

Christoph Demmke / Timo Moilanen



# **Effectiveness of Public-Service Ethics and Good Governance in the Central Administration of the EU-27**

Evaluating Reform Outcomes  
in the Context of the Financial Crisis

PETER LANG

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## Country Abbreviations

AT	Austria	Republic of Austria
BE	Belgium	Kingdom of Belgium
BG	Bulgaria	Republic of Bulgaria
CY	Cyprus	Republic of Cyprus
CZ	Czech Republic	Czech Republic
DE	Germany	Federal Republic of Germany
DK	Denmark	Kingdom of Denmark
EE	Estonia	Republic of Estonia
EL	Greece	Hellenic Republic
ES	Spain	Kingdom of Spain
FI	Finland	Republic of Finland
FR	France	French Republic
HU	Hungary	Republic of Hungary
IE	Ireland	Ireland
IT	Italy	Italian Republic
LT	Lithuania	Republic of Lithuania
LU	Luxembourg	Grand Duchy of Luxembourg
LV	Latvia	Republic of Latvia
MT	Malta	Republic of Malta
NL	Netherlands	Kingdom of the Netherlands
PL	Poland	Republic of Poland
PT	Portugal	Portuguese Republic
RO	Romania	Romania
SE	Sweden	Kingdom of Sweden
SI	Slovenia	Republic of Slovenia
SK	Slovakia	Slovak Republic
UK	United Kingdom	United Kingdom of Great Britain and Northern Ireland
US/USA		United States of America

## European Union Abbreviations

EC	European Commission
EP	European Parliament
ECJ	European Court of Justice

## SUMMARY

Over the last two decades, the EU Member States have invested considerable resources in setting ethical standards, as evidenced by the proliferation of ethics codes. However, neither instruments nor methodologies are available for measuring the development of ethical behaviour over long periods of time. There are reasons to believe that, by historical comparisons, civil servants have become more ethically sensitive than before, in such fields as awareness of anti-discrimination, mobbing, gift-taking, political patronage, transparency and accountability. On the other hand, there are many more rules and standards to be broken. Moreover, expectations have risen and standards are becoming ever stricter. New public management reforms also pose new challenges and threats. Overall, ethics policies have become more important. This can be seen in the high level of regulatory activity, growing number of rules and standards, expansion of the meaning of ethics, adoption of more codes of ethics, introduction of more complex accountability mechanisms, growing institutionalisation of ethics (e.g. through the establishment of ethics committees, monitoring bodies, disclosure policies etc.), and more training.

The trend has been towards an increase in the number of rules and standards, as well as the number of issues that are recognised as unethical behaviour. Still, more rules are needed, especially in Eastern Europe while the Nordic countries do not share the same requirement. This is remarkable, as many Eastern European countries already have more rules in place than the Nordic countries. This suggests that more rules are needed in a given political, economic, legal and institutional context characterised by low levels of public trust.

Deregulation of ethics rules seems to be politically impossible and also seems to be lacking support of the general public. However, some countries offer extremely detailed provisions in the field of disclosure of financial interests, which could be simplified. Furthermore, the quality of disclosure legislation could be improved as well. In the meantime, we realise that the trend towards more ethics rules is slowing down. However, our findings do not suggest a shift towards a stronger emphasis on better implementation, enforcement and institutionalisation of ethics policies and rules.

The Member States have invested very little in the evaluation of ethics policies' effectiveness as regards the development of ethical behaviour, costs, bureaucracy and side-effects. However, more Member States are investing in ethics surveys which measure the perception of the ethical climate.

In most countries ethics policies operate in a climate of increasing levels of distrust (higher distrust towards politicians than civil servants). Therefore, the Member States are under pressure to intensify their efforts in the field of ethics to improve public trust. Many other issues, however, may impact the trust levels. It is clear that doing less would probably decrease the trust levels even further, but doing more, on the other hand, would not necessarily improve public trust.

Ethics policies are mostly scandal-driven. They emerge, flourish, are reformed and expanded as a result of scandals and media attention. Hence, some issues such as corruption and fraud attract a lot of media and political interest, whereas others are not discussed publically to the same extent (e.g., mobbing and disrespect for core values). The fact that ethics policies are often scandal-driven results in the conception of symbolic policies, which at best lead to the adoption of new regulations. Therefore, the focus is on the adoption of new policies, not on the implementation and enforcement of policies. This is confirmed by the fact that ethics is often not taken seriously. The fact that many Member States often do not take ethics seriously contradicts the opinion that civil servants are well aware of ethics rules. Some countries reported also that there was a lack of ethics-related training and awareness. Moreover, ethics training is considered to be as an effective instrument.

As far as the effectiveness of ethics instruments is concerned, leadership and openness are deemed the most effective instruments, followed closely by ethics legislation and ethics training. On the other hand, poor leadership is one of the greatest obstacles in rendering ethics policies effective. Moreover, the findings show that the financial crisis may contribute to a decline in the level of trust placed in leadership. In the view of the present state of implementation, post-employment rules are considered to be the least effective ethics instrument. Strict gift policies, integrity officers, registration of financial interests, protection of whistle-blowers and ethics codes are considered less effective as well.

Most institutional structures are still weak and enforcement and monitoring of ethics policies continues to be an obstacle hindering the establishment of an effective ethics policy. The Member States are much more active in the institutionalisation of anti-corruption policies and conflicts of interest policies than in other ethics-related policies. Overall, institutional structures differ a lot and are highly fragmented. As regards corruption and conflicts of interest policies, one can observe a trend towards the creation of specialised bodies tasked with investigating conflicts of interest and corruption in the national public services. Ideally, these bodies should be independent. Only a few Member States provide for centralised and integrated institutional structures in the field of ethics (e.g., BIOS in the Netherlands, KNAB in Latvia and the Committee on Standards of

Public Life in the United Kingdom). Still, there are more questions than answers concerning effective institutionalisation of ethics policies. What are the experiences so far in monitoring and managing disclosure policies? Have the Member States ever evaluated whether the existing institutional structures existing in the field of ethics are efficient and effective? Are certain coordinating bodies needed? Could advisory bodies such as the Dutch BIOS develop good practices and act as role models? Should all ethics bodies enjoy an institutional and financial autonomy?

An extensive ethics bureaucracy, as can be observed in use in the US and Canada, is not likely to emerge in the near future. However, exceptions exist in the still evolving system of disclosure policies (registers of interests) and in the fight against corruption. The fact that ethics bureaucracies are still limited can be implicitly seen from the fact that the Member States do not consider the costs a problem. More specifically, almost all Member States have no evidence concerning ethics-related spending. This results mainly from the fact that any professional and credible cost evaluation requires a horizontal and integrated approach to cost development. Ethics-related costs are dispersed today amongst many authorities. Another specificity of ethics policies is that the Member States do not perform cost-benefit analyses. Opinions are still prevailing that increasing costs can be justified by the avoidance of ethical scandals.

According to the Member States, the HR reforms that are most vulnerable to integrity violations include recruitment policies, pay reforms, promotion policies and mobility policies. So far, the development of the new ICT is not considered a vulnerable reform trend in relation to ethics. However, the continuing emergence of more diverse ways of communication will raise more ethical challenges in the future. The new ICT also means that individual public servants are going to have access to an ever growing range of communication instruments. On the other hand, opportunities to control the use of ICT and to interfere with privacy issues will be more frequent as well. This means that the public sector will become exponentially more challenging and difficult to manage.

Overall, the impact that the financial crisis has on ethics is neither well researched nor easy to analyse, and most Member States are only beginning to monitor this link. The findings of the study indicate a link between higher budget deficits and higher levels of public distrust. Furthermore, the financial crisis exerts the strongest impact on work place commitment and job satisfaction. Because of the importance of this issue, we recommend it to be monitored more thoroughly in the future.

Other findings suggest that specific attention should be paid to post-employment. Because of the blurring of the boundaries between the public and private sectors, the regulation and management of post-employment will gain in importance in the near future. In addition, the trend towards more flexible forms of employment contracts makes it more difficult to design effective post-employment strategies for the ever more diverse workforce. On the other hand, the Member States have so far been critical as to the effectiveness of post-employment measures. In fact, post-employment is considered as the least effective ethics instrument. Consequently, the Member States should design better instruments in this field.

Finally, we conclude that the emphasis in the field of ethics has been excessively placed on scandals and on preventing wrongdoing. We argue that this regulatory top-down approach to integrity in government must advance beyond the bad person model of law and policy. Instead, we should look at the social psychology of organisational life and at the ability of individuals and leaders to understand and to be critical of their own behaviour.

## 1. INTRODUCTION: ETHICS AS AN ELEMENT OF GOOD GOVERNANCE

No instruments or methodologies exist to measure the development of ethical behaviour over long periods of time, although there are reasons to believe that, by historical comparisons, civil servants have become more ethically sensitive than before in such fields as awareness of anti-discrimination, mobbing, gift-taking, political patronage, transparency and accountability. Over the last two decades the Member States have also invested considerable resources in setting ethical standards.

All Member States accept that public-service ethics is important for numerous reasons: public institutions protect our countries from external and internal threats. Governments also employ means – such as the threat of violence – that affect the fate of all of us. Public authorities and specific groups of public employees (judges, police officials, military personnel) may interfere with personal rights. Public officials provide means and goods – such as health care, employment opportunities – that are valued by most citizens. Finally, public officials at all governmental levels exercise control over money granted to the government by the Parliament elected by the citizens. It is especially in the times of budgetary constraints that the public service is accountable for the efficient, effective and ethical management of such funds.

Consequently, public officials and public institutions have many opportunities to significantly affect the wellbeing of our societies. Therefore, we want their actions to be guided by rules and policies that prevent them from acting unethically. “Because in a democracy officials and institutions are supposed to act in our name and only on our authority, we want their actions to conform to the moral principles that we share”<sup>1</sup>.

As a consequence, for a long time opinions prevailed that civil servants were linked to the authority of the state and could not be compared to other public employees or to the private sector workforce. They were offered a public law status (at least in most states), in order to link them with the state and with the rule of law and not with the interests of individuals. The public law status originates from the French revolution aiming to establish and guarantee a democratic society based on the principles of the French Revolution (Schulze 2004, 39). In Germany the introduction of the public law status was inspired by the philoso-

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1 Amy Gutmann/Dennis Thompson, *Ethics and politics*, Thompson/Wadsworth, Fourth Edition, 2006, p.x.

pher Friedrich Hegel. In the *Elements of the Philosophy of Right* Hegel stated that “the civil [servant's] relationship to his office is not one of contract [...] the civil servant is not employed, like an agent, to perform a single contingent task, but makes this relationship [to his work] the main interest of his spiritual and particular existence [...] But the task which the civil servant has to perform is, in its immediate character, a value in and for itself”<sup>2</sup>.

Hegel's idea of the civil servant and the state as such was conceptualized as a Leviathan which stood above the society and citizens. Its main role was to protect the society by enforcing regulations to achieve fairness and to balance the diverging egoistic interests within the society.

The most influential definition of bureaucracy comes from Max Weber<sup>3</sup>. In his well-known lecture on *Politics as a Vocation* delivered in 1919, he defined the role of the public officials in the following manner: “The honour of civil servant is vested in his ability to execute conscientiously the order of the superior authorities, exactly as if the order agreed with his own conviction. This holds even if the order appears wrong to him and if, despite the civil servant's remonstrances, the authority insists on the order. Without this moral discipline and self-denial, in the highest sense, the whole apparatus would fall to pieces”.

According to Weber, the essence of administrative behaviour is to follow legally given orders. Following this, at a minimal level, administration was considered to be good and ethical if it achieved the implementation and enforcement of the existing laws and policy goals of the Government of the day. Moreover, ethically good or acceptable behaviour was also defined in terms of law obedience, impartiality and standardization. The purpose of rule-orientation was also to achieve fairness and equity, to implement the merit principle, to allocate rights to citizens and to protect public employees against arbitrary administrative decisions. Weber suggested that civil servants should administer without fight, passion and emotion. Communication should be “dehumanised” by eliminating feelings like hate and other irrational and emotional elements. The civil servant should not do the task of a politician: fighting!<sup>4</sup> Instead, one of the most important obligations of civil servants is to exercise their functions impartially and rationally.

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2 Gottfried Hegel, *Elements of the philosophy of right*, Cambridge University Edition, 1991, pp. 328-336 (§ 287-297).

3 Max Weber, *Wirtschaft und Gesellschaft*, Volmedia, Paderborn, 1922, pp. 219-227.

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

The principle of the rule of law is definitely one of the core principles in European administrative law, and it is constitutionally guaranteed in every EU Member State. For instance, in Austria and in Finland the principle of the rule of law is explicitly linked to public administration. According to the Austrian constitution, “The entire public administration shall be based on law” (article 18, subsection 1). The Finnish constitution argues that “The exercise of public powers shall be based on an Act. In all public activity, the law shall be strictly observed” (section 2). In the meantime, the notion of good and ethical administration has changed. It has become broader, more complex and more complicated.

Obedience to authority is the cornerstone of the traditional bureaucracy, and this concept is still alive and doing well in many countries. From the ethical point of view, following the law or the superior’s orders is usually not problematic. It still is a very relevant guideline for public officials, as it highlights the importance of the rule of law and loyalty to democratically elected government. However, the problem with the Weberian concept is that as an ethical guideline it is simply too narrow for today’s multi-level governance.

Today, the level of awareness is growing that work in the public sphere is much more complex and no longer dominated by the principle of rationality as Weber predicted. In fact, today experts are of the opinion that civil servants should not be seen as cogs in the machine. In reality, work in the public sector is more individual, value-laden, emotional, pluralistic and more unpredictable than ever. For example, modern public officials have much more individual decision-making discretion than predicted by Weber. Excessive adherence to rules may be problematic as such as has been illustrated by many authors<sup>5</sup>. On the other hand, the rule of law and administrative law as such remain the core principles of all administrative systems in Europe

Strangely enough, discussions on the importance of (administrative) law and administrative principles did not play a major role during the heyday of New Public Management. One reason for this may be that administrative law was mostly seen as a constraint that blocks policy choices and reform policies. Too much law as such was also seen as suspicious and an underlying reason for public sector inefficiencies. Consequently, traditional administrative behaviour was held to be rigid, rule-bound, centralised and obsessed with dictating how things should be done – regulating the process, controlling the inputs – but totally ig-

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5 Guy Adams/Danny L. Balfour, In the face of administrative evil: Finding basis for ethics. In Jay M. Shafritz/Albert C. Hyde, *Classics of public administration*, Sixth Edition, 2008, p. 566; Philip Zimbardo, *The Lucifer effect: Understanding how good people turn evil*, Random House Trade Paperbacks, 2008.



noring the end results. As a consequence, New Public Management theories were dominated by economic, political and organisational discussions.

In the meantime, the concept of New Public Management has lost a lot of its appeal as the focus on “too much” managerial thinking (and a too strong focus on rational choice theories) is also revealing many negative effects. Therefore, new concepts such as Collaborative Government, Digital Government, Neo-Weberian State or Post-Bureaucratic Government are discussed. Here, the focus is not any more on efficiency and transfer of the private sector model. Instead, it is about the efficiency, effectiveness, coordination, quality and citizen-orientation. In fact, it is all about Good Governance and Good Administration.

Today, the role and limitation of the ethics of neutrality is largely recognised. It is accepted nowadays that individual behaviour is not only determined by rules and policies. Instead, it is also largely influenced by cultural aspects, leadership, fairness perceptions and feelings such as hope, fear, aspirations, etc. Therefore, ethical laws, principles and standards do not cover all areas of human actions, nor do they always help in dealing with ethical dilemmas and personal conflicts. This also suggests that ethically good or acceptable behaviour can be defined not only by focusing on obedience to rules but encompasses also such issues like justice and fairness, leadership, ethical culture and the broader social context of behaviour.

However, given the grand tradition of the “ethics of neutrality”, the role and importance of emotions at the workplace is still widely under-researched and, sometimes, not even recognised in the public sector (Cropanzano/Stein/Nadisc 2011: xiii<sup>6</sup>). Changing behaviours and people is also more than difficult and cannot be accomplished by a simple introduction of new rules, standards and policies. Or, as Follett noted in *The Giving of Orders*<sup>7</sup>, you “cannot get people to do things most satisfactorily by ordering them or exhorting them; but also that even reasoning with them, even convincing them intellectually, may not be enough (...) For all our past life, our early training, our later experience, all our emotions, beliefs, prejudices, every desire that we have, have formed certain habits of mind ... Therefore it will do little good merely to get intellectual agreement; unless you change the habit pattern of people, you have not really changed your people”<sup>8</sup>.

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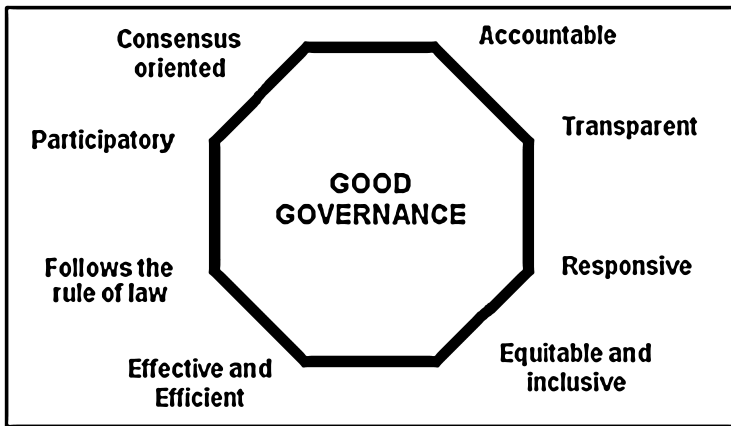
6 Russel Cropanzano/Jorgan H. Stein/Thierry Nadisc, *Social justice and the experience of emotion*, Routledge, New York, 2011.

7 Mary Parker Follett, *The giving of orders*, in Shafritz/Hyde, op. cit., p. 65.

8 Ibid.

Today, the concept of good administration and good governance is replacing the talk of New Public Management (NPM). Although there are just as many definitions of Good Governance as there are of NPM, the concept of Good Governance includes broader and varied political and organisational principles of management practices. Good governance is also about good leadership, organisational fairness, non-discrimination and an ever increasing set of issues which are considered unethical.

**Figure 1. Characteristics of good governance<sup>9</sup>**



Whereas efficient government is more about a balanced ratio between input, outputs and outcomes, effective government is about better solutions to problems and challenges (higher health standards, fighting unemployment, reducing environmental pollution), and about higher quality levels (better services for citizens). Good and ethical government is about being good and maintaining and achieving societal standards (democracy, trust, respect, integrity, civility etc.). Can governance accomplish both? Is doing good the same thing as doing the things right? Can government be effective, efficient and good?

Still, especially the rhetoric of good government is full of good but also conflicting intentions. We want better governance, better leadership, representative and diverse administrations, more flexibility, less hierarchy, more job autonomy, participatory management, effective anti-discrimination rules, more perform-

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<sup>9</sup> United Nations Economic and Social Commission for Asia and the Pacific, What is good governance? See <http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp>, last time checked on 26.3.2012.

ance, better accountability structures, more transparency, more openness and more citizen-orientation. Consequently, in discussions on good governance, the following factors are frequently mentioned: accountability, transparency, combating corruption and participatory governance<sup>10</sup>.

In fact, the concept of good governance and good administration is becoming broader and broader and includes different things such as the call for less administrative burdens, better quality of services, higher levels of citizen satisfaction, more transparency while enhancing efficiency and levels of public trust. Likewise, ethical government is also becoming more complex and expanded from an early focus on anti-corruption and fraud to many other fields, including conflicts of interest, ethical leadership, transparency, accountability, disclosure policies, post-employment etc.

Thus, ethics policies share a number of features with the field of anti-discrimination (and/or diversity). Whereas in the past the concept of anti-discrimination focused on equal opportunities, equal treatment and equal pay, today it encompasses a much wider field and includes the fight against discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Art. 10 TFEU). The case law of the EJE in the field of age discrimination includes an impressive number of important and complex judgments.

According to Salminen, we are moving from a minimalist concept to a maximalist concept of good and ethical governance<sup>11</sup>. Salminen argues that the “minimalist concept involves the minimum requirements for ethically acceptable governance, whereas the maximalist concept aims at enriching our understanding of what ethically good and high quality governance involves or could involve. The minimalist concept of ethical governance states absolute prohibitions that public authorities and civil servants are forbidden to violate in all circumstances. They include prohibitions of all forms of corruption (e.g., bribery, graft, and nepotism), extortion and coercion, deception, theft, and discrimination (....). The maximal concept of ethical governance additionally invokes positive commands, such as ‘Be fair and impartial’, ‘Safeguard the well-being of citizens’, and ‘Take good care of the administrative tasks entrusted to you’. Furthermore, the maxi-

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10 Sam Agere, *Promoting good governance. Principles, practices and perspectives*. Commonwealth Secretariat, 2000.

11 Ari Salminen (Ed.), *Ethical governance*, University of Vaasa, 2010, p. 32.

malist concept specifies positive characteristics of a good authority or civil servant, such as diligence, kindness, patience, and humaneness”<sup>12</sup>.

This study is about the question whether the move towards a new and more complex concept of ethics and governance is effective. Is it better than the traditional concept of the “neutrality of ethics”? Is ethical behaviour improving? Are newly designed instruments effective? Or, perhaps we are expecting too much? Are we becoming too demanding? Is it possible to have too much ethics?

As we will see throughout this study, we cannot offer a ten-steps-to-success handbook. However, we will try to analyse the existing challenges as thoroughly as possible. This study presents an overview of ethics policies’ effectiveness on central administrative level, the main reform trends and the main outcomes of selected national reform policies in the field of ethics. The overall aim of this work is to provide empirical evidence, facts and comparative statistical evidence in order to help experts and scholars better understand the nature of reforms and the changes that are taking place. This alone is risky business, since ethics policies are very complex and technical. Thus, any comparative study faces the risk of being far too superficial. Hence, this study relates to basic research which may be considered a good point of departure for a more specific study of the different instruments and issues, such as those related to leadership, post-employment and whistle blowing issues

We would like to thank the Polish EU Presidency and all national and European experts within the European Network of Public Administration<sup>13</sup> for their vital contribution to this study. We are also grateful to Krzysztof Banaś, the HRWG Chair for his consistent support throughout the entire project, and Councillor Katarzyna Dudzik for her excellent coordinating skills and diligent help.

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12 Ibid.

13 For more information about the network, see <http://www.eupan.eu/>, last time checked 26.3.2012.