Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service

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Background Information

The Recommendation was abrogated on 26 January 2017.

Background Information

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development;

CONSIDERING that ethical conduct in the public service contributes to the quality of democratic governance and economic and social progress by enhancing transparency and the performance of public institutions;

CONSIDERING that increased public concern with confidence in government has become an important public and political challenge for OECD Member countries;

RECOGNISING that public sector reforms are resulting in fundamental changes to public management that pose new ethical challenges;

RECOGNISING that although governments have different cultural, political and administrative environments, they often confront similar ethical challenges, and the responses in their ethics management show common characteristics;

RECOGNISING that Member countries are concerned to address ethical standards in public life by strengthening the efforts made by governments to improve ethical conduct;

HAVING REGARD to the political commitment of governments of Member countries, demonstrated by their actions to review and redefine their public service ethics framework;

CONSIDERING that public service integrity is essential for global markets to flourish and for international agreements to be respected;

HAVING REGARD to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions which was signed on 17 December 1997;

HAVING REGARD to other recent developments which further advance international understanding and co-operation in promoting ethical culture in the public service, such as the Resolution on Action Against Corruption, including the International Code of Conduct for Public Officials, passed by the United Nations on 12 December 1996, the Inter-American Convention Against Corruption adopted by the Organization of American States in March 1996, the Programme of Action Against Corruption approved by the Council of Europe in November 1996, including the preparation of a model European Code of Conduct for Public Officials, and the adoption by the European Council of the Action Plan to Combat Organized Crime on 28 April 1997 and the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union on 26 May 1997;

RECOGNISING the need of Member countries to have a point of reference when combining the elements of an effective ethics management system in line with their own political, administrative and cultural circumstances;

On the proposal of the Public Management Committee;

I.   **RECOMMENDS** that Member countries take action to ensure well-functioning institutions and systems for promoting ethical conduct in the public service. This can be achieved by:

- Developing and regularly reviewing policies, procedures, practices and institutions influencing ethical conduct in the public service;

- Promoting government action to maintain high standards of conduct and counter corruption in the public sector;

- Incorporating the ethical dimension into management frameworks to ensure that management practices are consistent with the values and principles of public service;

- Combining judiciously those aspects of ethics management systems based on ideals with those based on the respect of rules;

- Assessing the effects of public management reforms on public service ethical conduct;

- Using as a reference the Principles for Managing Ethics in the Public Service set out in the Annex to ensure high standards of ethical conduct.

II.   **INSTRUCTS** the Public Management Committee to:

- Analyse information provided by Member countries on how they apply these principles in their respective national contexts. The purpose of the analysis is to provide information on a comparative basis to support Member country actions to maintain well-functioning institutions and systems for promoting ethics;

- Provide support to Member countries to improve conduct in the public service by, *inter alia*, facilitating the process of information-sharing and disseminating promising practices in Member countries;

- Present a report in two years time analysing the experiences, actions and practices in the Member countries that have proved effective in a particular national context.

ANNEX

PRINCIPLES FOR MANAGING ETHICS IN THE PUBLIC SERVICE

Foreword

1.   High standards of conduct in the public service have become a critical issue for governments in OECD Member countries. Public management reforms involving greater devolution of responsibility and discretion for public servants, budgetary pressures and new forms of delivery of public services have challenged traditional values in the public service. Globalisation and the further development of international economic relations, including trade and investment, demand high recognisable standards of conduct in the public service. Preventing misconduct is as complex as the phenomenon of misconduct itself, and a range of integrated mechanisms are needed for success, including sound ethics management systems. Increased concern about decline of confidence in government and corruption has prompted governments to review their approaches to ethical conduct.

2.   In response to the above-mentioned challenges, the attached principles have been developed by the Member countries. The twelve principles are designed to help countries review the institutions, systems and mechanisms they have for promoting public service ethics. They identify the functions of guidance, management or control against which public ethics management systems may be checked. These principles distil the experience of OECD countries, and reflect shared views of sound ethics management. Member countries will find their own ways of balancing the various aspirational and compliance elements to arrive at an effective framework to suit their own circumstances.

3.   The principles may be used by management across national and sub-national levels of government. Political leaders may use them to review ethics management regimes and evaluate the extent to which ethics is operationalised throughout government. The principles are intended to be an instrument for countries to adapt to national conditions. They are not sufficient in themselves -- they should be seen as a way of integrating ethics management with the broader public management environment.

Principles for Managing Ethics in the Public Service

1.   Ethical Standards for Public Service should be Clear

Public servants need to know the basic principles and standards they are expected to apply to their work and where the boundaries of acceptable behaviour lie. A concise, well-publicised statement of core ethical standards and principles that guide public service, for example in the form of a code of conduct, can accomplish this by creating a shared understanding across government and within the broader community.

2.   Ethical Standards should be Reflected in the Legal Framework

The legal framework is the basis for communicating the minimum obligatory standards and principles of behaviour for every public servant. Laws and regulations could state the fundamental values of public service and should provide the framework for guidance, investigation, disciplinary action and prosecution.

3.   Ethical Guidance should be Available to Public Servants

Professional socialisation should contribute to the development of the necessary judgement and skills enabling public servants to apply ethical principles in concrete circumstances. Training facilitates ethics awareness and can develop essential skills for ethical analysis and moral reasoning. Impartial advice can help create an environment in which public servants are more willing to confront and resolve ethical tensions and problems. Guidance and internal consultation mechanisms should be made available to help public servants apply basic ethical standards in the workplace.

4.   Public Servants should know their Rights and Obligations when Exposing Wrongdoing

Public servants need to know what their rights and obligations are in terms of exposing actual or suspected wrongdoing within the public service. These should include clear rules and procedures for officials to follow, and a formal chain of responsibility. Public servants also need to know what protection will be available to them in cases of exposing wrongdoing.

5. Political Commitment to Ethics should Reinforce the Ethical Conduct of Public Servants

Political leaders are responsible for maintaining a high standard of propriety in the discharge of their official duties. Their commitment is demonstrated by example and by taking action that is only available at the political level, for instance by creating legislative and institutional arrangements that reinforce ethical behaviour and create sanctions against wrongdoing, by providing adequate support and resources for ethics-related activities throughout government and by avoiding the exploitation of ethics rules and laws for political purposes.

6. The Decision-Making Process should be Transparent and Open to Scrutiny

The public has a right to know how public institutions apply the power and resources entrusted to them. Public scrutiny should be facilitated by transparent and democratic processes, oversight by the legislature and access to public information. Transparency should be further enhanced by measures such as disclosure systems and recognition of the role of an active and independent media.

7. There should be Clear Guidelines for Interaction between the Public and Private Sectors

Clear rules defining ethical standards should guide the behaviour of public servants in dealing with the private sector, for example regarding public procurement, outsourcing or public employment conditions. Increasing interaction between the public and private sectors demands that more attention should be placed on public service values and requiring external partners to respect those same values.

8. Managers should Demonstrate and Promote Ethical Conduct

An organisational environment where high standards of conduct are encouraged by providing appropriate incentives for ethical behaviour, such as adequate working conditions and effective performance assessment, has a direct impact on the daily practice of public service values and ethical standards. Managers have an important role in this regard by providing consistent leadership and serving as role models in terms of ethics and conduct in their professional relationship with political leaders, other public servants and citizens.

9. Management Policies, Procedures and Practices should Promote Ethical Conduct

Management policies and practices should demonstrate an organisation's commitment to ethical standards. It is not sufficient for governments to have only rule-based or compliance-based structures. Compliance systems alone can inadvertently encourage some public servants simply to function on the edge of misconduct, arguing that if they are not violating the law they are acting ethically. Government policy should not only delineate the minimal standards below which a government official's actions will not be tolerated, but also clearly articulate a set of public service values that employees should aspire to.

10. Public Service Conditions and Management of Human Resources should Promote Ethical Conduct

Public service employment conditions, such as career prospects, personal development, adequate remuneration and human resource management policies should create an environment conducive to ethical behaviour. Using basic principles, such as merit, consistently in the daily process of recruitment and promotion helps operationalise integrity in the public service.

11. Adequate Accountability Mechanisms should be in Place within the Public Service

Public servants should be accountable for their actions to their superiors and, more broadly, to the public. Accountability should focus both on compliance with rules and ethical principles and on achievement of results. Accountability mechanisms can be internal to an agency as well as government-wide, or can be provided by civil society. Mechanisms promoting accountability can be designed to provide adequate controls while allowing for appropriately flexible management.

12.   *Appropriate Procedures and Sanctions should Exist to Deal with Misconduct*

Mechanisms for the detection and independent investigation of wrongdoing such as corruption are a necessary part of an ethics infrastructure. It is necessary to have reliable procedures and resources for monitoring, reporting and investigating breaches of public service rules, as well as commensurate administrative or disciplinary sanctions to discourage misconduct. Managers should exercise appropriate judgement in using these mechanisms when actions need to be taken.

BACKGROUND NOTE

The Need to Improve Ethical Conduct in the Public Service

1.   OECD Member countries have introduced significant management reforms which have changed the way the public sector operates. However, it is important to ensure that the gains in efficiency and effectiveness are not achieved to the detriment of ethical conduct. New ways of carrying out the business of government are creating situations in which public servants need to be highly attuned to ethical issues, and where there may be few guidelines as to how they should act. Reforms involving decentralisation of power to organisations at sub-national level, devolution of responsibility and greater managerial discretion, increased commercialisation of the public sector and a changing public/private sector interface place public servants more frequently in situations involving conflicts of interest or objectives. At the same time, many countries are finding that the systems that have traditionally governed and guided the behaviour of public servants are insufficient for the new managerial roles public servants are expected to play, and are indeed often in conflict with the demands being made on managers and staff in the new public sector environment. These new situations create dilemmas that need to be resolved, and that require ethical analysis and moral reasoning.

2.   Of further concern is the apparent decline in confidence in government and public institutions in many countries, and the implications this has for the legitimacy of government and public institutions. Weakening confidence is associated, at least in part, with revelations of inappropriate actions - and in some cases outright corruption - on the part of public officials. It is unclear whether standards of conduct are actually falling, or whether mistakes and misdemeanours are simply more visible in these days of open government, an enquiring media and a more sophisticated public. What is clear is that ethics and standards in public life have become more of a public and political issue in some countries demanding effective action by the governments concerned.

3.   Some remedial measures, broadly speaking, have the potential both to promote ethical behaviour and to prevent misconduct. Traditionally, increased regulation and stricter law enforcement have been the first responses to misconduct in the public sector. International initiatives have been concentrated on the development of concrete elements in the ethics infrastructure, mainly to prevent or criminalise certain forms of wrongdoing, such as corruption.

4.   OECD Member countries have taken collective actions to criminalise bribery of foreign public officials They adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on 21 November 1997. The United Nations passed the Resolution on Action Against Corruption, including the International Code of Conduct for Public Officials, on 12 December 1996. The Organization of American States adopted the Inter-American Convention Against Corruption in March 1996. The European Council adopted an Action Plan to Combat Organized Crime on 28 April 1997 and the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union on 26 May 1997. The Council of Europe approved the Programme of Action Against Corruption in November 1996, including the preparation of a model European Code of Conduct for Public Officials, and which underpins the co-operation of 40 countries in fighting corruption, money laundering, computer crimes and organised crimes.

5.   Underlying PUMA's contribution in this area is the conviction that preventing misconduct is as complex as the phenomenon of misconduct itself, and that a combination of interrelated mechanisms, including a robust ethics infrastructure, sound ethics management systems, specific prevention techniques and effective law enforcement are needed for success. An ethics infrastructure to promote ethics and prevent misconduct

6.   Significantly, OECD Member countries are increasingly exploring the application of administrative and preventative action. As countries implement more managerial approaches in the public sector, they are finding that a centralised, compliance-based approach to ethics management is incompatible with a devolved, results-based public management system. There is a trend towards a greater reliance on mechanisms that define and promote aspirational values for the public sector and encourage good behaviour.

7. In 1996 and 1997 PUMA conducted two surveys on the management of ethics and conduct in the public sector involving twenty-three Member countries. The first report, "Ethics in the Public Service: Current Issues and Practice", was based on studies of nine countries[1], and identified the factors that affect standards of ethics and conduct in the public service, and the initiatives being taken by governments to strengthen ethics management frameworks. The report identified a set of instruments necessary to governments for promoting integrity and preventing corruption, which was termed an "ethics infrastructure".

8. The key issue addressed in the report is how public servants can be supported in observing the highest standards of integrity and ethics in a rapidly changing public sector environment, without undermining the main thrust of public management reforms, which aim to enhance efficiency and effectiveness. All of the countries included in the study employ a range of tools and processes to regulate against undesirable behaviour and to provide incentives to good conduct.

The Ethics Infrastructure

A well-functioning Ethics Infrastructure supports a public sector environment which encourages high standards of behaviour. Each function and element is a separate, important building block, but the individual elements should be complementary and mutually reinforcing. The elements need to interact to achieve the necessary synergy to become a coherent and integrated infrastructure. The elements of infrastructure can be categorised according to the main functions they serve -- guidance, management and control -- noting that different elements may serve more than one function.

Guidance is provided by strong commitment from political leadership; statements of values such as codes of conduct; and professional socialisation activities such as education and training.

Management can be realised through co-ordination by a special body or an existing central management agency, and through public service conditions, management policies and practices.

Control is assured primarily through a legal framework enabling independent investigation and prosecution; effective accountability and control mechanisms; transparency, public involvement and scrutiny.

The ideal mix and degree of these functions will depend on the cultural and political-administrative milieu of each country.

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9. A second report, based on studies of an additional fourteen countries[2], provides further information on the formulation of the principles as an operational document for Member countries in reviewing the national ethics framework, the functions and elements of an ethics infrastructure. New ethics initiatives by governments of Member countries, particularly over the last five years, signal some common directions, as well as an increased concern by governments to examine the effectiveness of their ethics management regimes in relation to wider public management reforms.

10. The rapidly changing environment requires regular review of policies, practices and procedures affecting public sector ethical conduct. The principles for ethical conduct in the public service, set out in this document, are designed to be a reference for carrying out such reviews and to check the validity of existing functions and elements of the ethics infrastructure.

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[1] Australia, Finland, Mexico, Netherlands, New Zealand, Norway, Portugal, the United Kingdom and the United States. The individual country reports are available on the OECD Home Page on the Internet at http://www.oecd.org/puma/.

[2] The participating countries for the survey were Belgium, the Czech Republic, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea, Mexico, Poland, Spain, Sweden and Switzerland. The draft report was provided as a background paper for the OECD Symposium on Ethics in the Public Sector: Challenges and Opportunities for OECD Countries in November 1997.

About the OECD

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

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OECD Legal Instruments

Since the creation of the OECD in 1961, around 460 substantive legal instruments have been developed within its framework. These include OECD Acts (i.e. the Decisions and Recommendations adopted by the OECD Council in accordance with the OECD Convention) and other legal instruments developed within the OECD framework (e.g. Declarations, international agreements).

All substantive OECD legal instruments, whether in force or abrogated, are listed in the online Compendium of OECD Legal Instruments. They are presented in five categories:

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- **Substantive Outcome Documents** are adopted by the individual listed Adherents rather than by an OECD body, as the outcome of a ministerial, high-level or other meeting within the framework of the Organisation. They usually set general principles or long-term goals and have a solemn character.

- **International Agreements** are negotiated and concluded within the framework of the Organisation. They are legally binding on the Parties.

- **Arrangement, Understanding and Others**: several other types of substantive legal instruments have been developed within the OECD framework over time, such as the Arrangement on Officially Supported Export Credits, the International Understanding on Maritime Transport Principles and the Development Assistance Committee (DAC) Recommendations.