

GMC (2000) 26 MULTIDISCIPLINARY GROUP ON CORRUPTION (GMC)

Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials

(Adopted by the Committee of Ministers at its 106 th Session on 11 May 2000)

Directorate General I (Legal Affairs) 26 May 2000.3

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, Considering that the aim of the Council of Europe is to achieve a greater unity between its members; Considering that public administrations play an essential role in democratic societies and that they must have at their disposal suitable personnel to carry out properly the tasks which are assigned to them; Considering that public officials are the key element of a public administration, that they have specific duties and obligations, and that they should have the necessary qualifications and an appropriate legal and material environment in order to carry out their tasks effectively; Convinced that corruption represents a serious threat to the rule of law, democracy, human rights, equity and social justice, that it hinders economic development and endangers the stability of democratic institutions and the moral foundations of society; Having regard to the recommendations adopted at the 19th and 21st Conferences of European Ministers of Justice (Valletta, 1994 and Prague, 1997 respectively); Having regard to the Programme of Action against Corruption adopted by the

Committee of Ministers in 1996; Having regard to Recommendation No. R (81) 19 of the Committee of Ministers of the Council of Europe on the access to information held by public authorities; Having regard to Recommendation No. R (2000) 6 of the Committee of Ministers of the Council of Europe on the status of public officials in Europe; In accordance with the Final Declaration and the Plan of Action adopted by the heads of state and government of the Council of Europe at their Second Summit, held in Strasbourg, on 10 and 11 October 1997; Recalling in this respect the importance of the participation of non-member states in the Council of Europe's activities against corruption and welcoming their valuable contribution to the implementation of the Programme of Action against Corruption; Having regard to Resolution (97) 24 on the twenty guiding principles for the fight against corruption; .4 Having regard to Resolutions (98) 7 and (99) 5 authorising and respectively adopting the Enlarged Partial Agreement establishing the Group of States against Corruption (GRECO), which aims at improving the capacity of its members to fight corruption by following up compliance with their undertakings in this field; Convinced that raising public awareness and promoting ethical values are valuable as means to prevent corruption, Recommends that the governments of member states promote, subject to national law and the principles of public administration, the adoption of national codes of conduct for public officials based on the model code of conduct for public officials annexed to this Recommendation; and Instructs the Group of States against Corruption (GRECO) to monitor the implementation of this Recommendation..5

Appendix to Recommendation No. R (2000) 10

Model code of conduct for public officials

Interpretation and application

Article 1

1. This Code applies to all public officials.
2. For the purpose of this Code "public official" means a person employed by a public authority.
3. The provisions of this Code may also be applied to persons employed by private organisations performing public services.
4. The provisions of this Code do not apply to publicly elected representatives, members of the government and holders of judicial office.

Article 2

1. On the coming into effect of this Code, the public administration has a duty to inform public officials about its provisions.
2. This Code shall form part of the provisions governing the employment of public officials from the moment they certify that they have been informed about it.
3. Every public official has the duty to take all necessary action to comply with the provisions of this Code.

Article 3 – Object of the Code

The purpose of this Code is to specify the standards of integrity and conduct to be observed by public officials, to help them meet those standards and to inform the public of the conduct it is entitled to expect of public officials.

General principles

Article 4

1. The public official should carry out his or her duties in accordance with the law, and with those lawful instructions and ethical standards which relate to his or her

functions..6

2. The public official should act in a politically neutral manner and should not attempt to frustrate the lawful policies, decisions or actions of the public authorities.

Article 5

1. The public official has the duty to serve loyally the lawfully constituted national, local or regional authority.

2. The public official is expected to be honest, impartial and efficient and to perform his or her duties to the best of his or her ability with skill, fairness and understanding, having regard only for the public interest and the relevant circumstances of the case.

3. The public official should be courteous both in his or her relations with the citizens he or she serves, as well as in his or her relations with his or her superiors, colleagues and subordinate staff.

Article 6

In the performance of his or her duties, the public official should not act arbitrarily to the detriment of any person, group or body and should have due regard for the rights, duties and proper interests of all others.

Article 7

In decision making the public official should act lawfully and exercise his or her discretionary powers impartially, taking into account only relevant matters.

Article 8

1. The public official should not allow his or her private interest to conflict with his or her public position. It is his or her responsibility to avoid such conflicts of interest, whether real, potential or apparent.

2. The public official should never take undue advantage of his or her position for his or her private interest.

Article 9

The public official has a duty always to conduct himself or herself in a way that the public's confidence and trust in the integrity, impartiality and effectiveness of the public service are preserved and enhanced..7

Article 10

The public official is accountable to his or her immediate hierarchical superior unless otherwise prescribed by law.

Article 11

Having due regard for the right of access to official information, the public official has a duty to treat appropriately, with all necessary confidentiality, all information and documents acquired by him or her in the course of, or as a result of, his or her employment.

Article 12 – Reporting

1. The public official who believes he or she is being required to act in a way which is unlawful, improper or unethical, which involves maladministration, or which is otherwise inconsistent with this Code, should report the matter in accordance with the law.
2. The public official should, in accordance with the law, report to the competent authorities if he or she becomes aware of breaches of this Code by other public officials.
3. The public official who has reported any of the above in accordance with the law and believes that the response does not meet his or her concern may report the matter in writing to the relevant head of the public service.
4. Where a matter cannot be resolved by the procedures and appeals set out in the legislation on the public service on a basis acceptable to the public official concerned, the public official should carry out the lawful instructions he or she has been given.
5. The public official should report to the competent authorities any evidence, allegation or suspicion of unlawful or criminal activity relating to the public service coming to his or her knowledge in the course of, or arising from, his or her employment. The investigation of the reported facts shall be carried out by the competent authorities.
6. The public administration should ensure that no prejudice is caused to a public official who reports any of the above on reasonable grounds and in good faith.

Article 13 – Conflict of interest

1. Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties.
2. The public official's private interest includes any advantage to himself or herself, to his

or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto..8

3. Since the public official is usually the only person who knows whether he or she is in that situation, the public official has a personal responsibility to:

- be alert to any actual or potential conflict of interest;
- take steps to avoid such conflict;
- disclose to his or her supervisor any such conflict as soon as he or she becomes aware of it;
- comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict.

4. Whenever required to do so, the public official should declare whether or not he or she has a conflict of interest.

5. Any conflict of interest declared by a candidate to the public service or to a new post in the public service should be resolved before appointment.

Article 14 – Declaration of interests

The public official who occupies a position in which his or her personal or private interests are likely to be affected by his or her official duties should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur the nature and extent of those interests.

Article 15 – Incompatible outside interests

1. The public official should not engage in any activity or transaction or acquire any position or function, whether paid or unpaid, that is incompatible with or detracts from the proper performance of his or her duties as a public official. Where it is not clear whether an activity is compatible, he or she should seek advice from his or her superior.

2. Subject to the provisions of the law, the public official should be required to notify and seek the approval of his or her public service employer to carry out certain activities, whether paid or unpaid, or to accept certain positions or functions outside his or her public service employment.

3. The public official should comply with any lawful requirement to declare membership of, or association with, organisations that could detract from his or her position or proper

performance of his or her duties as a public official..9

Article 16 – Political or public activity

1. Subject to respect for fundamental and constitutional rights, the public official should take care that none of his or her political activities or involvement on political or public debates impairs the confidence of the public and his or her employers in his or her ability to perform his or her duties impartially and loyally.
2. In the exercise of his or her duties, the public official should not allow himself or herself to be used for partisan political purposes.
3. The public official should comply with any restrictions on political activity lawfully imposed on certain categories of public officials by reason of their position or the nature of their duties.

Article 17 – Protection of the public official' s privacy

All necessary steps should be taken to ensure that the public official's privacy is appropriately respected; accordingly, declarations provided for in this Code are to be kept confidential unless otherwise provided for by law.

Article 18 – Gifts

1. The public official should not demand or accept gifts, favours, hospitality or any other benefit for himself or his or her family, close relatives and friends, or persons or organisations with whom he or she has or has had business or political relations which may influence or appear to influence the impartiality with which he or she carries out his or her duties or may be or appear to be a reward relating to his or her duties. This does not include conventional hospitality or minor gifts.
2. Where the public official is in doubt whether he or she can accept a gift or hospitality, he or she should seek the advice of his or her superior.

Article 19 – Reaction to improper offers

If the public official is offered an undue advantage he or she should take the following steps to protect himself or herself:

- refuse the undue advantage; there is no need to accept it for use as evidence;
- try to identify the person who made the offer;
- avoid lengthy contacts, but knowing the reason for the offer could be useful in

evidence;

- if the gift cannot be refused or returned to the sender, it should be preserved, but handled as little as possible; .10
- obtain witnesses if possible, such as colleagues working nearby;
- prepare as soon as possible a written record of the attempt, preferably in an official notebook;
- report the attempt as soon as possible to his or her supervisor or directly to the appropriate law enforcement authority;
- continue to work normally, particularly on the matter in relation to which the undue advantage was offered.

Article 20 – Susceptibility to influence by others

The public official should not allow himself or herself to be put, or appear to be put, in a position of obligation to return a favour to any person or body. Nor should his or her conduct in his or her official capacity or in his or her private life make him or her susceptible to the improper influence of others.

Article 21 – Misuse of official position

1. The public official should not offer or give any advantage in any way connected with his or her position as a public official, unless lawfully authorised to do so.
2. The public official should not seek to influence for private purposes any person or body, including other public officials, by using his or her official position or by offering them personal advantages.

Article 22 – Information held by public authorities

1. Having regard to the framework provided by domestic law for access to information held by public authorities, a public official should only disclose information in accordance with the rules and requirements applying to the authority by which he or she is employed.
2. The public official should take appropriate steps to protect the security and confidentiality of information for which he or she is responsible or of which he or she becomes aware.

3. The public official should not seek access to information which it is inappropriate for him or her to have. The public official should not make improper use of information which he or she may acquire in the course of, or arising from, his or her employment.
4. Equally the public official has a duty not to withhold official information that should properly be released and a duty not to provide information which he or she knows or has reasonable ground to believe is false or misleading..11

Article 23 – Public and official resources

In the exercise of his or her discretionary powers, the public official should ensure that on the one hand the staff, and on the other hand the public property, facilities, services and financial resources with which he or she is entrusted are managed and used effectively, efficiently and economically. They should not be used for private purposes except when permission is lawfully given.

Article 24 – Integrity checking

1. The public official who has responsibilities for recruitment, promotion or posting should ensure that appropriate checks on the integrity of the candidate are carried out as lawfully required.
2. If the result of any such check makes him or her uncertain as to how to proceed, he or she should seek appropriate advice.

Article 25 – Supervisory accountability

1. The public official who supervises or manages other public officials should do so in accordance with the policies and purposes of the public authority for which he or she works. He or she should be answerable for acts or omissions by his or her staff which are not consistent with those policies and purposes if he or she has not taken those reasonable steps required from a person in his or her position to prevent such acts or omissions.
2. The public official who supervises or manages other public officials should take reasonable steps to prevent corruption by his or her staff in relation to his or her office. These steps may include emphasising and enforcing rules and regulations, providing appropriate education or training, being alert to signs of financial or other difficulties of his or her staff, and providing by his or her personal conduct an example of propriety and integrity.

Article 26 – Leaving the public service

1. The public official should not take improper advantage of his or her public office to

obtain the opportunity of employment outside the public service.

2. The public official should not allow the prospect of other employment to create for him or her an actual, potential or apparent conflict of interest. He or she should immediately disclose to his or her supervisor any concrete offer of employment that could create a conflict of interest. He or she should also disclose to his or her superior his or her acceptance of any offer of employment.

3. In accordance with the law, for an appropriate period of time, the former public official should not act for any person or body in respect of any matter on which he or she acted for, or advised, the public service and which would result in a particular benefit to that person or body..12

4. The former public official should not use or disclose confidential information acquired by him or her as a public official unless lawfully authorised to do so.

5. The public official should comply with any lawful rules that apply to him or her regarding the acceptance of appointments on leaving the public service.

Article 27 – Dealing with former public officials The public official should not give preferential treatment or privileged access to the public service to former public officials.

Article 28 – Observance of this Code and sanctions

1. This Code is issued under the authority of the minister or of the head of the public service. The public official has a duty to conduct himself or herself in accordance with this Code and therefore to keep himself or herself informed of its provisions and any amendments. He or she should seek advice from an appropriate source when he or she is unsure of how to proceed.

2. Subject to Article 2, paragraph 2, the provisions of this Code form part of the terms of employment of the public official. Breach of them may result in disciplinary action.

3. The public official who negotiates terms of employment should include in them a provision to the effect that this Code is to be observed and forms part of such terms.

4. The public official who supervises or manages other public officials has the responsibility to see that they observe this Code and to take or propose appropriate disciplinary action for breaches of it.

5. The public administration will regularly review the provisions of this Code..13

Explanatory Memorandum To the Recommendation No. R(2000) 10 of the Committee of Ministers to member States on Codes of Conduct for Public Officials (*adopted by the Committee of Ministers on 11 May 2000 at its 106 th Session*)

EXPLANATORY MEMORANDUM

Introduction

1. The Council of Europe became strongly interested in the international fight against corruption because of the obvious threat corruption poses to the basic principles this organisation stands for: the rule of law, the stability of democratic institutions, human rights and social and economic progress. Corruption is also a subject well-suited for international co-operation: it is a problem shared by most, if not all, member States and it often contains trans-national elements. However, the specificity of the Council of Europe lies in its multidisciplinary approach, meaning that it deals with corruption from a criminal, civil and administrative law point of view.
2. At the 1994 Malta Conference of the European Ministers of Justice, the Council of Europe launched its initiative against corruption. The Ministers considered that corruption was a serious threat to democracy, the rule of law and human rights and that the Council of Europe, being the pre-eminent European institution defending these fundamental values, should respond to that threat.
3. The Resolution adopted at this Conference endorsed the need for a multidisciplinary approach, and recommended the setting up of a Multidisciplinary Group on Corruption with the task of examining what measures could be included in a programme of action at international level, and the possibility of drafting model laws or codes of conduct, including international conventions, on this subject. The importance of elaborating a follow-up mechanism to implement the undertakings contained in such instruments was also underlined.
4. In the light of these recommendations, the Committee of Ministers agreed, in September 1994, to set up the Multidisciplinary Group on Corruption (GMC) under the joint responsibility of the European Committee on Crime Problems (CDPC) and the European Committee on Legal Co-operation (CDCJ) and invited it to examine what measures would be suitable for a programme of action at international level against corruption, to make proposals on priorities and working structures, taking due account of the work of other international organisations and to examine the possibility of drafting model laws or codes of conduct in selected areas, including the elaboration of an international convention on this subject and a follow-up mechanism to implement undertakings contained in such instruments. The GMC started operating in March 1995..14
5. The Programme of Action against Corruption (PAC), prepared by the GMC in the course of 1995 and adopted by the Committee of Ministers at the end of 1996, is an ambitious document, which attempts to cover all aspects of the international fight against this phenomenon. It defines the areas in which action is necessary and provides for a number of measures to be followed in order to realise a global, multidisciplinary and comprehensive approach to tackling corruption. The Committee of Ministers instructed

the GMC to implement this programme before the end of the year 2000.

6. At their 21st Conference (Prague 1997), the European Ministers of Justice adopted Resolution No 1 on the links between corruption and organised crime. The Ministers emphasised that corruption represents a major threat to the rule of law, democracy and human rights, fairness and social justice, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society. They further underlined that a successful strategy to combat corruption and organised crime requires a firm commitment by States to join their efforts, share their experience and take common actions. The European Ministers of Justice specifically recommended speeding up the implementation of the Programme of Action against corruption and to pursue the work concerning the elaboration of a model code of conduct for public officials.

7. On 10 and 11 October 1997, the 2nd Summit of the Heads of State and Government of the member States of the Council of Europe took place in Strasbourg. The Heads of State and Government, in order to seek common responses to the challenges posed by corruption throughout Europe and to promote co-operation among Council of Europe member States in the fight against corruption, instructed, *inter alia*, the Committee of Ministers to secure the rapid completion of international legal instruments pursuant to the Council of Europe's Programme of Action against Corruption.

8. The Committee of Ministers, at its 101st Session on 6 November 1997, adopted Resolution (97) 24 on the 20 Guiding Principles for the fight against Corruption. Principle 10 specifically indicates that States should "ensure that the rules relating to the rights and duties of public officials take into account the requirements of the fight against corruption and provide for appropriate and effective disciplinary measures; and to promote further specification of the behaviour expected from public officials by appropriate means, such as codes of conduct".

9. Consequently, following the adoption of the Criminal Law Convention on Corruption (European Treaty Series No 173), of Resolutions (98) 7 and (99) 5, authorising and establishing, respectively, the "Group of States against Corruption (GRECO)" and of the Civil Law Convention on Corruption (European Treaty Series No 174), the Council of Europe adopted a recommendation inviting the Governments of member States to promote, subject to national law and principles of public administration, the adoption of national codes of conduct for public officials based on the Model Code of Conduct for Public Officials annexed to the recommendation..15

Preparatory work

10. In January 1996 the Committee of Ministers at the 554 th meeting of the Ministers' Deputies required the GMC to elaborate a draft [European] Code of Conduct for Public Officials.

11. However, in the course of the preparation of this text, the GMC agreed to delete the

term “European” in the title of the Model Code in order to acknowledge the contribution of non-member States to the implementation of the Programme of action against corruption and to take into account the fact that some non-European States may wish to draw inspiration from this code.

12. The GMC’s Working Group on Administrative and Constitutional Law (GMCA) met 6 times from 1997 to 1999 to consider and finalise a draft recommendation of the Committee of Ministers including in appendix a model code of conduct. The GMC examined this text at its 18 th meeting (Strasbourg, 8-10 September 1999), approved it in second reading at its 19 th meeting (Strasbourg, 8-10 December 1999) and submitted it to the European Committee on Legal Co-operation (CDCJ) for its opinion. The GMC considered the CDCJ opinion and approved the draft recommendation at its 20th plenary meeting (Strasbourg, 11-13 April 2000). The Committee of Ministers of the Council of Europe adopted the Recommendation at its 106 session (Strasbourg, 11 May 2000) and authorised the publication of the explanatory report.

Public service codes of conduct in general

Context 13. A successful strategy for fighting corruption should be global and supported by all parties concerned, especially by those with the highest responsibilities. It should be based on prevention, education and enforcement. Each of these elements is essential, equally important and complementary. In this context codes of conduct play a part in all three elements of the strategy. Their main contribution is educational and preventive, but they also have enforcement aspects. They can be effective in changing the ethical climate in both the public and private sectors. Common considerations

14. In the discussion concerning corruption over the past years, the adoption and implementation of codes of conduct has been considered to be of crucial importance. However, voluntary regulation of behaviour by codes of conduct cannot replace legal norms and external control (by authorities or business auditors). Corruption can in fact occur despite subscription to a code of conduct. Accordingly, the public sometimes suspects that companies use much publicised codes of conduct mainly as a means for marketing. An effective implementation of the codes is therefore of utmost importance..16

15. Codes of conduct have many names and purposes. They may, for instance, be called “codes of ethics” or “codes of business practice” or they may take the form of administrative regulations. Usually, codes of conduct describe guidelines binding employees to act in a certain manner whereas codes of practice are often addressed to clients rather than to members of the institution for whom the code is drafted. Codes of practice lay down standards that clients have a right to expect, rather than standards that members of the profession are instructed to uphold.

16. Here the generic term “code of conduct” is used although it should be emphasised that certain distinctions sometimes need to be made, depending on the purpose of the

code. For instance, a code of good practice may be drafted for the purpose of giving detailed guidelines to employees on how to act in certain situations related to the work. Such a code may be of a totally different character from a normal code of conduct.

17. Codes may be adopted for various reasons and for various categories of public persons, such as public officials, judges, prosecutors, business people, auditors, members of other professions as well as elected representatives and members of government, both at the national and local level.

18. Codes of conduct dealing with issues of corruption may be very detailed. For instance, in one member State examples may be found where the codes deal with such issues as acceptance of flowers or boxes of chocolate and the exact value of gifts which may be accepted.

19. The legal basis for the adoption of codes may vary. Some are adopted on the basis of legislation whereas others are adopted on a voluntary basis. Some codes of conduct have the status of a semi-public instrument, although drawn up by private entities. An example may be found in the banking field where a due diligence code has been elaborated. Other such codes have been drafted for accountants and lawyers. Most codes are drafted to protect the interests of the company or the profession but some may be elaborated with a view to introducing clean practices in entire sectors of the industry. Examples may be found where entire employer's associations or larger companies in a specific sector undertake to abstain from corrupt practices.

20. As regards both public officials and the business community, the code may be seen as part of the employment contract and may in such cases be signed by the employee. A subsequent breach of the code can be a breach of the contract of employment. On the other hand, codes for independent professions and codes for elected representatives or members of government may be of a different character: breach would not amount to a breach of contract but may nevertheless result in disciplinary proceedings.

21. The codes may be applicable only to active service and form part of the employment contract as such, but some codes may contain provisions that apply when the employed person or the elected representative has left his work or his post. Such codes may, for instance contain provisions restricting a person from taking a post in a company with which he has had dealings in his previous position ("pantouflage"). Such provisions may be found both in codes for public officials and for politicians..17

22. The sanctions for disobedience of the codes vary as well, ranging from administrative sanctions such as reprimands to dismissal and other disciplinary measures. Some codes may not provide for any sanctions but may simply make reference to corruption offences in existing criminal codes. To a great extent the effectiveness of a code may depend on the sanctions which are provided. The scope for taking disciplinary measures is of course wider than the scope for criminal law measures. For certain categories of persons, for instance members of Parliament or the government, special types of sanctions apply. The

codes may be used in administrative, civil and criminal decision-making as a reference document, in particular in assessment of what may be fair or appropriate in a given situation.

23. For a code of conduct to be widely accepted and complied with by those who are to be bound by it, it is advisable that they should be consulted during its preparation.

24. A model code of conduct for public officials could be of great benefit in the fight against corruption, in particular in the emerging democracies of Central and Eastern Europe. Codes of conduct for other categories of persons, such as members of government or elected representatives, can be of importance in setting minimum standards in ethics.

Public officials

25. Given the variety of tasks undertaken by a modern public administration, with staff from different backgrounds and from non-homogenous social groups, the need to codify rules of conduct is now greater than in the past, when a more homogenous staff carried out similar activities and shared similar values.

26. The specific statutes of the civil service need to be taken into account when codes of conduct are considered, in particular when the codes are to be used, *inter alia*, as a means of combating corruption. Public service requires integrity from public officials. They are not only in the service of the government, taken in a narrow sense, but should also carry out their duties as a service to society at large. The responsibilities of the public official are therefore to a certain extent different from those of an employee in the private sector.

27. Special consideration needs to be given to the senior civil service and to members of the government who may be at the same time elected representatives. These categories may require special rules.

28. It should be noted, however, that a code of conduct cannot replace a statutory law on the status of public officials..18 Elected representatives

29. Elected representatives are usually responsible to their electorate and/or to their party. At the same time, the public interest requires from them accountability, transparency and integrity. Tradition plays a great role in the evolution of the situation in member States. In the context of combating corruption, special attention needs to be given to questions of immunity, relations with the party, sanctions and conflicts of interest, and changes to the current situation require careful consideration.

Other persons

30. Codes of conduct differ depending on which category of persons is addressed. The aims of codes for judges or prosecutors necessarily differ from those drafted for auditors or private business. As the aims and legal situation differ, so do the sanctions which may apply in a particular case.

Purpose

31. Codes of conduct should be clear and concise statements of the guiding principles of conduct by which an organisation expects its members to behave and the values for which it stands.

32. The purpose of a code of conduct for public servants is threefold: • it is a statement of the ethical climate that prevails in the public service;

- it spells out the standards of ethical conduct expected of public servants;
- it tells members of the public what to expect of public servants in conduct and attitude when dealing with them.

33. It is both a public document and a message addressed to every individual public servant. It cannot be assumed that a public servant knows what standards of conduct are expected of him if he has never been told what they are. Reliance on some unwritten process of absorption of standards in the working environment is haphazard and insufficient. If the public servant is to be called to account for his conduct, it is essential that he should have been informed of what was expected of him and that he should know in what respects his conduct has fallen short of those expectations. A clear, concise and accessible written statement of the standards by which his working life is to be conducted is a basic requirement.

Features

34. A model code should be capable of being adopted, with or without modification, for the generality of public officials. Its provisions should state the guiding principles and, at the same time, provide advice sufficiently specific to be of use in any given situation. As a model of general application, it might not provide detailed guidance necessary to certain categories of officials or employees whose functions or professions require specific rules..19

Content

35. Codes of conduct should not be limited to addressing corruption. They should go further and promote high standards of ethical behaviour. They should state general principles covering lawfulness, diligence, efficiency and thrift, transparency, confidentiality and the handling of classified information, personal responsibility and

independent judgement, fair dealing and integrity, and professional training.

36. Their guidance can also be broadly divided into provisions dealing with personal integrity and those dealing with managerial responsibilities for upholding the integrity of the public service or the company, such as devising and putting in place appropriate systems of operation, ensuring that subordinates are informed and aware of their duties, applying systems of supervision and accountability, applying proper selection procedures, enforcing the code of conduct and maintaining discipline.

Application

37. To whom should a code apply? Should a code designed for the general public service apply to government ministers, to judges or to elected representatives? Should that code apply also to short term employees (perhaps seconded from the private sector), or to agents or independent consultants? To what extent can and should the code continue to apply to those who have left the organisation? These are questions that should be addressed when proposing a code for any organisation.

38. A general code may be insufficient for those doing certain kinds of work or in certain professions. Additional provisions or additional emphasis or even separate, special codes may be necessary. The "Leadership Code" adopted in some countries is an example of a special code applying to a limited number of people in public service.

Preparation and promulgation

39. Consulting those to whom the code will apply is essential in its preparation since it must be accepted by those who are to lead their working lives in accordance with its guidance. It must be pragmatic and practical so as to foster compliance and to allow those to whom it applies to exercise their responsibility. The code must address the ethical issues people have to face every day.

40. Not only must every member of staff receive his or her own copy, everyone must be given practical instruction about its provisions and how to comply with them. Everyone must understand the importance of compliance and the consequences of not complying.

Implementation

41. It is the responsibility of management to ensure that the practices of the organisation are consistent with the code, that there is no contradiction between the standards required of staff and the goals or targets they are expected to meet..20

42. It must also be the responsibility of every manager and supervisor to make sure that those for whom they are responsible are constantly aware of the standards set by the

code and in practice carry out their work in conformity with them.

Enforcement

43. Deliberate failure to comply with the standards required must be met by appropriate disciplinary action. In deciding on appropriate disciplinary sanction, management should consider whether the breach results from ignorance or from deliberate self-serving wrongdoing of which the management would disapprove or from wrongdoing done in the mistaken belief that the organisation would benefit.

Relationship to law

44. The law shapes the code and provides a strong reason for putting a code in place, and the code in turn articulates the rules of conduct which govern the working lives of those to whom it is addressed. Codes of conduct should reflect at a minimum the standards of the criminal law relating to dishonesty and corruption. Moreover, there should always be a relationship between codes of conduct and the laws and regulations concerned with disciplinary action.

The Recommendation of the Committee of Ministers on Codes of Conduct for

Public Officials

The Recommendation

45. The Recommendation of the Committee of Ministers makes clear that the recommended adoption of codes of conduct for public officials should be subject to national law and to national principles of public administration. In recommending that such codes should be based on the annexed Model Code of Conduct, the recommendation also makes clear that the model should be adapted to meet the circumstances of the particular public service.

46. The Recommendation instructs GRECO to follow up on the implementation of the recommendation..21

The Model Code of Conduct for Public Officials

Structure

47. The Model Code is so structured that it states a number of general principles before setting out more specific guidance. It starts with application and interpretation provisions, states the object of the code and sets out the general principles. It then deals with the following specific matters: reporting breaches of the code, conflict of interest, declaration of interests, incompatible outside interests, political or public activity,

protection of the public official's privacy, gifts, reaction to improper offers, susceptibility to influence by others, misuse of official position, information held by public authorities, public and official resources, integrity checking, supervisory accountability, leaving the public service, dealing with former public officials and, finally, observance of the code and sanctions.

Style

48. The code offers guidance. It addresses public officials and members of the public. It is intended to be frequently referred to and read. It is therefore not drafted in the style of a law or regulation. Rather it offers practical advice and explanations to readers who are not necessarily learned nor legally trained. It nevertheless tries to be reasonably precise since breach of its provision could result in disciplinary proceedings.

Provisions

49. In adopting the provisions of the code, a State may need to adapt its provisions to meet the particular requirements of the State's public service.

Interpretation and application

Article 1

50. This article says the code applies to all public officials and defines "public official" as a person employed by a public authority.

51. The term "public official" is drawn widely. However the provisions of this article and the code as a whole do not cover the exercise of private functions or services, whether done by public officials or not. Thus, private contractors remunerated from public revenues would not be covered, but the code is intended to cover the exercise of public functions on a private basis, such as, in some countries: notaries, public registers, etc. States themselves will have to decide the extent of the term "public authority".

52. In accordance with paragraph 4, the provisions of the Model Code do not apply to publicly elected representatives, members of governments and holders of judicial office given the particular nature of the functions they perform..22

53. The GMC considered that it was necessary to draw a clear distinction between public officials who exercise functions within public administration or a public sector entity on the one hand, and ministers and elected representatives who are political figures responsible before parliament and ultimately to the voters. Thus, for instance, the principle of political neutrality recognised in paragraph 2 of Article 4 could not be applied to the latter.

54. Similarly, holders of judicial office are also excluded from the scope of this code. In certain countries prosecutors, on account of the nature of the functions that they perform may also be considered as holders of judicial office. Indeed the principle of judicial independence is incompatible with some of the principles stated in this code such as for instance the principle of accountability to the immediate hierarchical superior enshrined in Article 10.

55. Notwithstanding the exclusion of these categories of persons from the application of this code, it would be desirable for States to adopt ethical standards appropriate for the functions performed by these persons. With this in mind, States can decide to draw inspiration from the present code.

56. Moreover, States may decide to apply or adapt the provisions of this Code, totally or in part, to other categories of persons not included in Article 1.

Article 2

57. The code applies to a public official from the time he or she is informed of its provisions and certifies he has been so informed.

58. The application of this provision shall be adapted in the case of civil services based on the career system where conditions of service are governed by a civil service statute, where the code is enacted by the competent authority (responsible for public officials), for example the Minister for Public Administration or the Minister of the Interior, and the code would thus be an integral part of the regulations that apply to public officials.

Object of the Code

Article 3

59. The article states the aims of the code, i.e.: to specify standards of integrity and conduct, help public officials meet those standards and tell the public what it is entitled to expect from its public officials.

60. Given that public administrations play an essential role in democratic societies, that public officials are the key element thereof and since corruption undermines the citizens' trust in their administration, the code aims at eliminating any ambiguity about the general attitude of the administration towards corruption and clearly expresses what is expected from every employee in that respect..23

61. The Code of conduct fills the gap between on the one hand often abstract legal regulations as to the principles of behaviour and, on the other hand the requirement of guidance in numerous difficult situations of an employed person's day-to-day life. It seeks to eliminate areas of uncertainty by offering either directly applicable instructions

on how to cope with a given situation, or indications on where and how to receive such instructions. The Code can offer specific guidance in situations where the employed person may feel that he has to deal with a conflict of interest.

62. In addition, the Code contributes to greater transparency in the functioning of public administration by clearly informing citizens of what they are entitled to expect

from public officials.

General Principles

Articles 4 – 11

63. These articles set out the public official's general obligations to act lawfully, obediently, ethically and loyally. He or she is expected to be honest, impartial, conscientious, fair and just, and to act politically neutral, only in the public interest and with courtesy to all with whom he or she has contact.

64. He or she must not allow his or her private interests to affect, or appear to affect, his or her public position nor take undue advantage of that position. The term "private interest" is explained in Article 13. It is for States to define the expression "undue advantage". However, it should be understood in a broad sense, as including not only advantages offered or given to the public official but also the avoidance of any disadvantages or burdens imposed upon him or her. Undue advantages are usually of an economic nature but may also be of a non-material nature.

65. What is important for the purposes of Article 8 is that a public official or a third person, for example a relative, should not be placed in a better position or acquire that benefit. Examples of undue advantage are money, holidays, loans, food and drink, a case handled more quickly than others or better career prospects.

66. The public official's behavior should enhance the public's regard for the public service and he or she should be accountable for his or her conduct. Thus, Article 6 forbids him to act arbitrarily to the detriment of any person, group of person or body. In the course of the discussions, the GMC examined whether this Article should also forbid acting for the benefit of a person, group or body without any advantage for the public official or ensuing prejudice for a third party. However, in the light of the principles of impartiality and lawfulness stated respectively in Articles 5 and 7, the GMC did not consider it necessary to include expressly such a prohibition..24

67. His or her handling of information must respect both the right to official information and the need for appropriate confidentiality. The expression "necessary confidentiality" should be understood in a flexible manner, as allowing adaptation to the context of each member State, and in the light of the legal rules concerning the use of confidential information. Transparency is a key element in the fight against corruption. The principle

contained in Article 11 does not aim at restricting unnecessarily the access of the public to official documents.

Reporting

Article 12

68. This article requires the public official to report, in accordance with the law, whenever he or she believes he or she is being required to act inconsistently with the code.

69. If, having reported the matter in accordance with the law, he or she is not satisfied with the response, he or she may take the matter up in writing with the relevant head of the public service, namely the person ultimately responsible for the public service. This will obviously vary from country to country, for example the Minister for Public Administration or the Minister of the Interior. When the matter has been taken as far as procedures allow, the article makes clear that the public official must then comply with lawful instructions.

70. Moreover, paragraph 2 requires public officials to report to the competent authorities in accordance with the law any breach of the code by another public official of which he or she becomes aware. The GMC was aware of the practical difficulties that the application of this provision in public administration could entail in certain cases since it could create tensions among public officials. However, it considered that the passive or tolerant attitude of public officials regarding those breaches would be more harmful for public administration and society as a whole.

71. Unlawful or criminal activities are to be reported to the appropriate authorities. Once reported, the investigation will be the responsibility of the competent authorities and not of the public official.

72. For its part the public administration must ensure that no prejudice is caused to a public official who makes such a report on reasonable grounds and in good faith..25

Conflict of interest

Article 13

73. This article explains what is a private interest and how a conflict can arise between a public official's public duties and his or her private interest. He or she must be aware of the possibility of a conflict arising, take steps to avoid it, disclose it to his supervisor at the earliest opportunity and comply with any proper instruction to resolve it. Whenever required to do so, he or she should state whether or not a conflict arises.

Declaration of interests

Article 14

74. The article explains that certain public officials may be lawfully required periodically to declare their personal or private interests. This obligation has a preventive character. It is generally imposed upon officials holding high level posts. However, the main criterion should be the nature of the functions performed and the responsibilities relating thereto. This may lead States to impose such obligations upon certain officials even if they hold posts of a modest hierarchical level.

75. Periodic declarations of interest are essential for the effectiveness of this measure. Keeping this in mind, the code provides that the declaration will be made not only upon appointment but also at regular intervals thereafter determined by national legislation. Any change in the situation affecting the public official's interests will imply the obligation for him or her to submit a new declaration.

76. Since this obligation represents an interference on private life it needs to be always justified. It is the duty of public administration to ensure the confidentiality of such declarations which in turn is guaranteed by Article 17.

Incompatible outside interests

Article 15

77. The article states that public officials are not to engage in any activities incompatible with the proper performance of official functions. If unsure, they should seek the advice of their superiors.

78. Subject to the law, the public official should seek his or her employer's approval to undertake certain activities, positions or functions outside the public service. This requirement is made subject to law because some countries have regulations governing the taking of outside or second jobs. It should be noted that this principle does not prohibit a public official from having a second job outside the public service.

79. The article also requires the public official to comply with any lawful requirement to declare his or her affiliation to organisations that could detract from his or her position or the proper performance as a public official..26

Political or public activity

Article 16

80. This article enjoins the public official to be careful firstly not to allow his or her political activities to impair his or her impartiality or loyalty and secondly not to let himself or herself be used for partisan political purposes. He or she should comply with

any restriction on political activity lawfully imposed by reason of his or her duties as a public official.

Protection of the public official's privacy

Article 17

81. Like other citizens, public officials have a right to privacy and have a duty to respect the privacy of other public officials. This article makes that clear and specifically requires declarations made in accordance with the code to be kept confidential unless otherwise required by law.

82. The right to respect for private life is not an absolute one. It might be necessary to interfere or restrict the exercise of this right in order to attain certain legitimate objectives such as the prevention of crime and the protection of the rights of others. Consequently, the general principle of confidentiality of declarations recognised in this Article could be lifted for instance in the framework of criminal investigations or disciplinary procedures affecting the public official.

Gifts

Article 18

83. This article makes clear that the public official should not seek or accept any gift or benefit for himself or anyone else that could influence, or appear to influence, the carrying out of his or her duties. The public official should never accept either gifts that constitute a real or apparent reward for actions or omissions in the exercise of his or her functions. It is essential to preserve the citizens' trust in the impartiality of public administration. Such trust would be undermined if the citizen observes or is under the impression that the public official, whose salary should be paid in principle out of the public budget, receives compensation from private individuals in exchange for the performance of his or her duties.

84. The Code allows for some exceptions to the general prohibition of gifts, in respect of conventional hospitality or minor gifts. This expression comprises for instance, modest invitations to food and drinks, calendars, low price pens, advertising materials, small stationary... It is for each country to establish the criteria to differentiate between what is acceptable and the gifts which fall within the general prohibition rule. Often the value of the gift or invitation is used as a criterion, it being understood that whenever the value is lower than the threshold, the gift or invitation could be acceptable. However, low value may not always be a proper criterion. He or.27 she should be alert however to the possibility of even a generally permitted advantage giving rise to a conflict of interest in particular circumstances. Thus, gifts or invitations offered repeatedly, even if low value could affect the public official's impartiality in the exercise of his or her functions.

85. During discussions, the GMC considered the possibility of introducing a general obligation of declaring all gifts, even those of low value. Once the gifts are declared, the hierarchical superior or other competent authority would decide which gifts the public official was authorised to accept. The GMC preferred however, not to include such a general system in a model code, it being understood that each country is free to adopt more restrictive provisions than those contained in the code.

86. When social circumstances prevent him or her refusing an advantage, the public official should promptly report the fact and circumstances of his acceptance to his immediate superior and comply with any direction for disposal.

87. When in doubt, the public official should seek advice from his or her superior.

88. Elementary prudence would require that the request and the advice should be made in writing.

Reaction to improper offers

Article 19

89. Public officials need to know how to react appropriately when improperly offered a gift or benefit. This article gives specific guidance on what he or she should do in such circumstances.

Susceptibility to influence by others

Article 20

90. Public officials can become the targets of attempts to compromise them. The purpose of this article is to alert them to the danger by advising them that they should not put themselves in a position of obligation to return a favour, nor conduct themselves in their official or private lives in such a way that they become susceptible to the improper influence of others.

Misuse of official position

Article 21

91. The public official is enjoined firstly not to offer any advantage connected with his position as an official unless lawfully authorised to do so, and secondly not to try to influence anyone for his or her own private benefit by using his or her official position or by offering a personal advantages. These advantages can be offered directly or

indirectly..28

Information held by public authorities

Article 22

92. In the course of serving the common good, the public service creates, acquires and holds a great deal of information, the value or significance of which may not always be obvious. The handling of information held by public authorities is a frequent cause of difficulty. This article provides guidance in four distinct aspects.

93. First, the public official should disclose information only in accordance with applicable rules and requirements.

94. Second, he or she must protect the security and confidentiality of information, not only for which he or she is responsible but also of which he or she becomes aware.

95. Third, the public official should not seek official information to which he or she should not have access, nor should he or she make improper use of information come by in his or her employment.

96. Fourth, he or she has an equally strong duty not to withhold official information that may or should be released nor to provide false or misleading information.

Public and official resources

Article 23

97. This article requires the public official to manage and make use of personnel resources on one hand and of public property, facilities, services and financial resources on the other effectively, efficiently and economically. Unauthorised use for private purposes is forbidden, when authorisation is given according to the law. Thus, for instance, the public official should not, without proper authorisation, use the official car for private travel, or the office telephone for private calls, or ask his or her secretary to do work unrelated to his or her official duties.

98. In this connection, the GMC considered the use by public officials of fidelity programmes organised by airlines, hotel chains, and by other service providers. Thus, for instance, whenever the public official enjoys a margin of discretion in the choice of the airline for an official journey, this article requires the public official to be careful to choose without being influenced by personal considerations to the detriment of the economic interest of the public administration as defined above.

Integrity checking

Article 24

99. Experience shows the importance of carrying out integrity checks or acting on them in order to avoid long-term integrity problems in the public service. This article therefore requires the public official responsible for recruitment, promotion or posting to make sure that appropriate integrity checks are carried out as lawfully required..29

100. Again, he or she is enjoined to seek appropriate advice if the results of the checks make it unclear how to proceed.

Supervisory accountability

Article 25

101. The notion that every person in a supervisory position should be responsible and accountable for the conduct of those he or she supervises has a significant effect on the integrity of the public service.

102. This article lays a dual responsibility on the supervisor or manager. He or she should manage or supervise in accordance with the policies and purposes of the public service and he or she should be answerable for the failings of his staff if he or she has not taken reasonable steps to prevent them.

103. The article goes on to give specific guidance. The supervisor or manager should take steps to prevent corruption by enforcing the rules, providing education or training, being alert to signs of financial or other difficulties and setting a personal example.

Leaving the public service

Article 26

104. If it is in the public interest that people with experience of public administration should be able to take up appointment outside the public service, it is equally important that the taking up of appointment elsewhere should not cause suspicion of impropriety. The guidance provided in this article therefore aims to allay suspicion:

- that the advice, decisions or actions of the public official could be influenced by the hope or expectation of future employment with a particular employer; or
- that the employer might be gaining an unfair advantage over competitors by employing a public official who had access to information that competitors regard as their own commercial secrets or that relates to proposed developments in government policy affecting them.

105. Accordingly, the public official should not take improper advantage of his official position to obtain a job outside the public service. He or she should be careful to avoid the possibility of conflict of interest arising from the prospect of future employment. For an appropriate period he or she should avoid acting or advising in matters in which he or she was involved as a public official. Nor should he use or disclose confidential information acquired as an official. Finally he or she should comply with any rules that apply to accepting appointments after leaving the public

service..30

Dealing with former public officials

Article 27

106. This Article forbids public officials to grant former public officials preferential treatment or privileged access to the public service as this would be contrary to the principles stated in this code such as, for instance, those in Article 5, paragraphs 2, 7 and 9.

107. This provision does not concern the cases where national legislation grants former public officials certain advantages such as, for instance, the use of public facilities like holiday camps, preferential or free fares awarded to public administration, etc.

Observance of the Code and sanctions

Article 28

108. This article first states the authority under which it is issued, a matter that will vary from country to country. It then reminds the official of the duty to conduct himself or herself in accordance with the code and therefore to become and remain familiar with its provisions. He or she is urged to seek advice when unsure of how to proceed.

109. The article then points out that subject to Article 2, paragraph 2, the code forms part of the official's terms of employment and that failure to comply with it may lead to disciplinary action.

110. The official who has responsibilities for negotiating terms of employment is reminded of his or her duty to include in them a provision that the code forms part of those terms.

111. The supervisor or manager is made responsible for ensuring that those under him or her observe the code and for initiating disciplinary action for failure to comply with it.

112. The public administration is under the obligation to review at regular intervals the

provisions of this code so as to ensure that they are still appropriate...