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TECHNICAL PAPER: REVISING THE CODE AND INSTITUTIONAL RESPONSIBILITIES

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The views expressed in this document are author's own and do not necessarily reflect official positions of the Council of Europe

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1 INTRODUCTION

Building on Working Papers 4 and 5, this Working Paper reviews the current Code and the institutional arrangements to consider how far these may be re-aligned to develop the primary role of the Council of Ethics for the Public Service as an agency addressing the prevention of corruption, working with other agencies to promote an ethical environment and ensure the implementation of the Code.

2. ETHICS COMMISSIONS

In proposing Ethics Commissions within public service institutions, the Code provides the institutional means to consider the distribution of functions and responsibilities to allow the Council to focus on its policy and oversight roles while Ethics Commissions take on the role of ensuring the implementation of the Code through training, review of procedures and so on, in order 'to establish and develop ethical culture' and take on the responsibility of those alleged violations under the Code that relate to personnel and employment matters. These may also be better addressed in terms of sanctions (see Working Paper 4 on the need to broaden the range of sanctions) within the standard employment and disciplinary framework already followed by the institution.

3. THE CODE

It is suggested that the Code is redrafted to amend those Articles that do not lend themselves to investigations, and transfer those Articles to become the responsibility of the Ethics Commissions, with the institutions' disciplinary boards addressing the question of sanctions. The Council would still take overall oversight responsibility of the Code and the quality of investigations and the uniformity and equity of sanctions [see annex 1].

4. THE ROLE OF THE COUNCIL

This distribution of functions and responsibilities would allow the Council to establish a framework that would undertake the following main strategic responsibilities:

Reviewing the development of ethical framework – Article 27
Investigating/Overseeing Investigations – Article 28
Publishing Reports – Article 30

5. COUNCIL CAPACITY

To undertake the potential responsibilities the Council will need to consider the following areas for resourcing:

- Investigations: a limited number of experience investigators to address major cases of conflict of interest, possibly in part seconded from inspectorates or equivalent agencies, develop intake procedures (including those from Article 12) and to set up case management systems;
- Ethical Framework: researchers and policy staff capable of undertaking systematic institutional reviews, analyse cases and trends, develop prevention measures, liaise with other agencies, support Council inquiries and reviews;

- Trainers: a limited number of staff able to update training material, monitor ministry ethics training programmes, undertake staff surveys;
- Council support: secretarial and administrative staff.

6. FURTHER WORK

This will involve consideration of:

- A revised Code;
- Confirmation of the strategic direction of the Council;
- Establishing the functions and responsibilities of Ethics Commissions;
- Establishing the relationships between the Council, the Ethics Commissions, and Inspectorates;
- Assessing the future staffing and non-staffing resources of the Council;
- Costing the requirements.

| ARTICLE | THEME | CONTENTS | RESPONSIBILITY | COMMENTS |
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| 5 | Consciousness of public service in performance of a duty | Constant participating, transparency, impartiality, honesty, protecting the public interest, accountability, predictability, fitness in service and confidence in statement should guide public officials in performance of the public services. | The Council and the Ethics Commissions. | This is a broad generic work-related requirement that focuses on the overall ethical conduct of a public official. Other Articles take a more detailed view of the issues involved. It does not lend itself easily to investigation. The Article best serves as a mission or values statement to begin the Code. |
| 6 | Consciousness of the serving community | In performance of the public services the public officials should aim at facilitating the daily life of the community, meeting public needs in the fastest and the most active and effective way, increasing the quality of the service, increasing the satisfaction of the community, focusing on the requirement of those benefiting from the service and on the results of services. | Ethics Commissions | This is a work-related requirement that focuses on a particular aspect of a public official's performance of his or her duty. It is a service delivery statement that should be assessed within the institution concerned and seen as part of the appraisal of a public official. Allegations of breaches would in other contexts be the responsibility of an Ombudsman, audit or internal inspection units as it relates to public service delivery. |
| 7 | Compliance with the service standards | The managers and other personnel of the public institutions and organizations should perform the public services in accordance with the determined standards and | Ethics Commissions | This is a work-related requirement that focuses on a particular aspect of a public official's performance of his or her duty. It is a service delivery statement that should be assessed within the institution concerned and seen as part of the appraisal of a public official. Allegations of |

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| | | processes, inform those benefiting from the services by giving essential explanatory information about the work and transactions during the service processes. | | breaches would in other contexts be the responsibility of an Ombudsman, audit or internal inspection units as it relates to public service delivery. |
| 8 | Commitment to the Objective Mission | Public officials should behave in accordance with the objectives and mission of the institutions and organizations that they work in. They should act in compliance with the interest of the country, the welfare of the society and the service ideals of their institutions. | The Council and the Ethics Commissions. | This is a broad generic work-related requirement that focuses on the overall ethical conduct of a public official. Other Articles take a more detailed view of the issues involved. It does not lend itself easily to investigation. The Article best serves as a mission or values statement to begin the Code. |
| 9 | Integrity and Impartiality | In all their actions and transactions public officials should act in accordance with the principles of lawfulness, justice, equity and integrity, they cannot discriminate with reasons such as language, religion, philosophical belief, political belief, race, sex etc. while performing their duty or providing services. They cannot act in a human rights violating or restricting way and cannot behave in a way | The Council | This Article addresses discrimination and conflict of interest in a non-financial context. Like financial conflict of interest it lies at the heart of the separation of private interests and public duty and should be the responsibility of the Council to monitor and enforce. The requirements of the Article should also be integrated with that of Articles 13 and 14 since non-financial interests should also be disclosed and registered. |

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| | | <p>obstructing the equal opportunity.</p> <p>Public officials should use their discretionary authority in accordance with public interest and service requirements away from all sorts of arbitrariness and in compliance with principles of impartiality and equality.</p> <p>Public officials should not treat the natural and legal persons in a prior or privileged and partial way breaching the principle of equality, should not act in a way aiming at the advantage or disadvantage of any political party, person or group, and should not hinder the policies, resolutions and actions of public authorities which are in compliance with the legislation.</p> | | |
| 10 | Respectability and confidence | Public officials should behave in a way that will establish confidence for the public administration and they should display with their behaviors that they deserve the confidence | Ethics Commissions | This is a work-related requirement that focuses on a particular aspect of a public official's performance of his or her duty. It is very much a personnel issues that should be assessed within the institution concerned and seen as part of the appraisal of a public official. Allegations of |

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| | | <p>and reputation required by the duty. They should avoid behaviors that harm the sense of confidence of the community for the public service, raise doubts and impair the principle of justice.</p> <p>Public officials should act in accordance with the requirements of the service having the consciousness that serving the community is above all sorts of personal and private interests, they cannot misbehave to those who benefit from the service, neglect their work, perform double standard and be partial.</p> <p>Public officials who are in the position of director or auditor cannot behave arbitrarily, they cannot act in an oppressive, insulting and threatening manner, they cannot arrange reports which are not based on certain facts, they cannot demand service, opportunity or similar interests for themselves</p> | | <p>breaches would in other contexts be the responsibility of an Ombudsman, Personnel audit or internal inspection units as it relates to public service delivery.</p> <p>The clause discussing private interests should be amended.</p> |
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| | | against legislation and cannot accept anything presented even there is no demand. | | |
| 11 | Decency and respect | Public officials should treat seniors, subordinates, colleagues, other personnel and those benefiting from the service decently and respectfully and give necessary attention. They should direct them to the relevant unit or authorized person if the subject is out of their authority. | Ethics Commissions | This is a work-related requirement that focuses on a particular aspect of a public official's performance of his or her duty. It is very much a personnel issues that should be assessed within the institution concerned and seen as part of the appraisal of a public official. Allegations of breaches would in other contexts be the responsibility of an Ombudsman, Personnel audit or internal inspection units as it relates to public service delivery. |
| 12 | Notification to the competent authorities | Public officials, in the case that their acting against the principles of ethical behaviour which are determined in this Regulation or their carrying out illegal transactions or actions is demanded or when they learn or see such actions or transaction while performing their service, should notify the situation to the competent authorities. Supervisors of institutions and organizations should keep the identity of the public officials | Ethics Commissions and Council | This Article is about internal reporting of breaches of public ethics standards. Those that wish to do so, should be able to contact either body. This Article is better suited to the Section on investigations. |

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| <p>13</p> | <p>Avoiding conflict of interest</p> | <p>who notifies and take necessary steps in order to avoid any harm.</p> <p>Conflict of interest means all sorts of interests, financial or other liabilities and the situation of having such personal interests provided for the public officials, their relatives, friends or the person or organizations they deal with which affect or seem to affect their performance of the duty impartially and objectively.</p> <p>Public officials have personal responsibility in the conflict of interest and as they are the ones to personally know the situation in which conflict of interest may rise. They should proceed cautiously in any potential or real conflict of interest, take necessary steps to avoid conflict of interest, notify the situation to their seniors as soon as they realize conflict of interest and keep themselves away from benefits that are in the scope of conflict.</p> | <p>Council</p> <p>As noted above this Article lies at the centre of public ethics dilemmas – the separation of private interests from public duties and responsibilities. This should always be the responsibility of the Council although it should be more specific on the issues of disclosure and registration of interests.</p> |
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| 14 | | <p>Not using the duty and authorities to derive benefits</p> | <p>of interest.</p> <p>Public officials cannot derive benefit in favor of themselves, their relatives or of the third persons by using their duty, title and authority and cannot intercede, favor their relatives, friends and fellow townsman, perform political nepotism, discrimination or nepotism of any kind.</p> <p>Public officials cannot have their or others' book, periodical, cassette, compact disc and any other similar products sold or distributed; cannot derive benefits to any organization, foundation, association or sports club by donations, help or similar ways.</p> <p>Public officials, when they are on duty or they leave the duty, cannot use the official or secret information they acquired during performance of their duty or as a result of these duties in order to derive economical, political or social</p> | Council | <p>As noted above this Article lies at the centre of public ethics dilemmas – the separation of private interests from public duties and responsibilities. This should always be the responsibility of the Council although it should be more specific on the issues of disclosure and registration of interests.</p> |
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| | | <p>benefits for themselves, for their relatives or for third persons directly or indirectly, cannot explain this information to any institution and organization except from the competent authorities.</p> <p>Public officials cannot use the sources of the institution they work for in the election campaigns directly or indirectly or have those sources used.</p> | | |
| <p>15</p> | <p>Prohibition of receiving gifts and deriving benefits</p> | <p>All sorts of goods and benefits which are accepted directly or indirectly whether having economical value or not and which affect or have the possibility to affect the fulfillment of their duties, impartiality, performance and decisions are within the context of gift.</p> <p>The basic principle for the public officials is not to receive or give gift and not to derive interest as a result of duty.</p> <p>Public officials cannot receive</p> | <p>Council</p> | <p>As noted above this Article lies at the centre of public ethics dilemmas – the separation of private interests from public duties and responsibilities. This should always be the responsibility of the Council although it should be more specific on the issues of disclosure and registration of interests.</p> |

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| | | <p>any gift or derive benefit from natural or legal persons who have work, service or benefit relationships related to the duty they perform, for themselves, their relatives or third persons or organizations directly or through an interceder.</p> | |
| | | <p>Public officials cannot give gifts by using the public sources, cannot send wreath or flowers to a natural or legal person except from official day, ceremony and festivals; they cannot give out a notice of commemoration, make an announcement or a celebration which are not related to the service.</p> | |
| | | <p>Among the gifts given by the foreign persons and organizations according to the decency and protocol rules in the international affairs, saving for the provisions of article 3 of the Act numbered 3628, the ones that are below the limit of the said article are declared.</p> | |
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| | | <p>a) Donations which mean contribution to the organization for which the public officials work, which will not affect the execution of the organization services in accordance with the law and which are received, provided that they are allocated for the public service, recorded in the fixed assets list of the organization and that they are declared to the public (except from the official car and other gifts received in order to allocate for the service of a specific public official) and the donations which are granted to the institution and organizations,</p> <p>b) Book, magazine, article, cassette, calendar, compact disc or such goods,</p> <p>c) Gifts or rewards acquired in publicly held competitions, campaigns and activities,</p> <p>d) Gifts having the value of souvenir which are given in publicly held conferences, symposium, forum, panel, meal, reception or similar activities,</p> <p>e) Advertisement and handicraft products which are distributed to everyone and which have symbolic value,</p> <p>f) Credits taken from financial organizations</p> | | |
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| | | <p>according to the market conditions,</p> <p>are outside the scope of the prohibition of receiving gifts.</p> <p>a) Gifts of greeting, farewell and celebration, scholarship, travel, cost-free accommodation and gift vouchers received from the people who have service or interest relations with the institution they work for,</p> <p>b) Transactions which are made from unreasonable prices according to the market price when buying, selling or hiring movable or immovable goods or service,</p> <p>c) All sorts of gifts including jewelry, clothes, food or any other goods given by those benefiting from the service,</p> <p>d) Loans and credits taken from the people, who have work or service relations with the institution,</p> <p>are within the scope of the</p> | | |
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| | | <p>prohibition of receiving gifts.</p> <p>The officials within the scope of this Regulation who are at least general director, equal to or above general manager notify the list of the gifts they received in the previous year and which are stated in the 5th paragraph of this article and (a) clause of the 6th paragraph to the Council until the end of January without waiting for any warning.</p> | | |
| 16 | <p>Making use of public domain and sources</p> | <p>Public officials cannot use the public buildings, vehicles and other public domains and sources except for the public objectives and service requirements and can not have them used; they protect these and take necessary precautions to maintain them available for service at any moment.</p> | Council | <p>As noted above this Article lies at the centre of public ethics dilemmas – the separation of private interests from public duties and responsibilities. This should always be the responsibility of the Council although it should be more specific on the issues of disclosure and registration of interests.</p> |
| 17 | <p>Avoiding extravagance</p> | <p>Public officials should avoid wastefulness and extravagance in using the public buildings, vehicles and other public domains and sources, behave in an effective and economical</p> | Ethics Commissions | <p>This is a work-related requirement that focuses on a particular aspect of a public official's performance of his or her duty. It is very much a personnel issues that should be assessed within the institution concerned and seen as part of the appraisal of a public official. Allegations of</p> |

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| | | | <p>manner while using the office hours, public domain, sources, labor force and opportunities.</p> | | <p>breaches would in other contexts be the responsibility of an Ombudsman, Personnel audit or internal inspection units as it relates to public service delivery.</p> |
| 18 | <p>Binding explanations and factitious statement</p> | <p>Public officials while performing their duty cannot exceed their authority and make explanation, engagement, promise or attempts binding the institutions they work for, they cannot make a misleading and factitious statement.</p> | <p>Ethics Commissions</p> | <p>This is a work-related requirement that focuses on a particular aspect of a public official's performance of his or her duty. It is very much a personnel issues that should be assessed within the institution concerned and seen as part of the appraisal of a public official. Allegations of breaches would in other contexts be the responsibility of an Ombudsman, Personnel audit or internal inspection units as it relates to public service delivery.</p> | |
| 19 | <p>Notification, transparency and participation</p> | <p>Public officials should help the community to exercise their right to receive information. They should submit the information and documents upon the demand of natural and legal persons duly apart from the exceptions determined in The Law numbered 4982 on Right to Information.</p> <p>Top executives should present their institutions' processes of</p> | <p>Council</p> | <p>As noted above this Article lies at the centre of public ethics dilemmas – the separation of private interests from public duties and responsibilities. This should always be the responsibility of the Council although it should be more specific on the issues of disclosure and registration of interests.</p> | |

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| 20 | Managers' liability to render account | <p>tender, activity and audit report to the public opinion through acceptable means under the allowance of related laws.</p> <p>Public officials should pay attention to provide that those who will be directly or indirectly affected from the decision unless there is a contrary legal provision contribute to one or some of the stages of the preparation of fundamental decisions on public services, maturation, decision taking and application of these decisions.</p> | Ethics Commissions | | <p>This is a work-related requirement that focuses on a particular aspect of a public official's performance of his or her duty. It is very much a performance and appraisal issue that should be assessed within the institution concerned and seen as part of the appraisal of a public official. Allegations of breaches would in other contexts be the responsibility of an Ombudsman, Personnel audit or internal inspection units as it relates to public service delivery.</p> |
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| | | <p>the institutions on time.</p> <p>Executive public officials should take necessary steps in order to avoid the personnel under his/her authority from corruption. These steps should include practicing legal and administrative arrangements, making appropriate studies in training and notification; proceed cautiously about the financial and other difficulties which the personnel face with and being a model for the personnel with their personal behaviors.</p> <p>Executive public officials are responsible to provide his/her personnel with the appropriate education about the principles of ethical behavior, to observe whether they abide by these principles, to view the life of the personnel incompatible with their income and to guide about the ethical behavior.</p> | | |
| 21 | Relations with the former public | Public officials cannot make former public officials benefited | Council | As noted above this Article lies at the centre of public ethics dilemmas – the separation of private |

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| | officials | <p>from public services in a privileged way and cannot treat them in a privileged manner.</p> <p>The people who have left their public duties cannot be assigned directly or indirectly to a duty or work such as contractor, commissioner, representative, expert, interceder from the institution or organization they previously worked for -saving for the provisions and periods in the related Laws.</p> | | <p>interests from public duties and responsibilities. This should always be the responsibility of the Council although it should be more specific on the issues of disclosure and registration of interests.</p> |
| 22 | Declaring property | <p>Public officials should declare of property of the movable and immovable goods, loans and credits belonging to themselves, their spouses and children under their custody as per The Law on numbered 3628 Declaring Property and Anti-Bribery and Corruption.</p> <p>The Council has the authority to investigate the declarations of property if it is necessary. The related persons and organizations (including banks</p> | Council | <p>As noted above this Article lies at the centre of public ethics dilemmas – the separation of private interests from public duties and responsibilities. This should always be the responsibility of the Council although it should be more specific on the issues of disclosure and registration of interests.</p> |

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| | | <p>and special finance houses) are responsible to give the requested information to the Council within 30 days at the latest with the aim of controlling the accuracy of the information in the declarations of property.</p> | | |
| <p>23</p> | <p>Abiding the Principles of Ethical Behavior</p> | <p>Public officials are responsible to abide by the principles of ethical behavior determined in this Regulation while performing their duty. These principles constitute one part of the legislation that arranges the employment of public officials.</p> <p>The public officials within the scope of this Law are responsible to sign the document "Ethical Contract" which comes up in Annex -1 in one month. This document is affixed to the employee file of the personnel.</p> <p>The authorized supervisors of the institutions and organizations evaluate the performance and file in terms of compliance with the</p> | <p>The Council and the Ethics Commissions.</p> | <p>This is a broad generic work-related requirement that focuses on the overall ethical conduct of a public official. Other Articles take a more detailed view of the issues involved. It does not lend itself easily to investigation. The Article best serves as a mission or values statement to begin the Code.</p> |

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| | | <p>principles of ethical behavior arranged in this Regulation.</p> | | |
| 24 | <p>Informing Personnel</p> | <p>The personnel at all levels employed in the public institutions and organizations should be informed about the principles of ethical behavior and the responsibility related to these principles as a part of the conditions in relation with the employment.</p> | <p>Ethics Commissions</p> | <p>Training will be part of the responsibilities of the individual ministries, particularly since the Article specifies that being informed about such behaviour is part of their terms and conditions of service</p> |
| 25 | <p>Establishing Ethical Culture and Training</p> | <p>The Council makes all sorts of studies about the establishment and development of ethical behavior, have them made, arranges researches, inquiries, public opinion polls, scientific meetings and similar activities, prepares, coordinates, executes training programs for the public officials or cooperates with relevant ministries, other public institutions, organizations, universities, local administrations and non-governmental organizations in their fields about this issue.</p> | <p>The Council</p> | |

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| | | <p>The managers of institutions and organizations should provide that the principles of ethical behavior take place in the fundamental, preparatory and in-service training programs for the public officials.</p> | | |
| 26 | <p>Principles of Institutional Ethics</p> | <p>The principles of ethical behavior determined in this Regulation should be practiced in the institutions and organizations within the scope. Furthermore, the institutions and organizations can submit their own principles of ethical behavior according to the quality of the service or duty they perform under the audit and approval of the Council.</p> | <p>Ethics Commissions</p> | <p>Under the supervision of the Council, it should be the responsibility of the Ethics Commissions to develop through various means – training, procedures, etc – an ethical framework within their own institutions.</p> |
| 27 | <p>Authorization to request information and document</p> | <p>Ministries, other public institutions and organizations are obliged to submit the information and documents demanded by the Council about the applications in due time.</p> <p>The Council has the authority</p> | <p>The Council</p> | |

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| | | <p>to call for the related representatives from private organizations and from the organizations within the scope of this Regulation and to receive information.</p> | | |
| 28 | <p>Authorization to investigate and to search</p> | <p>The Council has the authority to make necessary investigations and researches about the behaviors and practices against the principles of ethical behavior ex officio or upon the applications. The Council can gather information and document from institutions and organizations through competent authorities when necessary in order to be the basis for the investigation and research it will make about the behaviors and practices against the principles of ethical behavior.</p> <p>The Council executes its investigation and research within the framework whether the principles of ethical behavior are violated or not. The Council concludes its</p> | <p>The Council</p> | |

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| | | <p>investigation and research within three months at the latest.</p> <p>Furthermore the Council can perform activities, analysis and researches about the establishment and development of the principles of ethical behavior in institutions and organizations.</p> | | |
| 29 | Ethics Commission | <p>An ethics commission consisting of at least three people from the institution should be established by the top executive of the institution or organization in order to establish and develop ethical culture, to advise and direct about the problems the personnel face with about the principles of ethical behavior and to evaluate ethical practices.</p> <p>The top executive of the institution and organization determines how long the members of the ethics commission will work and the</p> | Ethics Commissions | |

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| | | <p>other related matters. The information of curriculum vitae and communication of the members of the commissions should be notified to the Council within three months. Ethics Commission works in corporation with the Council.</p> | | |
| 30 | Delivering Opinion | <p>The Committee is authorized to deliver opinion about the problems faced during the practice of the principles of ethical behavior.</p> | The Council | |

