

**How to Implement Public Sector Codes of Conduct:  
Lessons from OECD Member States**

by

**Bryane Michael\***

**Centre for Comparative and Public Law**

**Faculty of Law**

**The University of Hong Kong**

**Occasional Paper No. 24**

**June 2013**



\* With contribution by *Habit Hajridini*, Office of the Prime Minister, Kosovo

The Centre for Comparative and Public Law (CCPL) was established in 1995 within the Faculty of Law of the University of Hong Kong. The purposes of the Centre are to promote research and other activities in the field of public and comparative law. The Centre has organised many seminars relating to international law and human rights in Hong Kong, and has active research projects covering such topics as the reform of constitutional law in Hong Kong, the implementation of international human rights standards in Hong Kong law and practice, equality and the law, trafficking of women into Hong Kong, and comparative sexual harassment law.

The Director of the Centre is Professor Simon NM Young and the Deputy Directors are Assistant Professor Puja Kapai, Assistant Professor Kelley Loper and Professor Benny Tai. The Assistant Research Officer is Sharron Fast, and the Executive Secretary is Flora Leung.

This Occasional Paper is written by Bryane Michael, who is a Visiting Fellow at the Centre. His professional experience includes work as a legal advisor from 2007 to present for the European Union. He has also advised the United Nations Development Programme (UNDP) on legal issues related to the International Anti-Corruption Convention and the World Customs Organisations on legal issues related to fighting corruption in customs. Bryane Michael has done his graduate work at Harvard and Oxford – and has taught at several universities including Oxford University and recently Columbia University.

Further information about CCPL and other occasional papers published by the Centre are available on the Centre's website: [www.law.hku.hk/ccpl](http://www.law.hku.hk/ccpl).

Published by

Centre for Comparative and Public Law  
Faculty of Law, The University of Hong Kong  
Pokfulam Road  
HONG KONG  
Tel: (852) 3917 2941  
Fax: (852) 2549 8495  
Email: [fkleung@hku.hk](mailto:fkleung@hku.hk)

© 2013 Centre for Comparative and Public Law and Helen Liu

Suggested Citation: Bryane Michael and Habit Hajridini, "How to Implement Public Sector Codes of Conduct: Lessons from OECD Member States", Centre for Comparative and Public Law Occasional Paper No. 24, Faculty of Law, The University of Hong Kong, June 2013

*The contents of this paper may be freely reproduced, provided that appropriate acknowledgements are made of the original source and author. The moral rights of the author are asserted.*

## Contents

Introduction.....	4
Phase 1: Regulating Ethics	5
<i>Why regulate ethics?</i> .....	6
<i>What areas of administrative behaviour to regulate?</i> .....	8
<i>Types of ethics regulations</i> .....	11
<i>Who to regulate in a public administration – and how?</i> .....	13
<i>Why are codes of conduct just another part of administrative law?</i> .....	15
Phase 2: Elements of Code of Conduct Work and Ethics-Regulations	18
<i>Overview of the five step plan for regulating public ethics</i> .....	19
<i>Collecting data</i> .....	20
<i>Follow existing law</i> .....	24
<i>Draft regulations or other instruments</i> .....	32
<i>Estimate effects using modelling and cost-benefit analysis</i> .....	36
<i>Inform staff about regulations and monitor performance</i> .....	38
<i>Conduct internal audits</i> .....	40
Phase 3: Institutional Approaches	44
<i>Evolution is the usual approach to whole-of-government ethics</i> .....	44
<i>How to Design a Whole-of-Government Ethics Programme from scratch</i> .....	47
<i>How to empower an Ombudsman to monitor government ethics?</i> .....	57
<i>How to empower an ethics committee or board to monitor ethics?</i> .....	61
Phase 4: Implementation Arrangements	66
<i>The role of leadership</i> .....	66
<i>How to assign Human Resources departments with ethics-related competencies</i> .....	70
<i>The role of public and internal feedback and complaints</i> .....	74
<i>Creating a special department for ethics counselling</i> .....	75
<i>How to Use Internal Audit</i> .....	80
<i>The role of codes of conduct and posters taped to walls</i> .....	81
<i>Beware excess regulation</i> .....	82
Conclusion	83

## Abstract

In this brief, we review the basics of implementing codes of conduct in the public sector. We discuss the link between codes of conduct, ethics-related law and other law. We discuss how different OECD Member States regulate the behaviour of their public officials – using codes of conduct as a guide or reminder of well-established principles in administrative law. In the first phase of work, officials in charge of the code of conduct programme must decide what to regulate, who to regulate and how to regulate them. In the second phase, they must collect data about existing needs, study existing law (to know what is possible), and draft ethics-related regulations. Codes of conduct can serve as actual administrative rule-making or as reminders of more detailed ethics-related regulations. In the third phase, officials in charge of public ethics must decide on a “division of labour” between various institutions – or let such a division develop organically. In the final step, senior public sector managers implement the codes of conduct which remind staff of the more lasting ethics-related legislation and regulation in place. Human resource departments and internal audit departments help senior public sector managers change administrative behaviours.

**Disclaimer:**

The views expressed in this paper belong only to the authors, and do not represent the views of the organisations to which the authors are affiliated. This research and work has taken place over several years, and parts may appear in other fora.

## How to Implement Codes of Conduct: Lessons from OECD Member States

### Introduction

Many governments look to codes of conduct for public officials as a way to prevent the abuse of public office. Most developing countries have already adopted very similar laws related to preventing conflict of interest or corruption. These laws have similar structures --- and have been passed at around the same time (in the 2000s). Yet, few developed countries have embraced in-depth public officials' ethics programmes. The United Nations, Council of Europe and OECD all have guidance on regulating public officials' behaviour through codes of conduct. Many government agencies have organised conferences or worked with UNDP, USAID or other bilateral-funded consultants on drafting codes of conduct. Yet, few government agencies -- particularly in the developing world -- have actually passed effective codes of conduct which change public officials' behaviour. Government agencies which have worked extensively on such codes of conduct can not report significant changes in staff behaviour. Simply put, most government agencies do not know how to implement codes of conduct and ethics-related regulations.

In this brief, we describe how OECD Member States have implemented their ethics-related regulations and codes of conduct.<sup>1</sup> We divide the brief into four stages -- regulating ethics, elements of the regulation, institutional approaches, and implementation arrangements. We show the reader how to design codes of conduct (and the ethics regulations on which they are based) at both the whole-of-government and agency level. We show that codes of conduct represent only a flimsy cover for a larger and usually unseen corpus of ethics-related law and informal practice. As such, we focus

---

<sup>1</sup> Much of this material comes from research we have done since 1998. We have distilled those lessons which we think -- based on our work in Eastern Europe -- will be useful to governments interested in expanding their work on government ethics. Naturally, the best advice will depend on the particular government agencies involved.

our discussion of implementation on the activities which underlie any code of conduct – rather than discuss the poetry of writing codes.

We discuss the basics of this work – taking the tone of an *Administrative Codes of Conduct For Dummies* book. We assume that the reader has no familiarity with codes of conduct, ethics programmes or the intricacies of legal drafting. Because of the wide variation in OECD Member practices and institutions, we provide many generalisations. Documenting particular article numbers and/or publicly recorded examples of practices for each assertion we make would turn our brief into a doctoral dissertation. In most cases, OECD Member State administrations do not put this information on the Internet. To maintain our integrity – and to prevent the outright lying that many consultants do by referring to abstract “international best practice” -- we can provide specific examples to support specific assertions upon request. We try to cut through much of the abstract ethics-guru advice – and offer practice advice to individuals actually implementing government ethics programmes. Needless to say, nothing in this paper reflects the views of the OECD Secretariat, its Member States, or its affiliates.

### **Phase 1: Regulating Ethics**

In this first section, we describe the generalities of regulating ethics through codes of conduct and ethics regulations. We describe why OECD Member States use codes of conduct almost as “reminders” for much more profound administrative rulemaking. We describe how such rulemaking affects different types of public officials (such as elected officials and civil servants). We describe the types of behaviour usually regulated – though ethics-regulation and codes of conduct can encompass almost any type of behaviour not regulated by black letter law.<sup>2</sup> We describe the various types of regulation which support codes of conduct – from city ordinances all the way to international

---

<sup>2</sup> We refer to black letter law as codified formal written law contained in various codes of regulation (such as the US Code of Federal Regulation or US Code for legislation). In the European context, Ministry of Justice databases and the web pages of various executive agencies will have such law under their laws, legislation, and/or normative law tab.

recommendations. We discuss why most commentators wrongly see codes of conduct as a tool of regulation – rather than a sign of much more comprehensive rulemaking.

### *Why regulate ethics?*

Codes of conduct and ethics-related law aim to regulate areas of public officials' work which can not normally be done by black-letter administrative law. Loyalty to the public institution consists of one obvious example of a principle contained in a code of conduct. This principle encourages public officials to serve the best interest of their agency – by guarding the secrecy of certain kinds of information (for example). But what happens if a public official stumbles upon some important information which the public should know about? Governments can not pass laws forbidding public officials from sharing all information. They also can not allow public officials to share *all* information. They can not define long lists outlining the kinds of information officials can share, and the information they can not share. Such decisions require discretion, may change over time and may depend on changing circumstances. As such, broader ethical principles need to guide public officials.

OECD Member State administrations generally choose ethics regulations and codes of conduct (rather than black letter law) when:

1. *The decision is too complicated to be defined in a list-test* – executive regulations usually provide proscriptive or prohibitive conditions. If X occurs, then do Y (or don't do Y). However, codes of conduct usually involve general rules which can (and should sometimes) be broken. For example, don't share public information, unless the public interest is involved. Or act efficiently – unless it discriminates against some group of service users. These kinds of decisions require the balancing of principles.

2. *The decision requires discretion which senior management can not check all the time* – senior government managers usually check the work of lower level staff. However, they

can not check all decisions made by these staff. What if someone does not have all the documents needed in an administrative process? Should the official accept the application or not? Such a judgment requires judgments about risk and return – whether the omission is material, discriminatory, legal and so forth.

3. *Senior officials seek to build consensus on an area of little agreement* – many codes of conduct admonish staff to have the most up-to-date skills needed to do one’s work (for example). Yet, no one can agree on what these skills should be, otherwise they would be codified in job requirements. Moreover, no one black letter regulation can tell both public financial planners and engineers (to take two examples of the literally thousands of jobs in a government) which skills they should have. So, codes of conduct promulgate general admonitions to have the latest skills – and leave to interpretation what those skills should be.

4. *Complex and changing job requirements make fixed regulation impossible* – planning against natural disasters, making medical policy and providing electricity all require different skills and ways of dealing with the public. In such circumstances, a fixed regulation preventing discrimination would prove impossible to implement. Rules against discriminating against groups based on ethnicity, gender or other factors during the planning of an evacuation programme would not work for a doctor performing triage in an ER room (for reasons too complex to discuss in this short brief). General ethics-related guidelines provide broad rules which help give guidance – and allow senior managers to apply sanctions in cases where staff clearly violate the spirit of those guidelines.

5. *Quickly changing values may make strictly defined black letter law impractical* – take the example of fixed working hours. Many codes of conduct require staff not shirk and to work during the duly appointed working hours. Yet, in the internet age, playing at work (to generate new ideas) and flexible hours have become the norm. Should senior managers punish staff who perform excellently – but do not come to work at 9:00am sharp? Such

decisions require judgments that depend on labour market norms and often common sense.

*What areas of administrative behaviour to regulate?*

What should codes of conduct and ethics regulations regulate? In theory, most guidance promulgated by organisations like the UN and OECD agree on the topics that a code of conduct should cover. Figure 1 shows the main themes of these codes of conduct usually address. We do not discuss these topics in-depth in this brief – because we focus on the implementing already accepted codes of conduct. However, we do want to highlight the fact that most ethics admonitions require public officials to balance a set of values and take a discretionary decision. For example, an ethics code may require public officials to provide a high level of service. At first glance, such an admonition does not seem to make sense. Why would any public official deliberately seek to provide poor service? In practice, the admonition requires that the public official provide the best possible service – taking into account resource constraints and strong administrative political pressures. Providing poor service may serve political ends during the next budget negotiation (by pointing to a poor level of service, the minister can ask for more money). Understanding public administrative codes of conducts often requires a deeper understanding of the trade-offs and compromises which public officials must make each day.

**Figure 1: Deciding What to Regulate**

<b>Topic</b>	<b>Description</b>
<b>High quality public service</b>	Public officials should provide service efficiently and effectively. Implicitly such a norms requires staff to balance efficiency/effectiveness and resource as well as political constraints.
<b>No arbitrary or capricious behaviour</b>	Public officials represent agents of the government – and should take decisions based on established guidelines and procedures. The implicit trade-off here involves efficiency versus predictability (many times senior level

	officials won't or can't provide clarification on decision-making criteria in a reasonable amount of time for one exceptional case).
<b>Loyalty to public authorities and institutions</b>	Such loyalty involves an implicit trade-off between loyalty to the organisation (as a long-lived institution) and to the current director or head (whose values may diverge from more permanent values of the institution).
<b>Freedom of opinion</b>	Public officials may not make damaging or derogatory statements against the government. On one side of the decision lies freedom of speech, acting the public interest and acting as an agent of a politician involved in strategic action. At the other side lies the legitimate interest of the institution in conducting public policy without hindrance from its own agents.
<b>Prohibitions on political activity</b>	Implicit trade-off because agency's staff which know most important issues to influence politics. But influence can corrupt and led to excessive executive power.
<b>Use of Relationships</b>	Implicit trade-off because relationship can best help public officials achieve their goals – but can be corruptive.
<b>International relations</b>	International relations often rely on individual relationships between civil servants and foreign agents. However, these unelected civil servants may act undemocratically (or against the interest of their principals).
<b>Restrictions on gifts</b>	Gifts can distort decision making. However, most governments do not outright forbid receiving gifts because they serve as a way to build rapport with individuals the government regulates.
<b>Participation in decision making</b>	Civil servants with a personal interest in executive decisions should recuse themselves from that decision. However, their proximity to that decision means they can be the best people to take that decision.
<b>use of public resources</b>	Public resources should serve public ends. However, the use of some non0-rival resources may serve as a necessary salary top-up and perquisite in a low salary administration.
<b>Cooling off periods</b>	Many countries do not regulate these cooling off periods because the promise of entering private sector right after public employment can motivate capable person into the public service. However, the risk for self-service influence decisions making. However, job after government as motivation to enter into

	public service.
<b>Report suspicious behaviour</b>	Whistleblowing clearly decreases administrative malfeasance. However, whistleblowing can harm the agency more by creating an unhealthy environment of fear and distrust.
<b>Restricted participation in public contracts</b>	Participation in public procurements can lead to obvious self-serving. However, many civil servants will have unique knowledge of the bidders and the type of work needed and can match these needs better than an independent commission.

Source: Based on Michael (2007). Edited for space.

In practice, ethics-related codes and regulations extend well beyond the topics listed above. Ethics describes “what a group of people define as good/right or bad/wrong”. Administrative ethics treats the gray areas of administrative behaviour – where no agreement exists to draft black letter law. We do not want to get into the debate about whether universal ethics does (or should) exist – like respect for certain types of human rights. Instead, we want to point to the large potential area for ethics-based regulation. In the political sphere, these issues may involve fidelity to one’s political party and its campaign promises. In the administrative sphere, these issues may touch about the extent to which religion may be discussed in an administrative context. Because of the large number of potential topics, no definite list of ethics-related subjects exists.

Yet, some issues gain or lose importance. Issues like bribery no longer enter into modern discussions about administrative ethics because of the consensus built in the 1990s and 2000s about the criminality of bribery. Before the passage of the UN Convention Against Corruption, many codes of conduct and ethics regulations prohibited public officials from taking bribes. Since then, the issue of bribery has moved from the sphere of ethics into the sphere of criminal law almost universally. The only thing that changed is that legislators have decided to regulate the issue using black letter formal law rather than rely on informal, discretionary norms governing ethics-based regulation.

*Types of ethics regulations*

How do OECD Member States regulate public sector ethics? To what extent should formal black-letter law regulate ethics-related conduct? Figure 2 shows the types of instruments used to regulate public official conduct in the OECD. These instruments reflect the variety of public structures – both within a single government and between governments. Governments have complex structures which can not be generalised in this short brief. They usually consist of the three branches of government – the executive, parliamentary and judicial branches of government. They will include independent agencies and institutions (like a central bank). They will also consist of state owned, regulated, or managed companies. They will also consist of quasi-autonomous non-governmental organisations (quangos) and non-for-profit organisations managed by public officials.<sup>3</sup>

**Figure 2: Types of hard and soft law instruments used to regulate public official ethics**

<b>Instrument</b>	<b>Description</b>
<b>Legislation</b>	Code of conduct legislation consists of laws passed by the parliament, congress or (sub-national) legislative body. Such legislation usually consists of either black letter law defining certain types of behaviour or resolutions which have no binding force (and thus are usually not effective).
<b>Executive Regulations</b>	In theory, ethics-related regulations comprise the main way that OECD Member States regulate ethics. The head of the government will issue regulations of varying specificity – sometimes based on competencies given by the legislature to regulate ethics (though usually from the usual competencies related to managing the organisation and its staff).
<b>Executive</b>	In practice, administrative ethics emerge as the result of a long process of

<sup>3</sup> In many jurisdictions, civil society organisations may have board members belonging to a government agency and acting on behalf of that agency.

<b>decisions, instructions, decisions and norms</b>	decisions, decrees, instructions, decisions and judgments made by an institution’s director. These decisions “accrete” over time to create a corpus of decisions and practices – often as the resolution to ambiguities of work or more often conflicts between civil servants.
<b>Informal Norms</b>	Informal norms rarely emerge spontaneously – particularly as the result of codes of conducts or group decisions. Administrations usually import these norms from the broader business or administrative culture.
<b>Board resolutions</b>	Particularly for state-owned enterprises and certain types of state-managed non-profit organisations, these board resolutions serve as executive regulations, decisions and judgments. These resolutions may contain punitive measures for non-compliance and monitoring mechanisms.
<b>Self-regulating organisations’ mandates</b>	Professional organisations (like accountants, auditors and lawyers) and members of the legislature and judiciary often create their own ethics regulations. Usually, a professional oversight board collects complaints related to members’ violation of codes of conduct and ethics-related regulations.
<b>Parliamentary, Board and other Resolutions</b>	For deliberative bodies like parliaments, public-private partnerships and other membership-based organisations, their management committees or other senior management may promulgate ethics-related decrees or advice. Such resolutions rarely have enforcement mechanisms and rely on comity between members.
<b>Ordinances and By-Laws</b>	Local government executive bodies, city councils and other local-level government institutions may also adopt particular ethics-related regulations.
<b>Broad statements of principles</b>	Many public agencies promulgate lists of principles their staff should adhere to. These lists though usually emerge from existing regulations, norms, and informal agreements within the administration – rather than direct them. Many external commentators mistake these lists for the underlying administrative law and practice which defines and enforces these lists.

Agency directors tend to mindlessly copy codes of conduct and other ethics regulations when senior managers and official laws require these codes.<sup>4</sup> In the 1990s, many public agencies mandated the creation of public codes of conduct. These codes emerged from administrative fiat rather than as responses to the organisation's needs. These codes tended simply to copy model codes of conduct available on the internet. These codes of conduct have not, for the most part, led to substantial changes in administrative conduct. Codes of conduct and administrative regulations should emerge from the regular regulation-making and senior arbitration processes – like they emerged in the OECD Member States over decades and sometimes centuries.

*Who to regulate in a public administration – and how?*

Now that we talked about how to regulate – we need to describe who to regulate. One of the main distinctions to keep in mind involve the difference between elected officials (politicians and their appointed advisors) and professional civil servants. The other main distinction to keep in mind is that the executive branch of the government only represents one part of the wider state (and still wider public sector).<sup>5</sup> The complex structure of the public administration makes blanket codes almost impossible to write (let alone enforce). Figure 3 shows some of the members of a public sector who may be bound to some form of ethics-regulation in OECD Member States' administrations.

**Figure 3: Deciding Who to Regulate**

Who?	What?
<b>Civil servants in the executive administration</b>	Profession career or contract civil servants do not take political decisions. Their ethics focus on efficiency, effectiveness and the public interest.

<sup>4</sup> Throughout this brief, we tend to refer to the head of an administrative organisation (with a Ministry, Department, autonomous agency) simply as an agency director. We mean anyone with the final regulatory authority in that particular government body and only that particular government body.

<sup>5</sup> We do not discuss the structure of a public administration to keep the brief focused. Any basic public administration textbook will describe in more detail the distinctions we have briefly mentioned.

<b>Independent agency and other staff</b>	Same rules usually apply as to civil servants because of similar highly organised and routinized work.
<b>Public officials (elected)</b>	These include ministers, other elected officials and their political appointees and advisors. Because they represent the values of the people, their decisions will almost always have an ethical dimension.
<b>Legislators</b>	As a self-regulating body, their political decisions will often have ethical dimensions involved. Codes of conduct are difficult because of the highly politicised nature they can take on.
<b>Judicial officials</b>	Investigators, prosecutors, judges (and to a lesser extent the legal profession) adopts its own codes of conduct. Usually these codes represent regulation as we normally think of it because of clarity in interpretation (by a standards body) and sanctions.
<b>State-owned enterprises</b>	As economic entities, their ethics often revolves around balancing the needs of the market and consumer with the public good. SOEs do not have the duties to society as government agencies.
<b>Quangos and regulated NGOs</b>	Their semi-independence from government (and often lack of government funding) makes a strict focus on the public interest difficult to enforce. Their codes of conduct focus on balancing their rightful private interest with the public weal.
<b>“Subjects of government regulation” (citizens)</b>	Senior officials can impose certain behaviour norms on public officials as part of their employment contract with the government. Such powers do not apply to citizens – though an ever encroaching set of administrative laws imposes behaviour norms on persons and companies doing business with government.

OECD Member states choose different methods of regulating these types of officials – usually based on their administrative traditions. In the UK (for example), administrative ethics usually occurs at the agency-level and involve voluntary compliance with relatively unanimous consent. In France, formal regulations enshrined in administrative law help define the rights and obligations of civil servants. French agencies may post codes of conduct – but behind them lie a corpus of administrative law and sanctions.

*Why are codes of conduct just another part of administrative law?*

Many outside observers see principles taped to walls in OECD Member State administrations and assume that putting up copies of ethics codes comprises a public sector ethics programme. However, these observers see only the tip of the iceberg. Codes of conduct usually reflect – rather than create -- other ethics-related regulation. There are four reasons why codes of conduct in OECD Member States do not comprise the backbone of administrative ethics-relation.

*1. Instructions not part of law are not legal* – government works according to the principle of the rule of law. The rule of law means that government agents act according to fixed rules which the citizens (through their appointed legislators) decide upon. Public officials that decide on rules simply according to best practice – rather than following their own laws – do not act according to the rule of law.

*2. Principles without rewards and punishments do not change behaviour* - public officials (like other normal people) respond according to rewards and punishments. Codes of conduct can not define specific punishments because the precepts they contain are often too general and abstract to judge impartially. These abstract admonitions require a corpus of well-defined practices, judgements from previous administrative disagreements and punishments allowed by administrative law in order to change behaviours.

*3. Propaganda makes up for lack of work by senior staff* – codes of conduct provide excellent PR by showing that an agency cares about ethical issues, without actually doing the difficult regulating and enforcing needed to change behaviours. The short-term PR benefits from quickly draw up a list of principles and disseminating them on the internet often prove extremely tempting to politically and administratively weak agency directors. These ineffective codes make future ethics-related regulation difficult.

4. *Codes of conduct can be used as part of bureaucratic politics (especially during disciplinary proceedings)* – administrative agencies do not have only one set of values or one group vying for power. During a power struggle within an administrative agency, a director can use the abstract and bendable precepts of an ethics code to bring charges against staff he or she wishes to remove.

Most OECD Member States thus place ethics-related issues at the level of administrative law. As part of administrative law, ethics regulations undergo the usual reviews – by in-house counsel, by the public during comments on proposed rulemaking and by legislators in the course of the political process. Administrative law sets boundaries on the administrative decisions taken by public officials, provides for sanctions, and can be stricken down by administrative judges. Ethics-regulations set in administrative law also benefits from the legitimacy which papers taped on walls lack. Administrative law also develops into a coherent body over time – as administrative decrees and decisions follow a logic which sets the lines of the broader jurisprudential tradition within the agency. Such law is also recorded for posterity, making such law stable.

For the reader without a background in law, these points may seem a bit confusing. While administrative law comprises the main way that OECD Members regulate ethics, they also rely (to various extents) on other law. In order to place codes of conduct – and ethics-related administrative law – into context, we need to see how various parts of the law work together to regulate administrative ethics. Most causal observers mistake policy announcements, speeches and signs-on-walls as the main components of an ethics programme. In legal systems – particularly in East Asia and the former socialist countries –these statements may contain unofficial elements of legal regulation. In these legal systems, policy pronouncements carry some amount of legal authority due to the consensual and hierarchical structure of their legal system (rather than the rights and obligations approach of our more individualistic legal traditions).

**Figure 4: A Primer in Law for Public Officials Looking to Put in Place an Ethics Programme**

Type of law	Description
<b>Norms and moeurs</b>	Norms and tradition govern much administrative behaviour. However, changing these norms though requires direct intervention through regulation.
<b>Policy announcements</b>	In some systems, policy declarations of senior officials serves as binding “law” on government officials. For example, in China and many former Soviet countries, civil servants may refer to a speech of a premier as the legal basis for a decision or administrative action. This can include parliamentary recommendations, resolutions and similar pronouncements. Their effect still depends on extent to which public officials think these pronouncements carry with them punishable obligations or rewardable rights. Most Western systems do not consider such pronouncements as part of administrative law.
<b>Administrative Law</b>	Such law governs the rights and obligations of public officials. Such law comprises decrees, decisions, judgments, instructions and other rules adopted by public officials at all levels of government. Such administrative law also encompasses working procedures, disciplinary sanctions and other areas of public administrative regulation. In Eastern Europe, some administrative law straddles what an Anglo-Saxon reader would consider as civil law.
<b>Civil Law</b>	Under civil law, individuals and the agency itself may be found guilty of damages for unethical behaviour. Different ethics-related principles may be defined under civil law (depending on the jurisdiction involved). Civil law represents a natural branch for ethics-regulation because it can impose fines often without jail time.
<b>Criminal Law</b>	Ethics violations which public officials know about (having <i>mens reus</i> ) and which cause significant harm may fall under criminal law. However, because ethics treats the gray areas of law and behaviour, the criminalisation of behaviours deemed unethical is neither desirable nor practicable. Issues like bribery and nepotism represent examples of previous ethics-related issues where a consensus has dragged them into criminal law.

Senior politicians from developing countries recoil when they hear that ethics should be regulated by law. In most of their legal traditions, administrative law remains much less developed than in most OECD Member States. They think of parliaments passing legislation (legislation is only one kind of law-making) and police interrogating suspects (even though in administrative structures, agencies directors themselves – and not the police – serve as the main enforcers of ethical rules). Most developing countries’ administrative law has not adapted to the balancing tests and principles-based regulation that OECD Member administrations often use. Because senior officials often use administrative law in their own self-interest during bureaucratic conflicts in developing countries, these senior officials fear extending such rulemaking into relative ambiguous areas of public life. Public officials in developing countries can only avoid these harms by placing administrative ethics into a deep-seated body of administrative law.

In this section, we looked at the various provisions included in codes of conduct (and ethics-related regulations). We looked at who ethics regulations covers and the types of instruments used to regulate ethics in the public sector. In the next section, we look at the typical steps an agency new to code of conduct work can follow to implement a code of conduct programme in their agency. As the previous section made clear, when we refer to codes of conduct, we actually refer to the underpinning administration regulation, lawmaking and other procedures which seek to modify public officials’ behaviour.

## **Phase 2: Elements of Code of Conduct Work and Ethics-Regulations**

In the previous section, we discussed why OECD Member State administrations have adopted codes of conduct and other ethics regulations. We described who falls under these codes and why these codes in fact represent only reminders of much more profound and developed systems of administrative regulation. In this section, we describe the archetypical steps for administrations looking to implement codes of conduct.<sup>6</sup> We

---

<sup>6</sup> An archetype refers to caricature or simplified stereotype. We boil all the complexity of code of conduct work into a simple 5 step plan to simplify our discussion.

describe a five-step plan for public administrations new to code of conduct and ethics-regulation work.

*Overview of the five step plan for regulating public ethics*

In this section, we describe the steps involved in implementing a code of conduct programme in the public sector. An effective programme consists of five steps – collecting data, conducting a legal analysis, drafting regulations (and codes of conduct which remind staff about these regulations), working with staff on implementation (particularly with HR directors) and using internal audit to assess performance. We focus on programmes that result in sustainable changes in behaviour. Therefore, we do not discuss much of the ineffective work which only consists of speeches, posters, and Ten Commandments like codes of conduct taped to walls. Figure 5 outlines each of the steps in a general code of conduct and ethics-regulation exercise.

**Figure 5: Steps in a Code of Conduct Exercise**

<b>Step</b>	<b>Description</b>
<b>Collect data on needs and preferences</b>	Surveys of public officials and government service users can tell about ethics problems and proposed solutions for remedying incentives which lead to unethical behaviour. Such data also stop debates stemming from personal opinions by providing an aggregate view of the ethical situation.
<b>Collect and analyse existing law on ethics-related behaviour</b>	Any proposed ethics rules and regulations must fit into the country's (and agency's) jurisprudential traditions. Agency staff can not reward and punish behaviour unless they possess the authority to administer such punishments.
<b>Draft regulations or other instruments</b>	The drafting of ethics-related regulations requires special skills – as ethics touches upon gray areas of behaviour which black letter law can not directly address. Parliaments (and agency directors) require special guidance in their approach to regulating.
<b>Estimate effects</b>	Tools from economics, management and audit allow us to estimate the

<b>using modelling and cost-benefit analysis</b>	impacts of ethics-related legislation and regulation. We can guess (in the aggregate) what public officials' responses will be – by looking at the incentives regulations provide to them.
<b>Inform staff about regulations and monitor performance</b>	Mentoring still represents the best way to train staff about ethics. Skills related to seeing both sides of an ethical conflict – and thinking of solutions which balance various values and persons' interests represents a skill which can not be taught by formal education.
<b>Collect information on performance</b>	Internal auditors have years of training in assessing the performance of various policies. They can collect data on the performance of ethics-related regulations – and recommend improvements.

In the sections below, we summarily describe each of these steps. Applying these steps often require years of study in law, economics, audit or related disciplines. Thus, we can not provide a how-to guide for each country or ethics environment. But the descriptions below should be enough to allow senior government officials to ask for the detailed work they need to put in place a code of conduct programme.

### *Collecting data*

The first step consists of collecting data about the need for ethics regulations. Such a needs assessment can be done with questionnaires and/or other methods (such as measuring the number of times staff engage in certain behaviour like recommending their friends for jobs). Designing and implementing valid surveys requires years of training – and we can not address all the technical issues related to conducting such surveys in this brief. Yet, there are five reasons why public administrators should use data to guide their future code of conduct drafting activities.

*1. Data help measure what ethics problems exist* – for example, a survey can ask what proportion of officials in a department act beyond their powers. If the data show almost no one does this, why focus ethics work on it? If everyone does it, clearly more resources

and time need to be spent on regulating this problem. Different questions can address different potential problems.

*2. Data help identify what staff are ready to do* – survey designers can ask staff about the types of activities they would participate in. It does not make sense to design an ethics programme around whistleblowing if almost all staff say they wouldn't denounce unethical colleagues. Questions can even ask about resources different agency directors are willing (and able) to dedicate to addressing unethical behaviour – with questions like “what percent of your time would you spend on reviewing the ethics of your staff's behaviour each week?”

*3. Data help identify how to tackle ethics-related problems* – for individuals planning an ethics programme for a large department or an entire government, they can not ask every person for their opinions. They can not solicit ideas through discussions. But they can ask a series of questions which draw out the best ideas about addressing unethical behaviour in an administration. Surveys and data help cover a large number of people quickly and effectively. Survey designers and the designers of the data need to remember that the opinions solicited come from individuals who do not specialise in ethics-related issues.

*4. Data help decide on the best size of problem (whole-of-government versus agency-level)* – data can help decide the coverage of an ethics programme. Imagine that several agencies (like Ministry of Defence and Agriculture) are against a government ethics programme. Then including them would add to cynicism and not contribute to making a more ethical government. Data can identify particular common problems (like nepotism) in certain agencies. Common problems can sometimes suggest common regulatory approaches to reducing unethical behaviour.

*5. Data build agreement on problem* – meetings about ethics often turn into abstract discussions about morality. With data, meeting organisers can pose specific questions (such as should the agency director adopt a particular ethics regulation) and show the data

for or against such a proposal. In this way, meetings about the code of conduct focus on specific problems and member members can work toward specific conclusions – rather than dwell on philosophical questions.

Data can determine the design of a code of conduct programme. How to collect such data? We can not address all the details of designing questionnaires, collecting and analysing data. We want to keep this brief within a readable 20-30 page length. However, there are a number of principles that the senior administrators and agency directors who must commission and interpret these studies should keep in mind.

*1. Survey questions should generate data which can be used to plan specific ethics activities*

Many ethics-related surveys collect large amounts of data about respondents' impressions about how ethical they think staff are in various agencies. Some even ask directly "how ethical do you think staff are in your organisation?" These questions do not provide specific and objective information which regulation writers can use. Instead, a more focused question used be used, like "what percent of staff do you know have helped a friend or neighbour get a job in the government." If a large proportion of staff help their friends, the agency director can write regulations which address this issue (if this actually represents an issue in their legal and ethical situation).

*2. Survey questionnaires should be short enough to collect meaningful data*

Staff conducting surveys about ethics in a government agency will be tempted to use long questionnaires and gather a lot of information. They should avoid this temptation. Data need to reflect the actual number of times staff behaves unethically. Long questionnaires will encourage respondents to fill in meaningless data (just to finish their work quickly). To reduce survey completion times, staff in charge of the ethics programme can use different surveys to address various ethics-related topics on different dates. For example,

they may focus on conflicts of interest in March and misuse of public title and symbols in August. Such a “staging” of data collection also helps to keep the topic of ethics on the minds of public officials throughout the year.

*3. Survey questions should provide data which internal auditors can later use to monitor the progress of work*

Survey data should ideally set a baseline which senior administrators can use to measure the progress of their ethics programme. A question like “what percent of people you know accepted a gift last year” can be used to monitor gift-acceptance policies. Internal auditors can follow up with their own surveys (if they have enough resources). However, they need baseline questions which provide specific enough data in order to compare their results.

*4. High level members of Cabinet should use rewards rather than punishments based on these data*

Senior officials – particularly in developing countries – sometimes tend to regulate ethics mainly through rules and corresponding punishments for non-compliance. Such an approach has led to hesitancy to expand ethics-related rulemaking. Punishments encourage staff to conceal unfavourable ethics-related data from their superiors. An ever-expanding set of obligations increases the risk of potential punishment for real or perceived ethics-related violations by staff. Such an environment leads to risk-averse behaviour which frustrate the goals of a code of conduct or ethics programme – such as improving the effectiveness, fairness or sustainability of administrative behaviour.

Instead of punishments, senior policymakers should offer rewards to sub-ordinates who positively influence administrative behaviours. Such rewards may consist of awards (like ribbons or honourable mentions). They may also consist of days off, attractive job rotations or even performance bonuses (as allowed by the relevant administrative law).

Positive incentive-based competitions can result in superior outcomes to negative fear-driven programmes.

*5. Surveys should cover similar questions across different departments (or agencies) –*

Questions should be (at least partially) comparable across agencies in order to be effective. They should also provide data which can be “stratified” across agencies. For example, we should be able to say that the Ministry of Education has statistically significant higher (or lower) incidence of diversion of public resources for private use than the Ministry of Health. Such simple statistics, such as the percent of staff who use government property for their own use or the value of that property, can facilitate comparisons across government.

Once data become available, they can be used in several ways. First, for a whole-of-government reform, they can point to specific ministries or agencies to work with. Most readers will now be familiar with data (about perceived corruption for example) which compares perceptions about the police with the customs agency. Similar data about various aspects of unethical behaviour can be used to identify priorities. Second, within agencies, these data can point to areas requiring the director’s regulation. If the data show that unauthorised comments about the agency’s policies represents a more serious ethical breach than gift taking, the director can focus his or her work on regulating that type of behaviour. Third, they can serve for making useful comparisons – particularly for “naming and shaming” exercises within government. Fourth, as previously mentioned, these data can help track the performance of the ethics programme over time. If ethics regulations fail to influence behaviours, senior policymakers can change the overall strategy of the ethics programme (for example, move elements of ethics regulation to the Agency for Civil Servants).

*Follow existing law*

Codes of conduct must impose specific obligations on public officials – otherwise they are just wall decorations. Because ethics-related regulations must fall into the grey area of law – discretion will also play a role in ethics-related decision-making and enforcement. Such an approach is antithetical to many legal systems – particularly in Eastern Europe – with its tradition of black-and-white, innocent-or-guilty style administration. Civil servants can not legally defend their actions by saying “I disobeyed the regulations because I thought it was in the interest of the citizen (or society).” In UK, French, Swedish (and to a lesser extent US) law, such protections do exist. In the newly developing administrative legal traditions of Eastern Europe, their administrative traditions will need to change before public officials can legally and safely apply the same ethics-based decision-making as that done in most of the OECD Member States. Simply put, no existing law allows (in many jurisdictions) for civil servants to follow *ad hoc* admonitions of a code of conduct.

We refer to code of conduct work as relying upon (or part of) administrative law because – like administrative law – five elements must be present in any code of conduct or ethics-regulation.

1. *Obligation to act (or not to act)* – a code of conduct or ethics-related law requires public officials to do something -- or not to do something. Yet, it is administrative law which serves as the forum which defining such rights, obligations, competencies and admonitions. Most officials in OECD Member States would find it usual to have a “parallel” set of instructions to public officials in the form of ethics manuals and codes of conducts existing outside of administrative law.

2. *Burden of proof* – public officials (and the people monitoring them) must have some way of knowing if they are following the code of conduct or not. Administrative law usually requires SMART provisions – namely provisions which are specific, measurable, attainable, realistic and time-bound. Yet, many codes of conduct we have seen represent wish-lists. Wish lists do not establish clear conditions when officials act ethically or not.

Wish lists do not delegate authorities for imposing sanctions (or providing rewards) for certain types of behaviours. Wish lists can not define what a public official needs to show (and to whom) in order to show he or she was not acting unethically.

3. *Objective verification* – public officials can not have subjective judgments of their ethical performance. Otherwise, they remain exposed to all kinds of accusations and can not appeal against sanctions imposed against them. Because most ethics-based decisions fall into the gray areas which no list can regulate, administrations use other criteria to decide on the ethics of an official’s behaviour. Two popular tests consist of the peer test and the public knowledge test. The peer test asks “would the official’s peers consider such behaviour ethical?” The public knowledge test asks “would the official feel ashamed if this decision appeared in the newspapers?” Such tests do not provide fail-proof evidence for or against an action. However, they provide reliable semi-guides for many public officials in many OECD Member administrations.

4. *Sanctions* – informal and formal norms and rules without sanctions provide no incentives which help ensure compliance. Sanctions can range from grimaces of disapproval to dismissal. However, such sanctions (or the credible threat of their imposition) must exist in order for public officials to engage in certain types of behaviours. Incentives drive behaviour. Sanctions for codes of conduct and ethical rules – just like other parts of administrative law -- must reflect the seriousness of the ethical breach. In other words, the same principles of proportionality must apply as in “normal” law.

5. *Rights to comply with obligations* - Administrative law well recognises that officials must have rights as well as obligations – and particularly the rights needed to fulfil an obligation. Under the administrative law of most OECD Member States, civil servants can not be found guilty of neglecting their duties if they do not have the authority or right to engage in the actions needed to fulfil a particular obligation. For example, a civil

servant can not be found guilty of failing to advertise a particular job if that person did not have the authority to release that information to the public.

Implementing a code of conduct requires that the same provisions found in administrative law should exist in enforcing ethical norms. Many agencies have pasted codes of conduct on walls – only to find that public officials do not follow their admonitions. There are three practical reasons why codes of conduct and ethics-related regulations must follow existing laws rather than rely on “best practices” and advice from experts.

*1. Anyone punished for code of conduct violation can overturn sanctions* – imagine that the Minister says that staff must not say unflattering things about his or her country in the Code of Conduct. One of the ministry’s staff mentions something untoward about the country in an international conference and the Minister decides to impose sanctions. Unless the rule conforms with civil servant statutes and the applicable administrative law, the Minister’s decision can be easily overturned. Even a simple ethics-based rule like this touches upon deep principles involving freedom of speech, *respondeat superior*, and potentially international law (if evidence must be obtained and used).

*2. Administrative law represents the way we agree to rule ourselves* – in a democratic system, executive regulations receive two types of oversight. First, most OECD Member States require public consultation on proposed executive rulemaking. Such public oversight helps provide the rights of citizens as well as civil servants. Second, members of parliament can question any executive regulations which seem untoward or illegal. Third, executive regulations can be stricken by administrative judges. Codes of conduct designed by experts and pasted to walls do not have the same kind of oversight. Law follows an orderly pattern and receives both parliamentary and judicial oversight – an order which even codes of conduct must follow.

*3. Administrative law represents a type of “acquis” which captures the ways we learn to govern ourselves* – administrative law in the OECD Member States has accumulated

sometimes over hundreds of years. Administrative law represents rules public officials have passed to avoid some danger or risk. They represent solutions to previous problems and resolutions to previous conflicts (through instrumentalities such as regulatory decisions). The stock of these decisions, decrees and judgments serves as a far more reliable base for managing a public administration's complicated ethics-related decisions than a couple of one-day meetings and a code of conduct.

### **The Four Steps for Drafting Ethics Regulations**

In order to write ethics-related regulations, ethics-advisors should follow four steps. The way to follow the existing law is as follows:

*1. Keep in mind the relevant constitutional principles* – the constitution (and in practice most likely the jurisprudential traditions enshrined in the country's constitutional law) will dictate much of the way ethics programmes can be implemented in the public sector. For example, French law stresses the principles of equality and gives a strong legal role to the notion of "society." American law, in contrast, focuses on individual rights – where a legally constructed fiction of a "society" had far fewer rights. Administrative law organises in system along those lines. Before thinking about legislation (or regulation), the analyst should think about existing and emerging constitutional principles.

*2. Look at (and draft if necessary) the relevant legislation* – ethics-related legislation must "fit" with the constitutional principles in place. Such legislation can reflect many of the themes we previously discussed from the international organisations' model codes of conduct (depending on what the data we previously discussed refer to). For example, ethics-based regulations may encourage staff to respect the privacy of regulated persons. However, in systems which recognise only very poorly the principle of a right to privacy, this could be difficult.

In most cases, several acts will already cover part the principles we discussed earlier. For example, the civil servant law often contains principles that civil servants should uphold. In other cases, the prevention of corruption law may explicitly refer to some of these principles (usually in the first articles of the law). The analyst will need to identify them for two reasons. First, they will need to figure out what provisions already exist in legislation (so as not to repeat them in new, proposed legislation if the government or relevant political parties decide to sponsor new legislation). Second, each piece of subsidiary regulation must be “tied” to the relevant provision in legislation. Therefore, the analyst should know what provisions exist at the legislative level when drafting regulatory-level ethics rules.

In some cases, a piece of ethics-specific legislation can create a useful legislative basis for secondary legislation and/or delegated rulemaking. Agency-level directors will not be comfortable creating codes of conduct for fear of acting outside of their powers (*ultra vires*). Having a specific piece of legislation which specifically authorises agency-level directors to engage in some forms of ethics-based regulation can help allay these fears. Such legislation can also help harmonise such rule-making across the public sector.

3. *Look at regulations in place* – even new ethics programmes do not emerge from a vacuum. Previous agency directors will have drafted rules of conduct, advice, and decisions based on problems which arose in the past. In theory, these can not be simply ignored. The person in charge of the ethics programme could, in an ideal world, stitch these together by choosing those that match existing needs (as defined by data) and existing law. In practice, it might be easier to start from scratch – as many directors do not even assign regulation numbers to this type of rulemaking. Having a first-generation of regulations which come from rigorous data analysis and legislative review may be a nice start – without having to formally cancel previous regulations which might be lost in any case.

4. *Publish any codes of conduct, posters and other paraphernalia after the serious statistical and legal analysis has been done* – The agency director’s staff will have compiled a set of ethics-based regulations and asked the director to sign a unified ethics regulation. After the appropriate reviews from in-house counsel and the public (as needed), these regulations can be advertised to the agency’s staff as simple codes of conduct, pamphlets, and posters. Because codes of conduct provide simple admonitions, staff can consult the more extensive rules and regulations in order to learn more about specific rights and obligations each provision of the code of conduct entails. The Anglo-Saxon administrations (and Swedish) have seen the most extensive use of these types of codes of conduct because most government officials know the underlying rights and obligations enshrined in their rich administrative law traditions. Most British civil servants for example, can cite the “Clapham bus” test without having formally studied law.

In the 1990s and 2000s, many ethics advisors recommended drafting codes of conduct in a highly participative, group-led process. According to this supposed wisdom, agency directors should call staff together, brainstorm about the provisions to include in a code of conduct and write down the best ideas to be posted on various agency walls. There are five reasons why the brain-storming approach to codes of conduct and ethics regulations has not created lasting and effective ethics-related work.

*1. Groups don’t have the technical skills needed to design effective ethics programmes –*

Government specialists dealing with providing water, processing documents given by drivers, and other public officials will not have experience in changing an administration’s ethics. Their opinions and advice should be heeded (of course). However, specialists who have studied ethics programmes and have seen what works should guide the process. As we have shown, the implementation of effective code of conduct programmes requires advanced skills in economics, law, management and audit.

Professionals usually do the brunt of “normal” administrative work. Why should public ethics be any different?

*2. Groups have weak incentives to design effective ethics programmes –*

A public sector division manager will not be rewarded if his department becomes more ethical. Group members in an ethics brainstorming session can give any kind of advice they please. They do not bear responsibility for cases of unethical behaviour (unless they are personally responsible for such behaviour). Their incentives lie more with participating (and showing their superiors and peers that they participate) rather than in actually creating effective ethics programmes.

*3. Consultants use these groups to make money –*

Many consultants earned a ton of money through ethics-related participative meetings. They did not need to learn about the country’s or government’s regulations. They could just organise a half-day meeting, write up the results and collect their salary. These consultants do not receive a bonus in case behaviours change (nor have their funds withheld in case behaviours fail to change).

*4. Participative methods of regulating ethics have not been shown to be effective –*

Despite hundreds of manuals showing public agency directors how to write codes of conduct, no peer-reviewed scientific research has shown these methods to produce more sustainable differences in behaviour than other methods. In contrast, longer ethics programmes which rely on the same administrative law, human resource practices, internal audit and other established methods of governance, have led to sustainable changes in administrative behaviours. Groups can be useful to comment on ethics provisions – using the same methods used for any proposed rulemaking inside government. If a civil service union or federation exists, they should comment on

proposed ethics legislation and regulation. However, the same methods should be used for ethics regulations as used for other types of regulating the public sector.

Those formal methods of regulation should be as simple as possible. Some government agency directors will tell that passing formal ethics regulations requires too much red-tape and administrative work. Non-binding, unofficial codes of conduct provide an easier route to encourage staff to adhere to particular principles. When these codes of conduct do not work, they blame the inefficiency of the codes of conduct themselves. The real problem lies in the onerous regulating methods which agency directors need to use to pass “normal” ethics-related regulations. An analysis of existing law – including the legal requirements for passing internal regulations – can identify these kinds of problems.

#### *Draft regulations or other instruments*

Putting pen to paper always comprises the most attractive (and visible) part of a public sector ethics programme. Senior management can then put codes of conduct on walls and show that they have a new policy. However, these codes of conduct should have a substantive body of administrative law backing them up. Such administrative law benefits from public review, impact assessments, formal requirements tied to human and budgetary resources needed to implement particular provisions, and internal audit requirements. Five principles should guide ethics-regulation drafters as they turn statistical results and their analysis of legislation and/or regulation into specific ethics-regulations.

##### *1. Craft provisions around the data and previous legal analysis*

The ethics-regulation drafter will tie each provision (or set of provisions) in the ethics regulation to address a concern raised in the survey and other empirical work. For example, if survey work indicated that staff “borrow” on a long-term basis office equipment, then the ethics regulations may contain one or more provisions related to

rights to use such equipment outside the office (depending on the circumstances). Other provisions may include penalties for removing office equipment, incentives for denouncing such behaviour, and exceptions under which such removal may be allowed (such as performing one's duties more effectively). Ideally, survey work will identify the reasons or causes for such behaviour in the first place. For example, if staff prefer to do mundane tasks at home – ethics rules should address these underlying issues which lead to potentially unethical behaviour.

For each article of any ethics regulation, drafters should have the relevant legislation (and constitutional principles where indicated) in mind. Each provision ideally should indicate where authority for that provision comes from. If an ethics provision relies on an interpretation of a legislative provision – or seeks to implement those provisions using specific procedures – then the regulatory article should provide details. Codes of conduct may provide handy reminders of the way the agency instructions staff to balance and resolve ethical values.

## *2. Join a group of similar drafters*

Whether legislation provides the overall guidelines for ethics regulations or not, ethics-regulation drafters in different ministries and government agencies should meet from time-to-time. They might have different interpretations about a particular provision in national legislation. Agreeing at the regulatory level on an interpretation can help prevent appeals from arising later when unethical civil servants try to overturn a particular rule or judgment. Meeting regularly also helps create a sense of cross-agency co-operation and motivation to continue drafting when other, more pressing, drafting obligations arise.

## *3. Principles-based tests should be used instead of list tests (to the extent allowed by the drafter's legal tradition)*

Particularly in Eastern Europe, regulation writers prefer lists of conditions under which a person may be found guilty of an ethical violation. In many OECD Member states, civil servants and public officials may use balancing tests or principles based tests to decide on particular actions. Take the example of the following ethical provision – a team leader may be rotated to another job function if his superior or sub-ordinates strong suspect he is engaged in unethical behaviour. Such a result relies on some civil servant seeing only part of the team leader’s action. The person can not know everything that happened (and can not spend the time and resources to find out for sure). The person must then decide if it is more likely than not that the team leader committed an unethical action.

Balancing and principles-based tests actually import the common law concept of taking decisions based on the “balance of probabilities” into a civil law context. Most ethical decisions rely on subjective judgments and imperfect information. Does the service user have the right to preferential and immediate use of this service? Should I complain against the action of my boss (who may be acting on orders from his own boss)? In practice, civil servants take these kinds of judgements every day. Without the protection of a balancing test enshrined in the regulations underlying the code of conduct, these civil servants face sanctions for their ethical decisions.

#### *4. Use common language*

Legal drafters looking to put in place ethics-related regulations will want to use fancy legal language. They will want to construct long and elaborate sentences with many conditions and exceptions. They should resist this urge. Simple language is clearest. Like in other legal drafting, ethics drafters should use specific examples which illustrate the general idea. For example, “staff shall not engage in forms of sexual harassment like touching a person’s body, using sexually-oriented words during work conversations, and so forth.” Drafters may think these look unsophisticated. But they help ensure that readers know what the drafters wanted to say. In this brief, we often mention codes of conduct and ethics-related regulations in the same breath. In theory, ethics regulations

should provide the same short and clear language as an elaborate code of conduct. In practice, the distinction between a document called a “code of conduct” and a “director’s instruction” can become very vague. As long as the drafter follows the basic principles and procedures we describe, the title of the ethics document or regulation does not matter.

#### *5. Balance rights with obligations – and rewards with punishments*

Many new ethics programmes start out by providing punishments for certain types of abstractly-defined behaviour. Public officials (particularly civil servants) have obligations – without any rights to ensure they comply with ethical requirements. For example, ethics regulations may require civil servants to provide efficient and effective service. If they by-pass some bureaucratic procedures, they will get in trouble. Ethics regulations should (to the extent allowed by super-ordinate legislation or regulations) give these staff the right to require fewer documents or jump the queue in order to provide more effective service. As this example shows, the implementation of a simple code of conduct provision can require significant changes in other substantive regulations.

#### *6. Codes of conduct and colourful posters should illustrate ethics regulations*

Regulations are boring. Regulation makers should create colour posters illustrating some of the more important points covered in ethics-related regulations. In that way, staff can slowly learn about ethical regulations and acquire the skills needed to balance conflicting values and interests. As we have already described, posters and codes of conduct are not enough without regulations. Codes without a basis in substantive law allow for arbitrary action by the agency’s management. Instead, such work should illustrate and inform. The underlying regulations should be available for staff to consult. Professional middle managers and counsels should provide easy-to-understand (though complete) explanations of these regulations.

#### *7. Report on cases involving the ethics code and regulations*

An ethics regulation can be signed by the agency director, filed and forgotten. In order to codes of conduct remain active, agency staff should report in the relevant agency newsletters any recent cases involving excellent performance by staff. For example, did a staff member find a clever way of ethically resolving a conflict? Did management take a decision that resolved an ethics-related complaint from a service user? Such decisions form the basis of administrative law (at least in some contexts).

#### *8. Draft knowing that key provisions will undergo internal audit*

Internal auditors can not include abstract ethics provisions into their annual audit programme. For example, internal auditors will have significant difficulty auditing compliance with a code of conduct provision which states “staff should act impartially, honestly, ethically and in the best interest of the government and citizen.” The provision contains several abstract concepts. Any ethics provision requiring staff to act ethically is tautological. Drafters should imagine they will be part of the internal audit team evaluating the performance of, or compliance with, these regulations. Indeed, they may be selected to join the audit team under certain circumstances.<sup>7</sup> Are provisions SMART (specific, measurable, attainable, relevant and time-bound)? Does the unethical behaviour they address pose a material risk to the agency?<sup>8</sup>

#### *Estimate effects using modelling and cost-benefit analysis*

Most attempts at improving ethics in a public administration result in red tape and encourage, rather than discourage, unethical behaviour. Directors send around rules without analysing the likely impact on the agency’s operations. In order to ensure that

---

<sup>7</sup> We describe the internal audit or codes of conduct and ethics regulations later. For now, the reader may take on faith from the author (a qualified internal auditor) that these officials could participate in the audit team.

<sup>8</sup> Material risk refers to any significant risk which may lead to actual harms. Often codes of conduct address risks that do not threaten an agency, or the potential loss from such unethical behaviour is hardly worth mentioning.

codes of conduct and ethics regulations improve behaviours, staff working on ethics programmes can do a number things.

*1. Estimate the dollar value of impacts of each provision of a code of conduct or ethics regulation*

Simple models can help the legal analyst estimate the likely impact on public officials of various ethics rules. For example, for a conflict of interest programme, we can estimate the level of activity in conflict with the public interest (using public macroeconomic data). We can estimate the dollar equivalent value of those actions. We can estimate the proportion of public officials which will respond to new incentives provided by new regulations. We can also estimate the estimated dollar value of their new behaviour. Naturally, we recommend that only qualified economists and others with advanced degrees in the relevant social science subjects conduct such analysis. However, legal analysts need to know that they can order such analysis to be done. They can expect the dollar-equivalent value of the impacts of their ethics rules. They can also ask for “what-if” analysis – simulating how much citizens would benefit or suffer from different types of ethics regulations.

*2. Figure out how civil servant will react to code provisions before adopting them*

Most codes of conduct treat civil servant like robots – adopt a code of conduct “legal software” and expect certain types of behaviours. Legal drafts need to think like chess players. If civil servants learn about a ethics-related provision, how will they react? How can drafters write regulations which anticipate the reactions of civil servants? Such a point may seem philosophical. To an experienced political analyst or economist, the use of applied game theory allow them to predict what individuals, groups and entire populations will do. The legal drafter does not need to learn to do this analysis. He or she only needs to know that they can ask for such analysis.

### *3. Conduct mini-surveys to monitor progress in route -*

Agency directors can monitor the results of the code of conduct and/or ethics regulations in real time. They can assign a member of staff to ask a group of service users (or private sector persons who work with the agency's staff) questions similar to those in larger surveys. With these answers, agency directors can obtain a qualitative feel for the effectiveness of their codes of conduct and other ethics regulations. Naturally, more work needs to supplement these mini-surveys.

#### *Inform staff about regulations and monitor performance*

Agency directors hold final responsibility for the ethical behaviour of their staff. These directors ultimately bear legal and administrative responsibility for promulgating codes of conduct and ethics-related regulations (or not). For example, under most principal-agent doctrines in OECD Member public administrations, if a civil servant working in an government institution uses confidential information for private ends, the agency director bears responsibility. To shoulder this responsibility, agency directors have the right to promulgate codes of conduct and other orders (in the form of verbal and written orders or as instructions) to their agents. These instructions tell exactly how staff should conflicts of interest in that particular government agency. However, staff can only comply with orders and regulations if they know about them.

Public sector work involves too many different kinds of work to provide, in this short brief, a detailed description about how agency directors can provide daily ethics-related oversight and mentoring. Figure 6 provides a generalisation about the approaches and specific activities agency directors can undertake to implement a code of conduct. In the figure, we look at two scenarios – when staff possess (or lack) motivation to act ethically and when they possess (or lack) the skills needed to negotiate ethical solutions and seek competent advice which can protect them from liability and so forth.

**Figure 6: Implementation matrix for codes of conduct**

	<b>Willing to following ethical rules</b>	<b>Unwilling to follow ethical rules</b>
<b>Able to follow ethical rules</b>	<b>I-</b> Self-running system – staff only need reminding.	<b>II-</b> Focus on incentives – provide rewards and career advancement
<b>Unable to follow ethical rules</b>	<b>III</b> -Provide mentoring and on-the-job training	<b>IV</b> -Intensive reform programme involving rotation of staff, revised regulations and training

In cases where staff possess the ability and desire to act ethically (as shown in Quadrant I), the agency manager need only engage in some superficial monitoring. Directors can post codes of conduct – knowing that staff will generally know about the underlying administrative law and procedures backing up these codes of conduct. Agency directors need to provide a role model for ethical behaviour. Staff only need reminding – or counselling -- about particular issues and problems. Quadrant II shows cases where staff knows how to address issues contained in a code of conduct but are unwilling because of national culture, low salaries or other reasons. For quadrant II type problems, the agency director should focus on staff incentives – providing rewards for acting ethically, for showing that one has acted ethically, and provide other non-monetary forms of compensation (to the extent allowed by law – such as career advancement, permissions to attend fancy trainings in foreign countries and so forth).

Quadrants III and IV address the interesting cases when staff do not have the skills needed to resolve certain types of ethical dilemmas. In quadrant III, staff want to act ethically, but do not know how. As we discussed before, acting ethically is not a question of black or white – it takes skills and knowledge of law and other disciplines. In these cases, directors and supervisors should mentor staff. Quadrant III represents the areas where directors are generally seen to exercise ethical leadership – though we discuss later why such work consists merely of everyday work and not leadership. Quadrant IV represents the case for most of the new democracies. This quadrant represents agencies

and entire administrations with few incentives and little knowledge about managing ethical conflicts. A complete reform programme must be undertaken in these circumstances. We describe several possible approaches under Phase 3 of the reform (in the next section of our report).

### *Conduct internal audits*

Most public officials – particularly in developing countries with a strong tradition of “inspection” or “control” -- tend to misunderstand the role of internal audit. They tend to think of internal audit as checking financial receipts for fraud. Fraud audits do comprise one element of internal audit – though a small part. Most internal audit deals with looking at ways to make departments work better (performance audit), to ensure that staff comply with regulations (compliance audit), and looking at the efficiency of organisational processes (systems-based audit) – among others. Most senior public sector managers do not need to understand the details of internal audit. However, they should know how internal audit fits into helping to design codes of conduct and ethics-related regulations. They need to understand how internal audits help ensure compliance and suggest follow-up activities to improve the code of conduct programme. Internal audit helps implement code of conduct programmes in three ways.

#### *1. Identify major risks which should be included in a code of conduct*

Internal auditors mainly focus on risks to the organisation – risks which could jeopardise the function of the agency. Potential unethical behaviour comprises one of those risks. The chief audit executive devises a work programme each year covering the audit of the most important risks facing the organisation. They design internal audits aimed at understanding and hopefully reducing those risks. Because internal auditors work on all kinds of engagements (projects) throughout the organisation, they are best placed to see which kinds of provisions should go into a code of conduct.

Internal auditors need to be careful though when giving advice on a code of conduct (or other ethics-related regulating). Such consulting work may impair their objectivity. In some cases, creating these codes of conduct and then assessing their own work represents a conflict of interest. In theory, as long as senior managers know about this conflict of interest and accept it, they can use internal auditors to help design the code of conduct programme. Otherwise, the individuals involved can recuse themselves – and evaluation of the code of conduct activities can be done by other individuals. Internal auditors are never, ever responsible for implementing or overseeing the programme.

### *2. Assess the effectiveness of the code of conduct (and related ethical regulations)*

Internal auditors can assess various aspects of the code of conduct and ethics regulation work. They can assess the extent to which these codes and regulations actually change behaviour (through a performance audit). They can assess the extent of compliance with various provisions of the code or regulation (through a compliance audit). They can look at the working arrangements of staff monitoring behaviours related to the code and suggest improvements (systems-based audit). In all cases, they focus on underlying risks these codes and regulations address – rather than the codes themselves. They focus on outcomes – not on outputs or inputs.

### *3. Provide recommendations for improving performance*

The goal of any internal audit consists of producing concrete and specific recommendations. An internal audit of code of conduct and ethics-related regulation work aims to produce specific activities which management can undertake to help change administrative behaviours. Some recommendations can be simple – like “put a locked complaints box on the second floor of the headquarters building near the copy machine.” Other recommendations can be more complicated – like “monitor log-in activity of staff at random intervals and check for suspicious behaviour using statistical software.” In all cases, internal auditors estimate the cost of implementing each recommendation – and

take their best empirically-driven guess at the financially-equivalent value of the costs and benefits each recommendation will bring to the agency. In all cases, internal auditors must support their recommendations with data and objective analysis (which auditors call their findings).

The internal audit process may be new to agency directors in developing countries (especially the process used to audit codes of conduct). We want to provide an overview of the process, so that when agency directors ask for an internal audit of their code of conduct programmes, they know what to expect. The four typical steps of an ethics-based internal audit appear below:

1. *Engagement conference* – at this meeting, internal auditors meet with senior managers and discuss the upcoming audit. They identify risks of concern to senior management and discuss how internal auditors, senior management and staff will work together in the upcoming audit. In the following engagement letter, internal audit staff formally agree with senior management about the objectives and methods of the upcoming audit of the code of conduct and/or related ethics regulations.

2. *Analysis of controls* - when auditors talk about “controls,” they mean the various directives, decrees, instructions, decisions, regulations and even informal norms that directors use to influence behaviours. Auditors will collect the codes of conduct and all the regulations which support that code. That is why relative extensive analysis of data and previous law – as well as relatively extensive regulatory drafting -- is required for a successful code of conduct. All these documents provide the underlying controls that affect the success of a code of conduct. Internal auditors “map” the extent to which these various rules, regulations and informal norms address each risk identified during the engagement conference.

3. *Fieldwork and data collection* - during fieldwork, internal auditors assess the extent to which internal controls actually influence behaviours. Internal auditors will collect

objective data (like measuring the time spent on various tasks or knowledge of ethics-related regulations as measured by a small impromptu exam). They may also collect subjective data (such as the extent to which staff feel an agency's managers are unethical). They will conduct statistical analysis and tests on these data – and hopefully compare many of these results with baseline data collected earlier.

*4. Pro-forma report and exit conference* - after analysing risks, controls and their data about ethics-related behaviours, internal auditors will write up their report. In their report, they present their findings, recommendations and cost-benefit analysis for their recommendations. They circulate this report in draft form and allow the relevant managers to make comments before finalising the report. In that way, they can correct any misunderstandings or wrong data. In the exit conference, internal auditors provide their findings to management.

Internal audits also help with implementation of codes of conduct through the Hawthorn effect. Namely, staff tend to act more ethically when they know they receive regular supervision and oversight. Internal audit aims to work constructively with staff – to address underlying incentive problems rather than “catch-out” unethical staff. However, internal auditors have a duty to report unethical behaviour to the relevant manager. Such oversight helps keep staff honest.

In this section, we reviewed several easy-to-follow steps for agencies looking to implement ethics programmes. In the next section, we will address several ways that the most senior public officials (included elected members of parliament) can regulate ethics across institutions. Regulating ethics in only one agency can ignore ethical problems in other parts of the administration. Thus, reformers looking to implement a whole-of-government (or whole of public sector) approach should consider the institutional approaches we present next.

### **Phase 3: Institutional Approaches**

In the previous section, we looked at some archetypical steps in designing a code of conduct programme. We highlighted the importance of collecting data, analysing existing ethics-related law, drafting regulations, coaching and monitoring. In this section, we step back and look at broader institutional approaches to codes of conduct. We explain how inter-institutional relations emerged organically in most OECD Member States – and why the organic approach may not be best for the new democracies of Eastern Europe (and particularly for future OECD Members like China and Russia). We describe the steps a country’s Cabinet-level policymakers and members of parliament can take to design and implement a whole-of-government (or whole of public sector) code of conduct programme. We can not discuss all possible institutional arrangements in all OECD Member States. So we focus on two institutions in specific – the ombudsman and the ethics committee or standards setting board. We provide advice for policymakers looking to use these two institutions more intensively.

*Evolution is the usual approach to whole-of-government ethics*

Each country will have different approaches to managing government ethics. We can not address the institutional arrangements in all OECD Member States in this brief. Each country’s constitutional jurisprudence and administrative traditions have led to very different approaches to dealing with public sector ethics. Some countries – particularly in Scandinavia -- will rely more on an Ombudsman agency. Others -- in the Continental tradition – focus more on civil service agencies. In the Anglo-Saxon systems, they focus work on ethics at the level of the agency. Yet, no matter which country, agency directors still form the lynch-pin for codes of conduct ethics work. All administrative traditions place responsibility for unethical behaviour of their agents with these principals. All OECD Member administrations assign responsibility for managing agency risks and delivering results to the head, director or minister of that administration.

To varying extents, a number of institutions work together to help ensure that public officials act according to a particular set of ethics. Some of these ethics (like those enshrined in the Constitution such as the respect for liberty) represent relatively unchanging values. Other kinds of ethics (such as prohibitions against bribery or restrictions on entering the private sector) may change over time depending on the values generally held by society. Figure 7 shows some of the institutions possessing competencies for engaging in ethics-related regulating, monitoring and/or enforcement. To a greater or lesser extent, each of these institutions plays some role in creating, regulating and/or enforcing ethics in the broader public sector.

**Figure 7: Generalisations about the Legal Mandates of Various Agencies in Creating and Enforcing Ethical Norms**

<b>Institution</b>	<b>Potential Role</b>	<b>Target agencies</b>
<b>Ombudsmen</b>	Accepts complaints – usually related to human rights. However, in some jurisdictions, also takes complaints about government’s actions generally. Unethical behaviour usually not illegal, so naming-and-shaming only recourse.	Law enforcement (with more coverage in Scandinavia).
<b>Agency Director</b>	Serve as <i>de facto</i> ethics legislators, judge, and jury in most jurisdictions. They pass decisions and instructions related to ethical (and operational) topics. Main deciders of ethical dilemmas. Ultimately accountable (in theory) for ethical breeches.	Most Ministries and agencies (wider coverage in Continental Europe, Japan)
<b>Civil Service Agency</b>	In countries with stronger civil service agencies, they can pass ethics related instructions. They also can hear cases involved in ethical dilemmas. In practice, they rarely play a strong role (except in jurisdictions with stronger civil service unions).	Focuses often on disputes or wide-spread problems. Continental systems and some former FSU
<b>Legislatures (at</b>	Passes laws on ethics, codes of conduct and specific	More important for

<b>all levels)</b>	pieces of legislation (like in US) within their jurisdiction.	multi-tiered small countries.
<b>Administrative Courts</b>	In jurisdictions like US, UK and France, these cases set important precedents and examples. Resolution of fuzzy gray ethics clashes become codified into administrative law.	Important in common law jurisdictions (US, UK, not Hong Kong).
<b>Standards-Making Body</b>	These professional bodies regulate behaviour in general. Important for parts of the State like the judiciary, state-regulated press and even state-owned enterprises.	Most non-executive institutions in OECD countries.
<b>Press (with freedom of information law)</b>	The press is where disagreements about ethics are often given vent. Attracts attention of legislatures and usual way ethics change across whole-of-government.	US and EU.

Source: Based on OECD (2000) and other sources where available. The summaries we provide represent very broad generalisations because of the high variety between institutions even in a single country.

We can only talk in abstractions – because of the diversity of OECD Member State institutional arrangements. In general, the constitution and parliament set down much of the basic foundation for public sector ethics. The constitution – and legislation passed according to constitutional principles – dictate the competence of various public organisations, the values of government, and set the broad contours for the “rules of the game” where the judiciary, legislature, executive agencies, press, NGOs, political parties and citizens decide on public ethics. The President’s or Prime Minister’s office take the lead in much ethics-related regulation in OECD Members (as they oversee the government and the civil servants working in it). A civil service office may assist the head of the government or state with regulating ethical conduct in the executive. Independent ombudsmen may oversee the work of the executive. Administrative courts may strike down ethics-related regulations which contradict higher orders or constitutional principles. Standards setting bodies set out codes of conduct for

parliaments and the judiciaries (as professional organisations). In practice, the press often plays a role by exposing unethical behaviour.

*How to Design a Whole-of-Government Ethics Programme from scratch*

No OECD Member country has undertaken a concerted reform of administrative ethics at the highest levels *ex-nihilo*. Countries like the UK periodically review and assess standards in public life – and have departments like the UK’s Cabinet office which oversees cross-government initiatives. Many developing countries differ from these OECD Member States because of rapid transformation of their public sector organisations and economic structures. Countries which have radically changed their governmental systems within the last 30 years find themselves in a position to think about whole-of-government reforms – and particularly ethics reforms. We can not refer to specific whole-of-government attempts to reform government ethics in the OECD. However, we can observe the way that ethics programmes have evolved over the years – and hypothesize how these results may be replicated in an accelerated, large-scale managed process.

*1. Using your data and legal analysis, take a blank sheet of paper and decide which institutions should be in charge of which aspects of the government’s ethics programme*

Over the roughly 150 years that most OECD Members have existed (with most undergoing extensive reorganisation at various times), we have observed the evolution of public ethics. Readers will object that the UK, France, Italy and US did not conduct surveys or have law professors analyse legislation centuries ago when their public ethics infrastructures (and related codes of conduct) emerged. However, we beg to differ. They collected data through experience and observation. Because they did not have the rigorous tools of statistics and survey design, they based their empirical design on slower and more labour-intensive processes. We have new tools that legislators and governors did not have circa 1900. Similarly, modern legal study represents a new professional

discipline (introduced into faculties as we now know it about 100 years ago). Yet, the governors of the past did compare new decisions with old ones. They made rules to govern the ethical behaviour of staff. They could not consult online databases of administrative law or use modern theories of legislative interpretation to guide their legal drafting. As such, their analysis consisted of a trial-and-error evolutionary approach drawing out over decades.

For a new state seeking a radical change in administrative ethics, they can speed up the process used in OECD Member States by selecting from one of the strategies listed in Figure 8. The Figure shows different ways that different political parties and coalitions can decide on introducing codes of conduct and their underlying regulations quickly and effectively.

**Figure 8: Model Approaches to Public-Sector Wide Code of Conduct Programmes**

<b>Approach</b>	<b>Description</b>
<b>Political approach</b>	A political party campaigns on a reform of government or public ethics platform. Once elected, the elected officials implement the party's platform. Policies find their way <i>ad hoc</i> into various pieces of legislation and regulation.
<b>Legislative-led approach</b>	Members of the legislature receive a bill aimed at regulating aspects of ethics-related behaviour in the public sector. Such legislation then sets the boundaries for further executive rulemaking. In contrast, numerous legislatures have already passed resolutions and other non-binding statements which generally have no tangible administrative effect.
<b>Civil service agency-led approach</b>	The civil service agency engages in project work aimed at modifying the behaviour of its members (or subjects of its regulation). Such work occurs either as cheerleading or under the guise of various regulations (having application under the competencies and jurisdiction of the Agency).
<b>Devolved approach</b>	General principles of liability and administrative responsibility encourage executive agency directors and ministers to regulate and monitor the

	behaviour of staff. Codes of conduct serve as one publication, among many, in their work. Leads to slow and faltering evolutionary development of a whole-of-government ethics programme.
<b>Consensual approach</b>	These usually take the form of public-private conferences and workshops. Experts and representatives from various institutions decry unethical behaviour. Their recommendations sometimes end up in part in proposed legislation or executive regulations.
<b>Independent agency (ombudsman) approach</b>	Independent commissions and ombudsmen offices can oversee ethics across the public sector (according to the competencies given by legislation). They promulgate codes of conduct – and collect complaints about violations. Often, they have no enforcement powers – except to reveal complaints to the press.
<b>Super-ministry approach</b>	The president or prime minister becomes directly involved in reforming ethics by creating an office accountable to him (we don't know of any female heads of government or state in office at the time these various offices have been created). The office has the rulemaking authority of the President or Prime Minister.
<b>Civil society approach</b>	No known examples of a NGO-led programme to reform ethics have succeeded beyond particular cases.

Once the Cabinet and/or a nation-wide working group decides on the best approach, their work has only begun. As we have mentioned previously, various heads of agencies can not just start drafting codes of conduct. Neither should they appoint large committees to develop elaborate implementation plans. Particularly in developing countries, they will want to create large implementation strategies – with timings and action matrices. They should avoid this temptation. Changing public ethics is not like other projects which can be managed in such a technocratic way. Moreover, setting up large deliberative bodies and committees often serves to prevent the reform.

*2. Decide on what parts of the ethics programme should be done at the national (federal) level*

The executive represents just one part – though probably the most important part – of the public sector. Regardless of the strategy or methodology chosen, laws must be changed. National (or federal) level law has precedent in most legal systems.<sup>9</sup> At the national level, policymakers can decide how specific to make national law (as opposed to regional or local law). For example, national ethics legislation can provide a broad mandate for executive agencies to prevent political activity done using government resources. Legislation can be written broadly enough to allow agency-level directors to choose more exact rules to put in place in order to implement the relatively broad guidelines enshrined in legislation.

Purposely avoiding changes in legislation comprises an acceptable strategy – if the legislative bases already exist for subsidiary rulemaking. In other words, if current parliamentary acts provide the rights and enough guidance to executive agency directors to engage in ethics-related regulation, further legislative amendments are not required. Or if parliament can not agree on the basics of ethics-related legislation, then no law may be better than an excessively restrictive or ambiguous law.

In most OECD jurisdictions in Europe, the principle of subsidiarity means that rulemaking should be done at the lowest level. Sub-national ethics programmes will probably provide the bulk of very specific legally defined rights and obligations for specific codes of conduct. In theory, the lack of explicit mandates from the central (or federal) level gives cities and municipalities wide-berth in creating their own ethics-related rules and codes of conduct. In practice, however, city and municipal officials are too busy -- or fear that their work may violate legal norms of higher administrative bodies. Hesitancy by city administrations to pass codes of conduct and implement ethics-related regulations in local government agencies represents one of the great missed opportunities in public sector ethics reform in the 1990s and 2000s.

---

<sup>9</sup> With the introduction of subsidiarity and recent doctrines in the US about the vesting of cities' powers, the question of administrative *stare decisis* is more complicated than we let on. In the complex area of regulating ethics, a multitude of laws can interact to create a highly uncertain enforcement regime.

**Figure 9: Code of Conduct-Related Rulemaking for States and Cities**

<b>Level of government</b>	<b>Regulatory instruments</b>	<b>Description</b>
<b>State/ region level</b>	state acts, governor decrees and regulations	State legislatures can require executives make existing national-level codes of conduct more specific or make new ones (depending on devolved competencies). Executives (like governors) can use existing competences to promulgate their own ethics-related rules (and remind staff with codes of conduct).
<b>City or municipality level</b>	ordinances, by-laws, binding resolutions	In theory, most ethics-regulating can (and should) be done in cities and municipalities. Yet, cities usually have relatively little capacity to do this work.

*3. Seek support from political parties for legislation or support by key ministers*

Political parties provide support for formal changes in government policy and for informal changes by members serving in government. Political parties can campaign on ethics reforms. Winning a political mandate to reform public ethics can led to members of parliament proposing legislation supporting the creation of codes of conduct (and ethics-related regulations). They can promote this work at the national and sub-national levels. For MPs or Ministers chosen based on these platforms, they can bring projects in front of Cabinet for executive approval (if they decide not to go with a legislative bill).

Political parties can also help promote informal changes. In theory, ministers do not represent the views of their political parties. In practice, they still maintain close ties with their parties – and would give a hearing to policy proposals coming from the party. The party structure also offers a more efficient way to bring these kinds of proposals to ministers’ attention than trying to launch a NGO-media project to raise attention. Many see political parties as hot-beds of unethical behaviour and corruption. However, they

respond to the political incentives voters give. When voters use parties affect change in administrative behaviours, many politicians will respond by supporting these initiatives.

#### *4. Provide guidance to agency-managers*

Whether senior politicians and policymakers decide to change legislation or not, they still need to provide guidance to executive agency directors, ministers and other officials. These agency directors need to know they are expected to pass regulations which implement national legislation. They also need to know the broad outlines of what they can pass in their agency's regulations and what they can not. While their (your) legal counsellors can advice them (you), economies of scale make providing much of this advice at a central location more cost efficient.

An important issue to tackle is whether the lack of legislation (at either the central or regional level in the case of a federal system) gives agency-level directors the right to pass ethics-regulations. In most OECD Member States, agency directors have relatively broad powers to govern their staff according to a range of laws. These laws range from the organic law on the structure of government to extremely detailed decisions extending over decades from the Cabinet of Ministers (or its executive office equivalent). Yet, agency directors in the region seem extremely hesitant to pass these kinds of regulations. We do not yet have an adequate explanation for their hesitance.

#### *5. Provide advice to specialised agencies (like a National Public Administration Ministry)*

Many countries find that setting up a one-stop-shop for agency directors can help encourage them to promulgate codes of conduct and ethics-related regulation. Such one-stop-shops provide general legal advice (what to include in regulations, what the opinion of administrative courts might be for particular provisions) and so forth. These centres

might also provide training – particularly training in moral reasoning. With such training, civil servants will know how to resolve certain types of ethical dilemmas.<sup>10</sup>

In some cases, these specialised agencies hold particular competencies related implementing codes of conduct. For example, an Ombudsman office may have the legal right to collect complaints made about violations of a government-wide code of conduct. An agency for civil servants may be able to adopt regulations which apply (through their labour contracts or directly from powers given in legislation) to civil servants so that they observe certain principles contained in codes of conduct.

These information centres can not (and should not) provide model codes of conduct. As we stated, codes of conduct represent a reminder of a large body of administrative rights and obligations which help public officials resolve ethical dilemmas. Copying a code of conduct is like copying an advertisement. The copy does not provide very useful advice to an organisation with different objectives, risks, traditions and directors' instructions. We know of no government agency which has stated that it used a model code of conduct, wrote its own code of conduct and saw substantial changes in administrative behaviours.

*6. Look at your budget, and decide on which ministries and levels of government you want to do field-work with*

A paper-only based exercise can not hope to succeed in changing public officials' behaviour. Champions of government-wide public ethics reform can not hope to write books and papers (like this one) and hope that public officials will read and understand them. In the Internet age, people do not read anymore. Senior public officials interested in promoting ethics reform must strategically engage with particular institutions. They

---

<sup>10</sup> Many public officials in emerging democracies balk at the idea of training in moral reasoning. Resolving ethical and inter-personal conflicts occurs in everyday life. Yet, when we provided training using Socratic Method case studies, we found most public officials to arrive at far inferior solutions to those proposed by their Western colleagues with formal ethics training.

must provide examples of regulations and provide experts to help with the first sets of regulations.

The budget of the senior politicians engaged in this exercise will determine the extent of this work. A government-wide (or public sector wide) reform can not occur without appropriating any budgetary resources for salaries, travel and so forth. The size of the budget will determine the speed and coverage of the code of conduct programme. Senior politicians will be tempted to divert existing staff to do this work. But they pay the price in what economists call “opportunity cost”. The cost of doing legal analysis for a code of conduct might be forgoing legal analysis on preventing internal crime (for example). Senior politicians may be willing to pay that price – as long as they understand the trade-offs involved. Figure 10 shows the likely expenditure on conducting some pilot work on even a small code of conduct programme. Even for a small programme with a few visits and a bit of supporting analysis, senior politicians can expect to spend over €200,000.

**Figure 10: Likely expenditure items for the implementation of a small code of conduct programme**

(some expenditures may be made in-kind, using existing staff and resources)

	<b>Days (total man-days)</b>	<b>Cost per day</b>	<b>Sub-total</b>
Data collection and analysis	200	€250	<b>€50,000</b>
Legal analysis	150	€375	<b>€56,250</b>
Consultations with political party	30	€490	<b>€14,700</b>
Meetings with agency directors	100	€615	<b>€61,500</b>
Walk arounds in several agencies	50	€390	<b>€19,500</b>
Sitting with auditors and evaluators	20	€190	<b>€ 3,800</b>
<b>Totals</b>			<b>€205,750</b>

Source: We have changed the costs and days to mask the identity of the country concerned (by proportional scaling). Costs per day include transportation costs and other incidental costs added and amortised over the cost of the activity. Man day costs have been averaged in case different staff with different daily rates participate in the activity. Half-days and work by-the-hour has been aggregated into full day estimates.

### *7. Work with internal audit departments to assess ethics programmes*

The senior politicians who helped design the whole-of-government programme have an important role to play in assessing the programme. They can describe to internal auditors the major risks to the entire government they wanted to focus on. They can describe the purpose of proposed legislation and/or regulation. They can encourage staff to co-operate with internal auditors during their fieldwork. They can help provide suggestions for recommendations.

A managed whole-of-government (in theory) code of conduct programme can quickly replicate the drawn-out evolutionary process used by OECD Member administrations. Figure 11 provides a summary of the managed approach to whole-of-government reform. Just like with agency-level programmes, a whole-of-government programme responds to needs assessed by surveys and other data. Legal analysis for whole-of-government codes of conduct certainly focus on legislation (rather than regulation) – and probably focus more on constitutional jurisprudence.<sup>11</sup> Unlike at the agency level, the whole-of-government programme will probably want to focus on some key organisations (like Ministry of Interior). For these key or pilot government organisations, agency directors may follow the steps we have already discussed. Whole-of-government reforms will use the appropriate ways of communicating across agencies. The supreme audit institutions or most experienced internal audit department (often in the Ministry of Finance) would take the lead in conduct a whole-of-government code of conduct internal audit.<sup>12</sup>

### **Figure 11: Starting the implementation of government-wide codes of conduct programme through specific example projects**

---

<sup>11</sup> We refer to “jurisprudence” as constitutional law represents an ever-changing application of political theory and evolving doctrines on interpretation made by constitutional scholars. The US (of course) develops constitutional doctrines and interpretations more fluidly than in many other OECD Member States. However, even in relatively stable continental systems, legal scholars and practitioners continue to re-evaluate the way constitutional principles interact with national ethics.

<sup>12</sup> Ministry of Finance audit teams usually have a bit more money (and need) for internal audits. We mention the Ministry of Finance only because of our own experience and just to give a concrete example.

<b>Step</b>	<b>Description</b>
<b>Collect whole-of-government data</b>	Data tell which agencies require dramatic changes in its members' (or employees') behaviour. Data also show where experts think particular ethics-regulating competencies should lie.
<b>Do legal analysis of inter-institutional relations</b>	The existing competencies of various administrative and state agencies will dictate how codes of conduct can be written and implemented. For example, does an ombudsman's office have the competence for cross-government ethics surveillance? Or are administrative judges given the task of resolving ethics disagreements? They also dictate what changes need to be made at the legislative level (to correct existing deficiencies).
<b>Choose agencies based on size, need and likely impact</b>	The data will already give you this information. Senior politicians pushing the reform will want to take an active role in pilot ministries or agencies.
<b>Work with agency directors on regulations</b>	Leading proponents of the reform will want to go and answer directors' questions about what to include in codes of conducts, rights they can (or can not) give to sub-ordinates in implementing codes of conduct and so forth.
<b>Disseminate these examples through networks and press</b>	Having a liaison in charge of inter-institutional work on ethics (or relevant legal unit, HR unit and so forth) can help facilitate knowledge of codes of conduct-related law, audit results, and practices.
<b>Work with internal audit departments</b>	The Supreme Audit Organisation can put together a team of codes of conduct auditors from across government. If the SAO can not do this, a salient team (often from the Ministry of Finance)

As a final piece of advice -- avoid a large PR campaign. Experience shows that ethics revolutions and reforms tend to build up expectations. When the program does not deliver on public officials' and the public's unrealistic expectations, these parties tend to resent the programme. Journalists tend to write unfavourable reviews of the new policies. The better approach lies in treating codes of conduct and ethics regulation like any other

administrative policy. Vanilla announcements about ethics programmes (like any administratively policies such as dress or pay changes) help to ensure the reform stays tied to normal administrative processes (as we have argued for throughout this brief).

*How to empower an Ombudsman to monitor government ethics?*

Some developing countries have decided to vest an external agency with the power to monitor public sector ethics. This organisation – popularly called an Ombudsman – collects complaints, can investigate and suggest corrective action. There are two advantages to placing the authority for government ethics in an Ombudsman office:

*1. A central organisation achieves economies of scale in regulation, investigation and remedial action*

An Ombudsman office working over the entire public sector (or at least in an executive office which can oversee various ministries and departments) achieves the advantages of centralisation. The office can centralise staff giving advice on codes of conduct, can promulgate central codes (for topics of general concern across government), and receive complaints more cheaply (per complaint). Such cost savings come from economics of scale. Having one person in 100 agencies undertake relatively similar work costs more than having 50 people all in one location do this work. These people in one place can consult with each other, learn from each other, and travel to various agencies as the need arises.

However, centralisation can lead to as many draw-backs as advantages. Central agencies giving advice to others tend to be more controlled and risk averse. As such, they discourage innovation and rapid responses to changing circumstances in particular agencies. Centralised agencies also tend to develop complex procedures. Staff tend to spend much of their time on these internal procedures and requirements rather than

understanding the needs of various external agencies needing the Ombudsman's assistance.

*2. Such an organisation receives closer Parliamentary oversight and does not rely on directors' authorities for its work*

Under the traditional scheme of public administration, agency directors receive their authority to undertake code of conduct work from the generic competencies in the government's organic law. In theory, staff making codes of conduct, implementing them and assessing them in the agency rely on the director for their rights and competencies. The director (who holds responsibility for unethical behaviour) has the power (and incentive) to stop, hide and conceal work that might reveal unethical behaviour. Directors decide how to employ staff in their agency – and must bear responsibility for unethical behaviour that he or she has helped uncover (by allowing internal investigations for breaches of the code of conduct to proceed). Parliament judges ministers (and the government writ large) on all its achievements – of which ethical behaviour forms only a part.

An ombudsman office – on their other hand – receives a mandate from the legislature. The head of the non-executive (independent) office is accountable to parliament and not to the directors whose staff he worked with. The Ombudsman office has less incentive to conceal unethical behaviour because the institution is considered more effective politically if it finds cases of unethical behaviour. The ombudsman's resources do not depend on agency directors – but on parliament. The ombudsman makes the executive directly accountable to parliament for unethical behaviour. For cases it finds (and investigates if allowed by law), these cases are transparently reported and public.

Because ethical dilemmas involve shades of gray behaviour, the Ombudsman usually receives few powers. It does not investigate (normally). It has no performance objectives. In practice, the Ombudsman remains an un-developed institution – except in parts of

Scandinavia. In most countries, Ombudsman offices deal with human rights abuses. Even in these cases, their powers often consist only of bringing cases to the media's attention.

Countries looking to place responsibility for government ethics in such an institution can do four things:

*1. Pass a special ombudsman law which places responsibility for codes of conduct with the special ombudsman office*

Instead of passing code of conduct legislation (or an executive decree depending on the approach senior politicians want to take), they can pass a law establishing – or strengthening – an ombudsman's office. The law would endow the ombudsman's office with particular competencies like providing consulting services, collecting data on complaints, and dealing with complaints (depending on its competencies). If the parliament passes legislation providing the Ombudsman with the necessary competencies to work on codes of conduct, the Ombudsman office can work across the entire public sector. If the ombudsman office receives its competencies from executive regulation (like in the US), then the Ombudsman office would work only with ministries, agencies and institutes under the government's jurisdiction.

*2. Provide the Ombudsman office with enough budgetary funds to engage in “community policing”*

The Ombudsman's office can help create, advise on the implementation of, and even monitor the effectiveness of codes of conduct. If parliamentary fiat or executive decree gives the organisation the necessary competencies, the Ombudsman office can even collect complaints from the public and refer them to the necessary institution. However, an effective Ombudsman office does not sit idly by and wait for complaints or petitions for advice to walk in from the street. Ombudsman's advisors should go into the

government and community and form the relationships which will make them trusted advisors.

Ombudsman advisors can go into the community in two ways. First, they can look for controversial decisions and government actions in the executive daily newspaper or in other media – and provide unsolicited advice. Over time, if government officials find their advice useful, they will use this resource more frequently. Second, they can actively participate in NGO and civil society events. Such participation (again) consists of providing useful advice, rather than propaganda speeches or information about the work of the Ombudsman office. The office is a service provider like any other government service. Having senior officials from across the public sector trust and use its services will require relationship building and hard work.

Hiring ambitious young lawyers and consultants provides a quick and easy way of making the Ombudsman's office indispensable to public sector agencies. Most government agencies will require advice on complicated aspects of administrative work. Such advice ranges from arbitrating internal or cross-agency disputes to interpreting new international standards which affect the daily work of government agency officials. Ombudsmen who can provide these services will become sought-after advisors who can help arbitrate the values in a code of conduct. These staff will need the budget to travel across the capital – and across the country – to their public sector “clients” seeking their advice.

### *3. Set up procedures for receiving and acting on Ombudsman's notices and reports*

Individuals inside and outside the government may complain about potential violations of the code of conduct. In fact, they are lodging complaints about the violation of specific provisions of administrative law and resorting to rights they have under that law. The code of conduct represents a quick-and-easy reference guide to those rights. When complaints arrive about various agencies – such as the Ministry of Interior for example –

procedures should be in place to handle these complaints. Otherwise the Ombudsman will spend a lot of time trying to interest staff in that agency in the complaint. With established procedures in place (adopted as regulations in the administrative law of the agency or at the government-level), the agency will act on such complaints.

Such procedures can also facilitate the acceptance of reports and analyses conducted *ex-officio* (on the Ombudsman's own initiative). For example, Ombudsman staff may write a report on gift accepting behaviour across the government and make specific recommendations. The odds that government agencies will accept these recommendations increases exponentially with the procedures in place for government agencies to receive this report and consider these recommendations. Again, legal drafting in executive agencies helps ensure the effectiveness of the Ombudsman.

#### *How to empower an ethics committee or board to monitor ethics?*

In many OECD Member States, independent standards and/or ethics boards monitor and enforce public ethics. In two of the three branches of governments, standards boards decide such ethics (namely the legislature and judiciary). Describing and discussing the way these essentially self-regulating organisations deal with ethics would require a treatise in itself. Indeed, treating parliament and the judiciary in the same breath – and describing the parliament as essentially a self-regulating organisation glosses over many complexities. However, we wanted to provide a basic understanding of the main issues for future code of conduct and regulation writers. We wanted to distil the basic lessons from OECD Member States into an easy to digest version for use in developing countries.

Three reasons determine why collegiate bodies monitor ethics in institutions professional and elected bodies:

#### *1. Closer definition of ethics and the profession -*

Being a judge or member of parliament is a more than just employment. These jobs are professions. Ethical decisions in these areas touch on very specific issues to that profession. Other members of the profession best know if ethics have been violated or not in any particular case. Take the judiciary for example. Only another judge can tell if a particular judges conduct constitutes unethical behaviour because he or she knows the courts, knows the common practices, and has become acculturated in that system. He knows the grey areas of right and wrong in that profession.

### *2. Standards and ethics-setting boards guarantee independence -*

The principle of parliamentary sovereignty represents a core principle of OECD democracies. Parliament – and its members – must have some types of impence and protection from the executive in order avoid co-option. Parliament must self-monitor to maintain that independence. Otherwise, ambitious or unscrupulous members of the executive could paint political decisions taken by members of parliament as ethical ones and attempt to punish parliamentarians for political positions. A logic applies to judges and members of the judiciary. Self-regulation ensures the independence of the legislative and judicial branches.

In order to have effective self-enforcement, ethics committees or boards should have oversight powers. Such oversight consists of several colleagues from these collegiate bodies who must collect complaints, rule on particular instances of allegedly unethical practice, and even engage in active surveillance (depending on the body's charter). These commissions work according to rules which are too complex to describe here. All the reader needs to know is that a collegiate sub-committee or group working for the self-enforcement of ethical norms guarantees their independence.

### *3. Standards setting boards do not have judicial powers -*

Most unethical behaviour results in only minor harms or grievances. Black letter law regulates the issues we can agree represent high risk and/or serious issues. Ethics-related regulations (and those contained in a code of conduct) cover the high volume and low value (or low volume and high value) transactions which involve judgments of right and wrong. Punishments – following the proportionality principle – usually consist of censure, loss of job or other sanctions proportional to decisions which the majority of a profession disagree with. For serious cases involving large amounts of resources, these cases often already fall under civil or criminal law (or whose case facts can be interpreted to fall under these branches of law). The vast majority of ethical misconduct relate to peccadilloes where a person has inappropriately exercised his rightful discretion in his or her own self-interest. So, the punishments given by ethics committees usually involve no greater punishment than disbarment (and referral to judicial authorities for more serious cases).

A self-regulating organisation usually decides on membership – and membership decides who may practice a profession. Thus, a decision to debar an individual temporarily or permanently from membership in a profession for unethical behaviour equates to loss of livelihood (income). Ethics committees must exercise this power according to formal rules. Legislation usually grants the often monopoly power to decide membership in a profession to a membership body. So, as a regulated profession, they must act according to the same rule of law as other parts of the public sector.

In theory, even executive agencies and local governments can have collegiate standards boards and ethics committees (and many do). The standards board model tends to work better for collegiate structures (rather than the line command structures of ministries and other executive agencies). In line structures, specific orders require relatively little discretion (though this is changing with the changing nature of government work).

For public officials in developing countries looking to set up an ethics committee for a professional standards board (or collegiate body like a deliberative legislative council), they can look at four steps:

*1. Appoint several people to sit on the ethics committee –*

The first step consists of getting several members of the professional body to agree to sit on an ethics committee. The ethics committees acts as the steering group for code of conduct work in the self-regulating organisation (whether the parliament, judiciary, or other organisation). Most parliaments by now have ethics committees – so this advice applies more to other organisations like a judicial council. The members of the ethics committee take the strategic decisions related to the development of the code of conduct (ethics regulation) programme for the organisation.

*2. Assign them to write ethics regulations (including a code of conduct if desired) and make the chairperson responsible*

The ethics committee can either appoint a member to do the initial regulatory drafting – or co-opt an expert from the wider organisation/profession to do the drafting. Parliamentary, judicial and other organisations – just like their executive agency cousins - - will have bodies of internal decisions, resolutions and regulations. These instructions and regulations guide the members of the organisation on many issues – including issues which relate to ethics.

A single individual needs to hold responsibility for the drafting of codes of conduct and ethics regulations. Such responsibility ensures that the work is done on-time, tackles the most important ethics-related risks important to the self-governing organisation, and addresses them adequately. This person can also provide advice and counselling to the experts who review and actually draft ethics-related instructions and regulations for the self-regulating organisation.

### *3. Use the same procedures we described above for collegiate codes of conduct*

Collegiate bodies and self-governing organisations should use the same rigorous process to create ethics-related regulations (including codes of conduct) as executive agencies. First, they should collect data on existing ethical problems affecting the organisation's members. Second, they should review existing legislation and regulations by any executive agencies which regulate the profession or branch of government. One example includes Ministry of Justice regulations and guidance for judicial staff. Clearly the person drafting a code of conduct for judicial staff needs to take into account any legitimate regulations enforceable on them by the Ministry of Justice. Third, the relevant specialists should draft internal instructions, resolutions, and regulations which affect the organisation's members' behaviour. Their competence and authority for such a code or ethics-related rules for members comes from the professional organisation's charter. Fourth, they should advertise the relevant ethics-related provisions to staff and persons interacting with the organisation's members. These persons should know what kinds of behaviours to expect – and can militate for relief in case organisational members act unethically.

### *4. Ensure funding for code of conduct and ethics-related work*

Just like in executive agencies, staff working on codes of conduct need money to conduct their analysis, write up these codes of conduct (or binding instructions and resolutions to members) and monitor their performance. Many self-regulating and professional organisations and raise dues to pay for full-time ethics officers (some of whom may even be secretarial or administrative staff rather than formally appointed members of parliament, judges or other members of the self-regulating organisation). For non-due paying institutions, conferences and other fundraising events can help providing funding for ethics-related work. Special rules will govern each organisation – and only a professional who knows that self-regulating organisation well should do such work.

In this section we have looked at the institutional arrangements governing a code of conduct programme. We have described – in general and abstract terms for officials interesting in implementing code of conduct programmes – the major institutions responsible for code of conduct work in the public sector in various OECD Member States. We have specifically outlined a method that governments interested in implementing a whole-of-government approach to code of conduct work can use to implement these codes. We have also addressed the role of non-executive agency public sector bodies like the Ombudsman, the legislature and judiciary in broader ethics regulation. In the next section, we describe several issues related to the implementation of codes of conduct. We describe the role of leadership, how human resource units and special ethics counsellors can help implement codes of conduct. We describe the role code of conduct documents (as papers taped to walls) and admonish users of this brief to avoid excessive ethics-related regulations.

#### **Phase 4: Implementation Arrangements**

In this section, we discuss specific arrangements which can be implemented in most public sector agencies. We discuss the role of leadership in ethics (arguing for the importance of passing regulations and building systems rather than lone wolves seeking to change their organisation’s ethical values by brave deeds). We discuss how agency directors can provide human resources units and departments with a mandate to create, monitor and enforce codes of conduct and ethics regulations. We discuss how to solicit public and internal feedback and complaints, how to create a special department of ethics counselling, and how to work with internal audit units. We discuss the role of codes of conducts and posters taped to walls and warn against excessive ethics regulating.

##### *The role of leadership*

Many books on ethics in the public sector encourage management and staff to exercise leadership in public ethics. Senior managers should provide a role-model for staff – by acting ethically themselves. In their view, senior officials should take politically or administrative unpopular decisions because the decision represents the ethical thing to do. In other cases, such leadership consists of wide-spread punishments meted-out in an administration where unethical behaviour is rampant. At first glance, ethics leadership seems like a good thing.

We want to convince the reader that ethics leadership (as it is popularly conceived) makes little impact in generating long-run sustainable changes in behaviours tied to an ethics programme. Leadership requires individual sacrifices and commitments. Instead, systems and procedures should guide the ethics programme. There are five reasons why ethical leadership (as we traditionally understand it) should be discouraged -- as ironic as that sounds.

*1. Ethics deals with areas of behaviour with little agreement –*

Ethical dilemmas almost always involve decisions where both sides of the argument have some validity. For example, many public officials justify the use of government property for private ends because public officials are paid so little (or because the value of their work is so high). Their decisions impact on billions of dollars – so why should they live worse than lowly paid middle managers in the private sector? Many administrations tacitly allow such practices – even if they must renounce them publicly for political and/or legal reasons.

In many cases – particularly where the “public good” is involved – ethical leadership represents one individual (or group of individuals) attempting to impose their ethics on others. Some officials may try to stop the cutting down of a forest on environmental grounds (in the name of the public good) while individuals in the same department may seek the policy (to create jobs in the name of the public good). When the action taken

stems from a discretionary decision (where no black letter law clearly dictates what should be done), each side will portray the decision as an ethical one. Ethical leadership – then only represents one side attempting to impose his or her ethical values. Instead of resolving the issue using established administrative, political and judicial procedures, these “leaders” attempt to by-pass regular administrative procedures.

## *2. Leadership requires the manager to act against prevailing incentives*

In popular parlance, “leadership” implies acting against the majority. Such leadership involves engaging in conduct first – conduct which others do not undertake. Why do incentives exist to prevent such supposedly ethical behaviour in the first place? Why not address those incentives – instead of engaging in actions which the majority refuses to take?

Ethical leadership also often implies some sort of risk (otherwise everyone would act that way). If the public official’s behaviour leads to positive outcomes, his behaviour may be tolerated. If he fails, the ethical leader will be punished. Why would any rational public sector official take such risks? Say for example, a civil servant thinks that the administration is too bureaucratic and agrees to accept only a few of all the documents required in an administrative process. His “leadership” places himself at risk and his superiors at risk (for not adequately supervising him). His best “play” – rather than running these risks – consists of encouraging his bosses to review the rules, working with a political party he favours to support pro-reform candidates, bringing particular cases to the attention of internal arbitration and working with internal auditors on simplification. In other words, his “leadership” comes from using already existing administrative procedures.

## *3. Leadership requires behaviour at odds with politics and hidden strategies –*

An administrative decision at any level can result for a number of reasons. Some decisions may involve one move in a long-running and hidden strategy. In other cases, decisions may involve difficult compromises made in Cabinet, in a public-private consultative body or between a government agency and a regulated body. Ethical “leadership” often threatens the fragile alliances – because a civil servant seeks to take an ethical course of action without having the big picture in mind. Such ethical leadership can cause harm to the administration and public service users.

*4. The best ethical leadership remains unobserved –*

Because of the individual risks involved in ethical leadership, many leaders in OECD Member States conduct such leadership in secret. They may act through third-persons (by convincing them in a particular course of action). They may solve problems before they turn into ethical conflicts. For example, a civil servant may want to hire a friend who is highly qualified to do a particular job. However, he can not recommend this friend – for fear of favouritism. Instead, he may encourage another civil servant to hire this friend for similar work before the opportunity of employing his friend arises in his own agency.

*5. Leaders represent an easy target to ridicule when ethical lapses occur -*

Ethical leadership can represent a danger to the administration as well as the individual. Numerous Mr. Cleans and heads of ethics commissions have been involved in public scandals and experienced revelations of personal or professional improprieties. Such cases undermine confidence in the management of ethics in the public administration. Holding these “leaders” up to public attention attracts attention to them which the press and their colleagues would not give under other circumstances.

We do not want to discourage leadership (indeed, we have also benefitted from the selfless acts of others). In many public administrations – particularly in the developing world – self-interest often and inappropriately guides administrative decision-making.

We want to show the logical and practical reasons why few public officials exercise ethical leadership. The form of ethics leadership stems from removing incentives and work processes which place public officials in ethical dilemmas in the first place. When they must resolve these dilemmas, they should have recourse to a body of administrative law and practice.

Using the usual tools of public administration to change public officials' behaviours represents a far more effective type of leadership than individual cases of self-sacrifice. We have argued previously that causal observers mistake on-the-job mentoring and administrative systems development with leadership. Such mentoring involves the normal oversight, training and guidance that any public administrative principal should give to his or her agent. Such leadership involves sending instructions, decisions, instructions and regulations to staff on specific and general ethics-related matters. Ethical leadership is not a special behaviour – it is a normal administrative behaviour.

#### *How to assign Human Resources departments with ethics-related competencies*

Human resources departments concern themselves with finding, hiring and reallocating staff, providing them with proper incentive structures, and implementing pay-performance policies (among other issues). Clearly assessing new recruits' ethics and deciding on promotions based on displayed ethical conduct represents competencies relevant to an agency's human resource (HR) unit, department or sector. However, because ethics deals with the gray areas of conduct which can not be regulated or easily assessed, most HR departments stay away from dealing with ethics issues. HR departments often train in, administer sanctions, and provide ethics-related advice in black and white circumstances. Often broader executive regulations prevent HR units from using ethics-related decision criteria – or providing advice – as such work may conflict with the broader HR framework in place.

Whole-of-government executive regulation -- and to a lesser extent agency regulations -- can provide for an important role for agency-level HR units, sectors and departments. These roles include:

*1. Use of ethics-related hiring and/or transfer criteria when taking on new staff*

Agency directors -- to the extent they can shape job requirements in any particular administrative structure -- can make ethics-related conduct a decision criterion for new hires or staff transferred to their department. Human resource units ensure the consistent application of these criteria and confirm that the individual involved did display such conduct. For example, during an initial interview, a panel may ask all the applicants to cite a time when they resolved a difficult ethical issue. Their answer may receive a score (like their other answers receive scores). Human resource staff can monitor these scores and questions overtime -- looking for ways to make these questions better predictors of future ethical behaviour. Directors regulations insisting on ethics-related hiring criteria can show incoming staff that the agency applies its code of conduct from the first day of the applicant's employment.

*2. Use of ethics-related measures in deciding pay, promotions and bonuses*

Human resources units can play a vital role in suggesting and later implementing regulations which make ethical conduct a criterion in deciding pay levels, promotions and bonuses. Most public administrations work according to very fixed scales of pay and job descriptions. However, many OECD Member State human resource regulations are becoming more flexible. They allow for extremely limited discretionary changes in staff pay, promotions and particularly in non-government public sector organisations (like state-owned enterprises), allow for bonus payments. Agency directors can draft regulations -- in conformance with broader HR regulations -- which make ethical criteria a factor in deciding pay, promotions and bonuses. Such regulations provide immediate and tangible incentives for following a code of conduct.

### *3. Documenting ethics problems and proposing regulatory amendments*

Human resources have a strong role to play in documenting ethics-related misbehaviour and proposing solutions to broader patterns of unethical behaviour in the agency. However, HR sector (unit) staff will not do such work unless required by director's regulation. Ethics regulations can provide to the HR the mandate for documenting these cases and conducting such analysis. The agency director's regulation can also outline procedures the HR sector can follow when monitoring ethics-related behaviour, recording complaints (or complements) in the file of the relevant staff, and other procedures.

### *4. Providing for disciplinary sanctions on behalf of the director*

Most agency directors (and their appointed managers) may apply disciplinary sanctions to staff who act against particular orders or regulations. Yet, as we have mentioned, the agency director will not have the incentive to apply punishments in many of these cases. Unethical conduct will either help achieve the director's goals or the goals of the agency (in the short-term). The director may also bear liability for the unethical conduct of his or her staff. Directors in this situation suffer from what economists call a "time inconsistency problem." Agency director benefit by agreeing beforehand to monitor ethics and punish unethical behaviour. If staff believe the Agency director's intentions, they will behave unethically. However, they will not believe in those intentions. They know that when the time comes and staff behave unethically, the agency director will have strong incentives not to punish unethical behaviour.

To resolve this impasse (economists call it a credible commitment problem), agency directors can credible vest their monitoring and enforcement powers in a sub-ordinate like the head of the HR unit. Through the ethics regulation, the agency director can allow the HR department head to apply (or recommend the application of) particular sanctions. Not all legal traditions allow agency directors to delegate competencies in this way.

However, the readers' in-house counsel will be able to advise on the legality of such rulemaking.

#### *5. Providing ethics-counselling services*

Human resource managers in some administrative bodies in OECD Member States provide counselling to agency staff. Such counselling can consist of ways to advance in each staff member's career, the type of training staff might need in the future, briefings on new laws and regulations and so forth. Human resource staff may – if given the competence by the agency director (in a regulation of course) – advice on ways staff can apply the code of conduct in their daily work. They may meet with staff, listen to their ethical dilemma, and help them find solutions. The agency director's regulation (drawing on rights and recognising strong limitation from central regulation) will outline the kinds of training human resource staff need to do such work and the limits of such advice.

However, ethics counsellors need to avoid the many legal traps inherent with providing such advice. Providing such advice interferes with the rightful unity-of-command principle in most public administrations (that staff should be responsible to and seek advice from their boss). Human resource staff in some jurisdictions may even be held liable for the decisions (or their outcomes) taken by the colleagues they advice. Such risks strongly point to the need for a detailed ethics regulation adopted by the agency director. The regulation would define the types of ethics-related advice HR managers can (and can not) give. The regulation can define the ways HR staff can apply balancing tests, principles-based tests and other measures to various provisions of the code of conduct. The regulation can describe the working procedures for HR managers to work in in-house counsel and legal advisors. The regulation can also outline situations where the director would need to provide such counselling personally.

*The role of public and internal feedback and complaints*

Most government agencies now use feedback and complaint hotlines to monitor the ethics-related behaviour of civil servants and staff lower than at the agency director level. Usually a specialised unit collects complaints – and forwards ones involving potential crimes to the police. For ethical violations, the person’s supervisor is often informed – as is a person in the human resources sector or unit and potentially in-house counsel. These complaints serve to bring unethical behaviour to the agency management’s attention

Unethical behaviour is usually a symptom what economists call “incentive misalignment.” In other words, de-motivated civil servants affected by poor management practices, inappropriately written regulations and other factors, tend to act unethically. Measurements of unethical behaviour and violations of a code of conduct can signal areas of the public sector suffer from deeper managerial, regulatory and/or other problems.

Ethics-related regulations need to put in place a system of feedback and complaint gathering related to the code of conduct. Proper ethics-related regulations will perform five functions:

1. *Empower a particular individual or group of individuals to collect complaints* – agency specific regulations may nominate one or more individuals to receive complaints about violations of the agency’s code of conduct from the public and/or other staff. The regulation can determine who is in charge of deciding if the complaint has merit, investigating the complaint and bringing the complaint to the attention of the accused person (or persons).

2. *Include the person’s contact information on the code of conduct or other informational materials* – a code of conduct pasted to walls around the Agency can help inform staff (and service users who read the code) where to complain. People with complaints can

make such contacts anonymously or not (depending on the agency's and/or government's policies and regulations).

3. *Provide for multiple sources of complaints* – including the Ombudsman, agency managers and/or other third-parties can increase the scope of complaints received. While public sector managers may not want to deal with more complaints, these complaints often signal more profound failings in service delivery processes.

4. *Allow for cross-institutional work on complaints* – complaints made at border crossing points for example, can involve several government agencies working together (such as customs, border guard and other agencies). If someone complains about unethical behaviour at a border crossing point, both customs and border guard may be involved. The relevant persons in charge of investigating complaints should be allowed to work with each other. In many countries, cross-agency co-operation usually only occurs if explicitly authorised and encouraged by agency directors.

5. *Encourage the relevant staff to collect data on service users' experiences* – conducting regular or *ad-hoc* surveys of individuals using a particular government service can provide a great deal of information (some of which deals with unethical behaviour).

If the agency collects numerous complaints against individual staff, the best course of action consists of addressing the reasons for unethical behaviour – rather than simply punishing the official(s). Punishments tend to create resentment and destroy investments made in that person's skills and initiative. Instead, priority focus should be on writing regulations which remove the incentives that led staff to act unethically.

#### *Creating a special department for ethics counselling*

In highly legalistic jurisdictions like the US, ethics advisors and counsellors may provide a useful service. Ethics counsellors may cost an administration tens of thousands of

dollars (or euros) to set up and run. Some running costs include paying wage payments these counsellors, allocating office space, and so forth. As such, small agencies may wish to “share” an ethics counselling agency – as Scandinavian countries do with their Ombudsman agencies.<sup>13</sup> However, if these ethics counsellors prevent unethical behaviour which results in harms in excess of the counsellors’ salary and overheads, they should be established as part of the government.

Ethics counsellors, ethics-units and departments can generally have 3 tasks (depending on the legal competencies they can be assigned and the costs-benefits of assigning these competencies):

*1. Providing staff with advice (preferably definitive and legally binding) on ethical dilemmas*

Ethics counsellors have a unique perspective on managing ethical dilemmas. They have training in finding creative third, middle solutions to ethical dilemmas. They also have training in law, administrative procedure, human resources management and sometimes psychology. As such, they can provide valuable advice to staff looking to do the right thing.

Providing ethics counsellors with the legal authority to give advice which can be reliably acted upon has numerous advantages. First, ethics counsellors can help protect staff from blame in case they choose a particular course of action. Many civil servants take the least visible solution to ethical conflicts for fear of reprimand or reprisal. Ethics counsellors can help “shield” these staff from these kinds of worries. Second, they can collect data about different ethics-related problems across the administration – providing a bird’s eye view of ethical problems in the administration. Third, they can provide protection for the

---

<sup>13</sup> The optimal location of an ethics counsellor will depend on its costs and benefits – and should be designed by a competent organisational theorist. A centralised agency will benefit from economies of scales and a range of experiences. An agency-specific agency can focus on problems particular to that agency.

director or minister under orders to do something unethical. Imagine an agency director receives orders to do something unethical. If an ethical counsellor has the legal authority to rescind the unethical order, such powers help protect agency directors from being placed in a position of having to act unethically.<sup>14</sup> Fourth, they can codify decisions into administrative law – ensuring that administrative ethics-related law evolves over time.

*2. Settling disagreements about ethics-related issues (such as unethical orders from superiors and so forth)*

One of the biggest areas of contention in a public administration involves cases where staff think a superior's orders are unethical. In a normal chain of command, bringing this to the attention of the director over the head of one's boss is inappropriate. Providing an independent arbiter who personally knows both parties and has the administrative obligation to settle these kinds of disagreements can build – rather than undermine – working relationships. In practice, these counsellors also provide other services, like career counselling. In this way, they promote the development of the administration. Because agency director will have a vested interest in certain kinds of unethical behaviour, an independent ethics office under the Director (or outside the Agency) can provide impartial advice.

*3. Providing oversight of the ethics infrastructure, drafting director's instructions and acting on behalf of the director on ethics matters*

Ethics counsellors' jobs consist of thinking about ethics from 9.00am to 6pm. As such, they can see where ethics regulations and codes of conducts fail to cause changes in behaviours. Rather than waiting for survey results, they observe and understand the deep reasons for ethical failures in an administration. They can suggest urgent changes in

---

<sup>14</sup> Law in OECD Member states varies enormously about the extent to which sub-ordinates must obey the unethical orders of their superiors. We do not discuss this complex issue here.

regulations and handle cases where potentially unethical behaviour could place the agency at great risk.

One area involves acting on behalf of the director in ethics matters. As previously mentioned, the director will have a conflict of interest in judging many ethics-related cases. Moreover, ethics counsellor can only work according to the authorities delegated to him or her by the director (except in cases where these counsellors receive their authority from legislation and/or a cross-agency body like a government Ombudsman). Careful ethics regulation drafting needs to understand this problem – and propose practical ways to resolve this weakness.

In order to set up these ethics counselling units or departments, four things must be in place:

*1. Legal competence to give ethics-counsellors rights and obligations*

Most developing countries do not want to pass ethics legislation or create a special government ethics office like that in the US. As such, any authority for ethics counsellors must come from agency directors themselves. They must delegate some of the competencies given to them by the government's organic law.

In practice, agency directors will feel reluctant to devolve authorities (and responsibilities) not explicitly given in legislation. Most government's executive organic law does not explicitly state that "ministers and agency directors shall be responsible for the ethical behaviour of their sub-ordinates and may delegate authorities to ensure ethical conduct within his or her agency." Naturally, obligations and responsibilities remain with the head of the ministry or agency. However, the head can delegate some powers to staff who can help him.

The best solution to the problem of insufficient ethics counsellors authority to engage in particular kinds of counselling comes in the form of legislation (or whole-of-government regulations). Such lawmaking can provide authorities to ethics counsellors which agency directors themselves do not possess (like the right to offer immunity from administrative sanctions individuals who blow the whistle on unethical staff).

*2. A regulation in place which governs their work*

Government agencies work according to the rule of law – and so do ethics counsellors. These ethics counsellors should act according to internal regulations signed by the agency director (or parliament and/or head of government – depending on the type of ethics programme chosen at the national level). Such a regulation can help determine the competencies of ethics counsellors and their responsibilities to the agency director.

Ideally, legislation guides this process for three reasons. First, each agency will not need to re-invent the wheel. Some competencies will be the same across agencies. Second, some staff may view directors’ regulations like the previous impotent codes of conduct they saw taped to their walls. They may feel that these regulations carry no legal weight – and so ignore them. Legislation can help provide legal force to these regulations (especially legislation with sanctions). Third, many developing countries do not have a strong executive like the US. In the US, an executive office co-ordinates ethics work for a highly disbursed federal government. The system works extremely well – given the extreme differences in administrations across states and municipalities. Because developing countries do not have this strong presidential system, their executive agencies may require additional powers of self-regulation granted by Parliament.

*3. Their own regulations (including codes of conduct), regular career tracks, incentives and audits.*

Ethics counsellors represent a professional advisory service like tax, law, audit or any other profession. As a collegiate self-regulating body, they need to have their own training, their own standards, codes of conduct and professional discipline. In theory, they do not need a central level regulation or law anymore than any other self-regulating body needs such lawmaking. In practice, some countries may wish to pass a Cabinet of Minister's regulation (or parliamentary decree) establishing the framework for the development of ethics counsellors in the public sector.<sup>15</sup>

### *How to Use Internal Audit*

Agency directors hold responsibility of commissioning, using and following-up on internal audits of the agency's code of conduct. Internal audit represents a tool which agency directors can use to help create, implement and assess codes of conduct and the ethics-related regulations backing these codes. Agency directors can keep three points in mind as they engage in ethics-related internal audit work.

#### *1. Assign a staff member to follow up on accepted recommendations*

Management – not internal auditors – have the responsibility for ensuring that internal audit recommendations related to the code of conduct are implemented. Internal auditors can not participate in parts of implementing recommendations without a conflict of interest (though exceptions exist).

#### *2. Release internal audit reports to the public (if allowed)*

An environment of secrecy naturally encourages unethical behaviour. If the public feels that the agency acts unethically – but the internal audit reports provide reasonable

---

<sup>15</sup> We hesitate to say more on this issue because of the vast array of legal complications that can arise when setting up an ethics counsellor's function. Legislation must provide these counsellors with certain protections from prosecution (to take one example) which can not simply be "devolved" by an agency director. We strongly recommend detailed analysis of current law before considering establishing an ethics counselling function.

assurance that no unethical behaviour occurs – such a situation can either mean that the agency does not function properly...or internal audits do not function properly. For many internal audits related to ethics, external stakeholders will need to be consulted. They will have an interest in the final results. Public disclosure can also encourage much needed research and legal scholarship on the development of ethics-related regulations in that particularly agency (or in general). A downside of public disclosure is that audit clients and auditors themselves will self-censor because they know their work may appear in public.

### *3. Don't use internal auditors as enforcers*

In theory, internal auditors work according to a charter which provides them with independence from the agency director.<sup>16</sup> In practice, nothing stops the agency director from telling internal auditors that they must find violators of the code of conduct. Internal auditors in the agency director's organisation still remain answerable to him or her. Internal auditors may engage in this type of enforcement – conducting what are known as fraud audit. In this audit, internal auditors specifically assess the risk of fraud. Agency directors can easily classify unethical behaviours as fraud (or potential fraud) and use internal auditors to investigate these possible offenses. However, such behaviour decreases trust in internal auditors. Agency directors should avoid using internal auditors as their code of conduct enforcement team.

### *The role of codes of conduct and posters taped to walls*

Throughout this brief, we have been pessimistic about codes of conduct taped to walls. Countries looking to implement these codes generally confuse the chicken and egg. OECD Member States' agencies with effective code of conduct programmes tend to rely

---

<sup>16</sup> In many administrations, the charter itself consists of a director's regulation. The reader may question the extent to which an agency director has the right to grant independence to a unit under his control from his control. In some cases, higher administrative bodies adopt the charter (removing this administrative paradox).

on these codes as reminders of more profound administrative law and practice. Even in countries like Germany or Ireland – where these codes run only a couple of pages long – a body of administrative law literally thousands of pages provides teeth for these codes. These codes of conduct on walls serve three purposes:

*1. Provide quick and tangible reference to substantive rights in administrative law* – when a civil servant can point to a line on the code taped to the wall and say “I must act this way according to the code,” this shortens debates and conflicts in an administration. Actually, the civil servant is not referring to code when he says this. He refers to all the substantive rulings, decrees, decisions that underpin that 1-2 sentence line in the code of conduct.

*2. Remind civil servants about the broader interest* – a number of studies in economics show that people need to be reminded regularly that they can receive bigger payoffs from social actions than narrow self-interest. Several experiments in economics show that codes of conduct help focus minds on receiving the larger pay-off of working together in the public interest rather than pursuing one’s private interest.

*3. Provide useful information about where to receive advice and “what happens next”* – a code of conduct can contain telephone numbers of ethics counsellors who can give more advice. It can inform service users about the rights they can expect. It can remind of rules (like staff must come from 9-6 if that is the case).

Posters serve a similar purpose (and are used less in OECD administrations these days). The best posters do not try to act like the propaganda of the old days. They provide specific information – like how to contact the ethics advisor or what the exact penalties are for engaging in certain kinds of behaviours.

*Beware excess regulation*

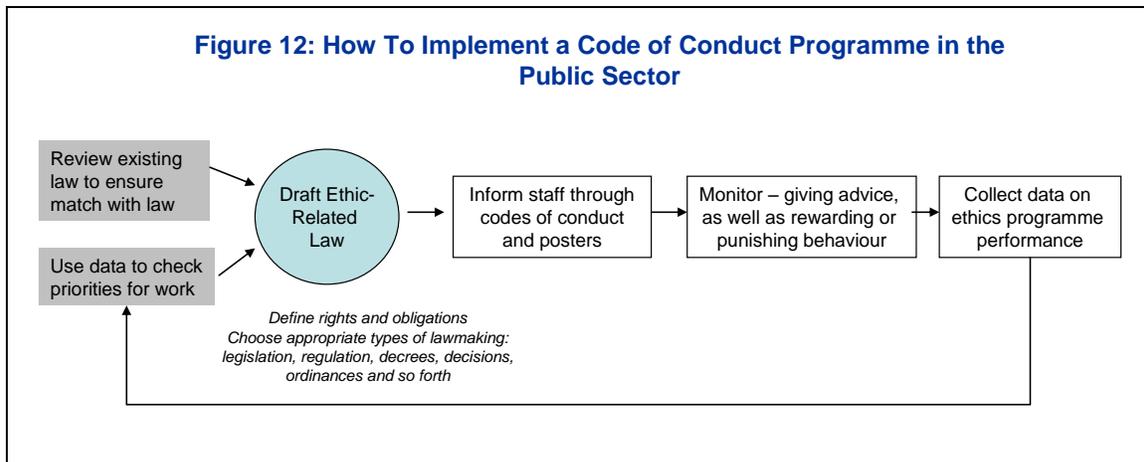
We save one of the most important observations until the end. Ethics regulations and codes of conduct can actually cause more unethical behaviour. Many ethical dilemmas arise from civil servants trying to work around regulations in order to do what they think is right. Increasing regulations simply increases the number of obstacles that civil servants must confront in their daily work. Increases in regulations also increase the risk of potential punishment in case a senior official disagrees with a judgment. More regulation also leads to more costs of enforcement, inspection and assessment. Internal auditors can help ensure that excessive regulations do not appear (though auditors have a penchant for regulations themselves).

## **Conclusion**

In this article, we outlined the basic steps for implementing a code of conduct programme. We showed why simply taping up principles on the wall of a ministry does not count as a code of conduct or government ethics programme. Agency regulations help public officials to understand, define, and act in the gray areas of public administrative decision-making -- where no formal black-letter law can provide explicit prohibitions and define penalties. We showed that codes of conduct serve as reminders of a deep and developing administrative law related to resolving ethical dilemmas. Such an administrative law provides specific procedures for implementing broad values and ethical principles found in the country's constitutional jurisprudence and legislation.

At both the whole-of-public-sector and at the agency level, the steps needed to implement a code of conduct policy remain pretty much the same. As shown in Figure 12, analysts should collect data and engage in legal analysis before drafting codes of conduct (and the underling regulations which allow for the implementation of the code of conduct). A fair amount of legal drafting needs to be done before writing up the code of conduct. In this way, the provisions of the code will have the nice properties of normal administrative law – enforceability, impartiality, legality, definitiveness, applicability, and proportionality as to enforcements. Agency directors still bear the brunt of implementation – working with

staff on resolving day-to-day ethics dilemmas which the code of conduct advises on. Collecting data on the performance of the code of conduct and improving the code through internal audit work provides an important way of developing both the code and the underlying ethics-related law making the code useful in daily working life.



You will not see these kinds of step-by-step instructions for public officials when you visit an OECD Member State because many of these steps have been received through hundreds of years of administration law. So we simply write explicitly what has remained tacit (unwritten) knowledge in many OECD Member agencies. Naturally, the reader will find numerous exceptions to the simple rules we provide. In Italy for example, their historical traditions have created a tapestry of administrative traditions which have led to very different ethical outcomes even in the same country. We hope our framework helps the reader to identify these exceptions for themselves (as there are more exceptions than rules in ethics regulating). We also hope to have provided new ideas for implementing codes of conduct in your work (we did not want to provide a fancy exposition which provides scientific validation for theories about public administrative ethics). In short, the code of conduct programme you design and implement will depend only on you and your system.