and standards in many countries are scattered in numerous legal documents, which makes it difficult to locate the information and to understand the general idea of civil service. Value statement and code of conduct can be seen as two steps in the development of official ethics. As a first step, member states often begin by identifying their core values and promote them by announcing a statement of core values. After this, as the discussion on public-service ethics advances, the state is ready to introduce more systematic and detailed guidelines in the form of code of conduct. We anticipate that there might well be a third step in the development, and that is to take the codes of conduct down to the agency-level in order to provide more specific and useful guidelines for practical situations that vary between different agencies. This enables bottom-up approach to codes which probably leads into stronger commitment. The downside is that this approach increases discrepancies which may fragment the public-service ethics if not coordinated.

Core values. Originally, the Ethics Framework identifies six general core values that should be common to all member states. Here we have further divided them into eight values for analytical purposes. These values are the rule of law (“lawfulness”), impartiality/objectivity, transparency (“openness”), accountability, professionalism (“expertise”), duty of care, reliability (“confidence, trust”) and courtesy (“service principle”). If we believe that these are the core values, then they should be fully recognised in every country. According to data, the values were well reflected in the official documents with only minor exceptions. As expected, the principle of the rule of law was the most commonly recognised core value. Also, impartiality/objectivity, which comes quite close to the lawfulness as a value, was ranked high. Even the values that had the lowest ranking, e.g., reliability and courtesy, seem to be well recognised in the member countries. However, many countries mentioned that accountability was the newest value and it was in the process of taking its form. The respondents were also asked how well the above-mentioned core values were reflected in the administrative practices. Drawing on the respondents’ assessment, the most recognised real-life public-service values were lawfulness, impartiality/objectivity and professionalism, with accountability and courtesy being the last ones. In conclusion, the core values

⁵ For example, there are some guidebooks that in practice have the status of a code and are used in personnel training (Finland, Sweden).

specified in the Ethics Framework were clearly recognised in the official documents of the member states and the administrative practices seemed to follow the official values fairly well⁶. These findings are consistent with other surveys (e.g., OECD 2000, Bossaert & Demmke 2005, 42-43; 163-165).

Standards of behaviour. The Ethics Framework groups the specific standards of conduct into six main sections. The respondents were asked how these ethical issues were regulated in their country. (1) Handling of confidential information was regulated by law in all the 28 cases and was further elaborated in a code of conduct in 13 countries. Also, in the majority of the countries the standards concerning the (2) acceptance of gifts or favours, (3) avoiding interest conflicts – such as in purchasing decision-making, outside activities and financial interests – and (4) tendering regulations were regulated by law. Juridical regulations to counter (5) revolving door employment and regulations with regard to (6) the use of public resources, equipment and property were presently less common. It should be noted that all the above standards were also covered by the code of conduct, although only in the last case, the use of public resources, equipment and property, the code of conduct was the predominant tool. However, in order to understand what kind of impact the codes really have had compared with legislation requires a more detailed analysis. If properly used, legislation and code of conduct complement each other effectively.

Implementation: HR measures

It should be noticed that writing a code of conduct is one thing, ensuring that everyone is acting in accordance with its values and standards is another⁷. This is to say that implementation of a code is equally important as setting the values and standards. One important way to foster good administration, which has too often been neglected, is to integrate it with management systems, especially with policies on human resources. This is particularly important since a leader sets the standards for the whole organisation with his/her own example. The Ethics Framework lists five human resource management policies to promote better standards of integrity within the organisation. These policies are quite common among the member states. The data reflects that many of the countries use a specific component in training programmes for managers to promote high ethical standards. In half of the cases, there is a generic process such as a common training programme for all top civil servants. Leadership programmes emphasise that leader sets the example and is also responsible that the personnel acts in an appropriate manner⁸. Likewise, the personnel training is seen to address ethical issues, for example, how to avoid conflict of interest situations.

Communicating ethical values and standards is an important part of personnel management. Based on the data collected for this study, in the majority of the countries under observation organisations lay emphasis on integrity in their communications, stressing clear, specific and well-communicated values, standards and regulations. Ethical aspects can also be taken into account in recruitment procedures: the applicants' knowledge on ethics and integrity can be tested, or ethical dilemmas can be used in assessments, for example. The last HRM policy, i.e. mobility, seems to be used least of all. The idea behind this specific policy is to use job rotation in order to prevent corruption and to control potential conflict of interest situations. Policies on mobility are in wide use but they seem to focus on career planning and ignore ethical aspects. This might be an important policy in areas that are most prone to corruption and fraud, such as in construction and public procurement. Policies on rotation seem to be rather more common in business-life in which many companies rotate their in-buyers in order to avoid too close relationships between the buyers and the sellers.

⁶ It should be noted however that the question of real-life values is a demanding empirical question and we cannot generalise these findings to the European level. Actually, it is more likely that there exists a great deal of variation between the member states, and even inside a member state there can be expected to be many differences between different agencies and different levels of government. It is also possible if there were differences even inside a single agency.

⁷ Writing a plan does not make it work. Ulrich (1997) argues that world is full of wonderful strategies forgotten on the top shelf. Plan provides us the direction where we should go but we should not think that we have reached our objective right after we have published our plan. Implementation is a long process and full of uncertainties. See also Whitton (2001, 5), who writes that "Codes of Ethics and Codes of Conduct [...] have been implemented in various forms in most if not all western Civil Service systems. Almost irrespective of the particular content of such Codes, however, it is essential that ongoing professional training, effective institutionalisation by management, and committed leadership by political and administrative elites, be maintained or strengthened if such Codes are to be worth more than the paper on which they are printed".

⁸ This is important also because there is evidence that unethical behaviour is mostly an elitist problem related to leadership (Bossaert & Demmke 2005, 114).

Enforcement

There are many ways to fight corruption and other forms of unethical behaviour. The respondents were asked what instruments their countries had used in dealing with ethic-violation situations. The most common instruments were disciplinary measures and legal sanctions. Disciplinary measures range from written warnings to the termination of employment, and they were used in every country. Legal sanctions, including the punitive measures in the penal code, were reported to be used in 25 cases. Various reporting systems, based on formal or informal procedures, were also extensively employed. A number of countries had a special body to deal with ethic-violation situations. The provisions concerning the protection of whistle-blowers were used in 10 countries. The least used instrument was the confidential integrity counsellor (CIC) that was operative in six member states.

Future issues and priorities

The main future issues and priorities concerning public-service ethics as reported by the member states seem to be very divergent. However, some common tendencies can be pointed out. First, there is a considerable amount of activity among the member states to introduce codes of conduct. Second, several countries are working to improve training on ethical values and standards. Third, many countries are taking measures to fight against corruption. Fourth, several actions have been taken to strengthen the various bodies responsible for public service ethics. Fifth, new issues such as whistle-blowing, post-employment restrictions and regulations concerning lobbying have not been amply addressed yet and only few member states seem to have focused on them.

Concluding remarks

As can be discerned from the preceding discussion, public-service ethics is an issue that is taken seriously in every member state. However, member states are at different stages of development and measures that are considered necessary in one country may be deemed irrelevant in others. The Ethics Framework has had a greater impact on those new member states that are currently fighting against corruption. In the case of old member states, the Framework has had smaller impact since the core values have traditionally been an integral part of their administrative culture and many of the tools proposed in the Framework were already in use. This allows us the possibility to conclude that the introduction of the Ethics Framework has been useful to those countries that are still in the process of strengthening the ethical practices.

The authors of this research find the work done under the Dutch and Irish Presidencies on public-service ethics very important and the introduction of the Ethics Framework has been a significant contribution. Although all member states do not need the Ethics Framework, it has helped many new member states to recognise their blind spots and to design their own integrity systems. The Framework is a good reference and it helps the member states in the drafting of their own code of conduct.

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