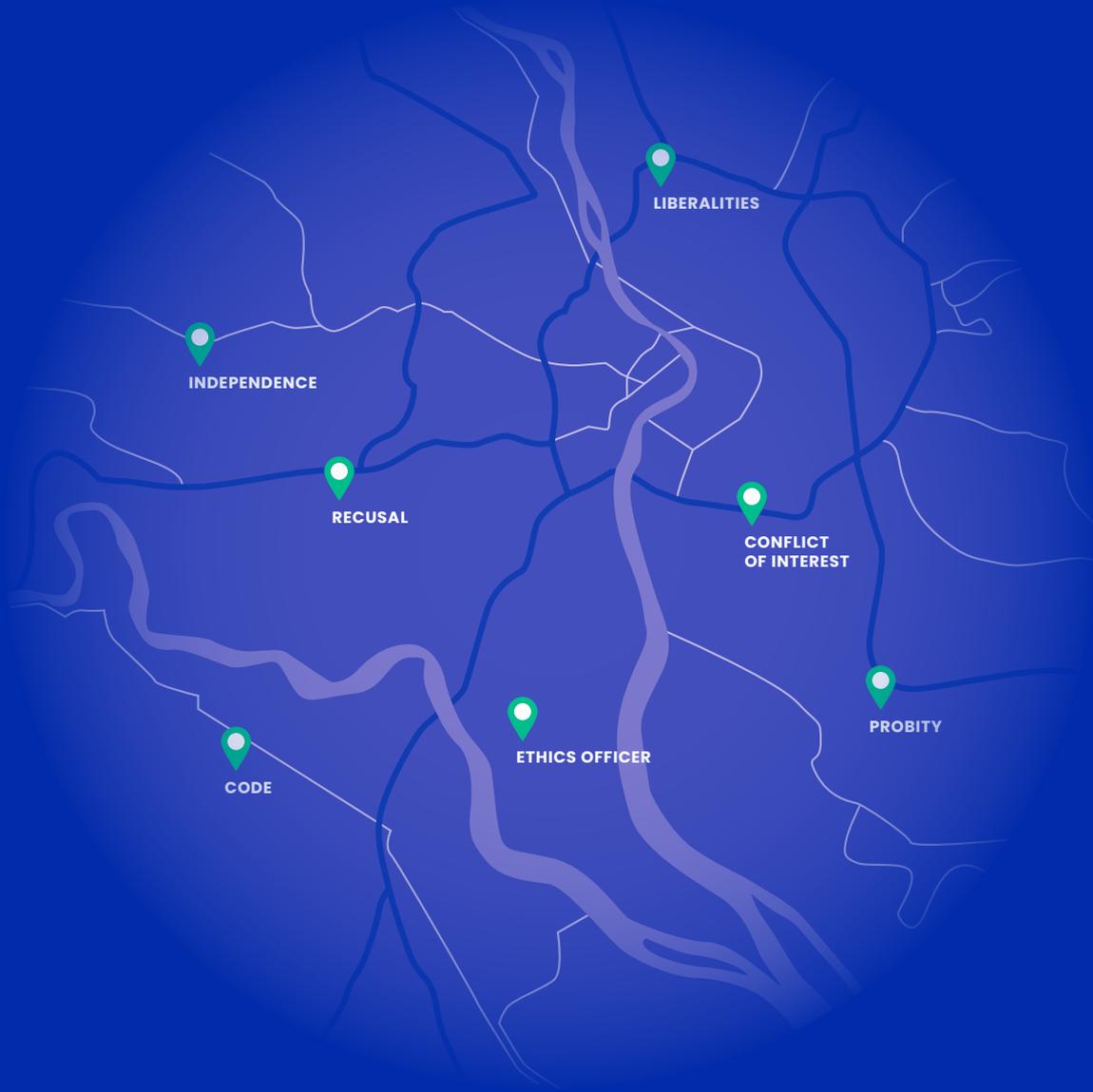




High Authority
for transparency
in public life



Ethics Guide

Handbook for public managers
and Ethics Officers

“If morality must continue to be ethical, as we believe, is it not evident that we must know our duties before carrying them out?”
Paul Janet¹

Ethics have been a longstanding requirement in the public sphere as a whole, but have come to renewed prominence over the past ten years or so. As a compass for public action, they point civil servants and elected officials in the right direction in fulfilment of their daily missions. A source of legitimacy, they act as a shield in the face of citizens' growing defiance towards their institutions and public officials. Given that appropriation of ethical principles in practice is sometimes difficult, work should be done on awareness-raising and education.

1. “La Science sociale et la Philosophie anglaise”, *Revue des Deux-Mondes*, 3rd period, volume 6, 1874, p.105.

Since the Act of 20 April 2016, compulsory appointment of Ethics Officers has enabled elected officials and staff to progressively exercise their new right, that of obtaining personalised advice on ethics. Ethics Officers help anchor new systems and practices in the daily lives of elected officials and staff in administrations, healthcare facilities and regional and local authorities. They act as special relays, disseminating the requirements of integrity, probity and impartiality within departments. Ethical reflexes are by no means inborn and, in order to ensure they are instilled once and for all, extra effort must be made with regard to education, advice and training, all with the same goal: to raise questions, develop thought and inculcate a new mindset.

This is the ambition cherished by the High Authority for Transparency in Public Life, over which I have had the honour of presiding for the last five years. This young institution has developed acknowledged expertise on the subject of ethics. The High Authority now wishes to pass on this knowledge by lending its support to public officials and ethics officers, who sometimes find themselves isolated and powerless in the exercise of their exacting new mission: modernisation of their ethical tools. Such support in proactive implementation of ethical management of their institutions is the natural extension of the missions incumbent upon us. Of course, this initiative responds to the need to mobilise all stakeholders in professional integrity. But, above all, it emanates from a real determination

to meet the need for support expressed by public actors. This is why this guide was written; far from wishing to impose a standard model, it provides recommendation and information on best practices with a view to facilitating establishment of appropriate ethical mechanisms. It is intended to act as a reference document for ethics officers, elected officials and heads of department, helping them with this often complex but always fascinating task on a daily basis.

I should like to take this opportunity to reiterate my gratitude to the Minister of Justice, for her enabling the unrestricted involvement of liaison judges abroad, whose legal expertise made them invaluable contributors to this guide. Nor would this publication have been the same without the contributions made by members of the Network for Integrity, who provided the High Authority with international viewpoints.

I should also like to commend the personal commitment of the many ethics officers attached to the central administration and regional and local authorities, who, by sharing their respective experiences, did much to nourish and underpin the High Authority's thinking. Their contribution was essential, as, by bearing witness to their practices and the problems they come up against, they played a leading role in shaping the proposals and recommendations contained in this guide. Finally, I should like to thank the academics whose different perspective provided the measure of distancing required in broaching this new, highly promising field of studies.

I therefore call upon ethics officers, elected officials and heads of department to take advantage of the opportunity provided by this publication to continue to work with energy, skill and conviction at disseminating a culture of integrity in the public sphere. If we are to achieve this ambitious goal, responsibility cannot but be collective, shared by the whole public sphere and maintained through regular dialogue between all its actors.

Jean-Louis Nadal

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Introduction

The field of ethics covers all rules on what must and must not be done, and on what we are all duty-bound to do, in particular in the context of our professional practices.

Since the Act of 20 April 2016, civil servants and public officials have enjoyed a new right: the right to consult ethics officers in order to obtain ethical advice. The right resulted from a series of texts and provisions that gradually led to greater account being taken of ethics in the public sphere. Public officials sometimes regard ethics as nothing more than an extra set of obligations. Such obligations' counterpart is a right to benefit from assistance and personalised support in the field of ethics.

The proliferation of standards relating to ethics, transparency and prevention of conflicts of interest, and the flexibility allowed by the texts concerned as to how they should be applied, may be a source of difficulties for the administrations and local authorities that have to put them into practice, as well as for the elected officials and staff subject to them.

Since its creation, the High Authority for Transparency in Public Life has been developing a doctrine and refining its ethical expertise in the context of the missions entrusted to it by law, in particular through examination of declarations of interest from more than 15,000 senior public officials, provision of assistance to local authorities and public institutions in drafting codes of ethics, and opinions delivered in an advisory capacity to public officials. This is why the High Authority now wishes to make its expertise available, via wide dissemination of this guide containing recommendations and best practices for implementation of ethics policies.

Moreover, the compulsory appointment of Ethics Officers provides public entities with an opportunity to fully integrate ethical standards. One of the High Authority's main goals is to guide and nourish this movement, by meeting the needs expressed by Ethics Officers and the various actors concerned. This guide forms part of the initiative, and is designed to provide public officials with advice on implementing virtuous ethical management of their institutions in the face of ethical and criminal risks.

The choice of the word “guide” is by no means haphazard. This document seeks to be practical and concrete, useful on a daily basis to public officials and Ethics Officers alike. It summarises recommendations, puts forward best practices and highlights various pitfalls. Actors in the field of ethics themselves provided the main source of proposals herein. The High Authority held a great many meetings with Ethics Officers, academics, elected officials and lawyers, all of whom were happy to involve themselves fully in the initiative, providing documents and giving clear accounts of their practices and any problems they had in apprehending this renewed social requirement. Another source, of course, was the doctrine developed by the High Authority’s board as it examined cases of potential or acknowledged conflicts of interest and the various ethical questions submitted to it. Finally, legal doctrine and jurisprudence complemented and refined the way in which this guide perceives the various issues it tackles.

The guide is intended for members of local executive bodies that wish to introduce a Code of Ethics, as well as heads of department having to appoint an Ethics Officer, and Ethics Officers themselves, whether experienced or more recently appointed.

It covers the various ethics-related subjects that the High Authority handles on a regular basis and on which its contributions may prove to be of use. This is why whole areas of ethics relating to civil servants are purposely left out, including neutrality and secularity, the duty of confidentiality and the duty of loyalty. Parts One and Two of the guide present the structuring procedures to be followed by any public body wishing to renew or create its ethics system: establishing risk mapping, drafting a Code of Ethics, and instituting the position of Ethics Officer. Part Three has more to do with content and more specific sectoral procedures, such as dealing with conflicts of interest, supervising gifts and invitations and use of resources allocated to elected officials and staff.

Each of these subjects may be approached separately, even though they are all complementary. In the first three parts, each theme is approached via three focuses: why is the subject of interest? what context is applicable? what lessons are to be learned from feedback? The goal is to provide ethics practitioners with tools, whether they are new to or have experience in the field. In this respect, a number of practical tools are proposed in Part Four, as well as on the High Authority’s website. They may certainly be added to and complemented. The High Authority will be happy to listen to any suggestions or remarks.

In order to make for easier reading, exact legal references are not repeated all the way through the guide. They are all available in the dedicated appendix. Anyone who so wishes is of course free to make use of these tools and adapt them to their specific needs. For, although ethics necessarily involve compliance with general crosscutting principles, they also assume that such principles may be organised and adapted in line with the institutional context and the goals sought by each organisation.

The High Authority hopes that this guide will be of use to you and help you implement fruitful ethics-related procedures in your organisation. We hope you enjoy reading this guide.

Why put ethics at the heart of your organisation?

If elected officials and staff are to inform the commission of any offences or breaches of their ethical obligations, an ethical reflex must be disseminated to all levels of an organisation.

Achieving this goal is one of the many positive results that an organisation might hope to see after implementing an ethics policy. First of all, such an initiative reasserts the entity's common values, a reminder of the meaning that lies behind all professional activity, in the public sector in particular – a meaning that may sometimes be forgotten in the daily round of tasks. It is an opportunity to unite teams around these values and foster a climate of trust.

Success in the implementation of risk mapping and new ethical obligations is also achieved through enabling real exchanges, between elected officials and heads of department, and local authority staff or company employees. The various steps in these procedures may be put to good use as opportunities for discussion on how people regard their work from an ethical point of view, and whether they are comfortable with instructions and procedures, with a view, of course, to improving them, explaining the legitimacy of such instructions, and enabling their appropriation. Hence, the launch of a new ethics policy may be regarded as a time for dialogue and consultation, as the subject affects the very heart of all professional practice.

In addition, when risks have been identified, and limited by clear guidance, a safe space becomes available for taking initiatives, which should be encouraged. Risk mapping enables implementation of the tools required to safeguard projects to the full, by overseeing relations with suppliers, for example.

Moreover, setting up functional alert procedures is an effective way of highlighting upcoming difficulties and therefore of handling them more quickly, before too much damage is done.

Finally, the potential benefits to the image of an organisation or local authority that communicates on these various measures are very real, in a context where citizens are increasingly attentive to public actors' ethics and good use of public funds.

Implementation of procedures designed to generate and systematise an ethics reflex is therefore the first step in achieving the goal of countering criminal and ethical risk.

Elected officials* and public officials: What obligations? What ethical best practices?

	For elected officials*	For staff
Risk mapping	Recommended	Recommended Exception: obligatory for EPICs with more than 500 employees and whose turnover exceeds €100 million.
Code of Ethics	Recommended	Recommended
Institution of an Ethics Officer	Recommended	Obligatory
Institution of an Alert Officer	Obligatory	Obligatory
Prevention of conflicts of interest	Obligatory	Obligatory
Declarative obligations		
- to the High Authority (provided for by the Act of 11 October 2013)	Obligatory For local executive bodies. For the complete list, refer to the High Authority's website	Obligatory For senior civil servants For the complete list, refer to the High Authority's website
- to the hierarchical authority		Obligatory For members of local executive bodies, civil servants and military personnel whose hierarchical level or the nature of whose duties justify it. For the complete list, refer to the High Authority's website
- complementary declaration of interest	Recommended	Recommended
Business expenses	Obligatory	Obligatory
Gifts and invitations	Recommended	Recommended

* Holders of local offices. This guide does not cover parliamentarians' situation.

Part I

Establishing ethical procedures adapted to your organisation

Mapping risks

Sheet 1 Risk mapping goals

Sheet 2 Proposed risk mapping method

Drafting a Code of Ethics

Sheet 3 Why have a Code of Ethics?

Sheet 4 How do you come up with a Code of Ethics?

Sheet 5 Structuring the Code of Ethics' content

Sheet 6 Communicating effectively on the Code of Ethics

This first part is organised around two themes: risk mapping and the Code of Ethics. Risk mapping enables development of a procedure adapted to the entity's specificities and the concrete problems it encounters. By doing so, it ensures the effectiveness of the ethical system adopted. On the basis of priorities and needs identified by risk mapping, public managers can draft a Code of Ethics that provides a clear, comprehensive document to their staff and, if applicable, to elected officials. The code is the main work tool employed by the Ethics Officer, whose appointment enables all staff members to benefit fully from their right to ethical advice.

Sheet 1

Risk mapping goals

Risk mapping originated in compliance initiatives adopted by private companies, in the banking and insurance sectors in particular. “Compliance” may be defined as development of mechanisms ensuring the entity’s concrete implementation of respect for applicable rules. Hence, the final goal of risk mapping is to avoid any legal proceedings arising from noncompliance with a standard and guarantee the entity’s integrity in the eyes of the public.

Adapted to the field of ethics in the public sector, risk mapping aims to secure decision-making and identify the specific risks to which each entity is exposed, through the answers to the following questions: In view of the entity’s activities, what are the main ethical risks? What kind of situations might lead an employee or, as the case may be, an elected official to break an ethical rule? How are these various hypotheses handled, depending on whether the risk has actually occurred (correction) or not (prevention)?

Risk mapping enables identification and prioritisation of actions to implement in order to ensure compliance with regulations in force. It enables identification of risk areas, defective or absent procedures, and therefore actions to be carried out. It not only highlights problems and shortcomings, it also enables identification of best practices and procedures already in place.

In this respect, the Act of 9 December 2016, the so-called “Sapin II Law”, universalises the tool in the field of prevention of corruption. It makes corruption risk mapping compulsory for private companies and State-funded industrial and commercial establishments (EPICs) with more than 500 employees and whose turnover exceeds a hundred million euros.

Mapping risks

Although most public entities, with the abovementioned exception of EPICs, are not subject to compulsory implementation of risk mapping, the tool, once adapted to their specificities, can prove invaluable, in particular in the field of ethics and prevention of corruption. “Compliance” initiatives can therefore be transposed to the public sector.

Nor is risk mapping foreign to various public entities, at State and local authority level alike. The [Provence-Alpes-Côte d’Azur Region’s Ethics Commission](#) recommending establishment of risk mapping of Regional Council officials in two successive activity reports (2016 and 2017).

When a start is being made on renewal of ethical procedures, risk mapping, as an initial step, provides an opportunity to involve heads of department and their staff, who will be made aware of the future draft code beforehand.

Sheet 2

Proposed risk mapping method

1. Organising the mapping development initiative

Step one: Make sure of hierarchical and political support in development of the risk mapping initiative

Before you start, even before embarking on any substantive consideration of the subjects to be broached during implementation of the risk mapping procedure, it is essential to make sure of adequate hierarchical and, as the case may be, political support, as well as involve elected officials, departments and staff in the initiative.

In this context, the initial choice should be to carry out risk mapping with internal resources, the Legal Department in particular, or call in an external service-provider. A Risk Mapping Manager should be designated and clearly identified as elected officials' and staff's main interlocutor during the initiative.

Risk mapping should be carried out at a level consistent with the code's scope of application and the Ethics Officer's competence, whether a local authority or one of its economic operators, a central administration department or even an entire ministry is concerned. Whatever its intended scope, the project must be undertaken at the highest political and hierarchical level of the entity concerned. Its goals, challenges and implications must be presented to management staff before the mapping's operational launch.

In a local authority, political support from elected officials, and the executive body above all, is essential and must be sought for. As elected officials have major criminal and political responsibility, the Head of Legal Affairs or Ethics Officer should emphasise how useful properly conducted mapping will be to them, as it will enable them to pinpoint risks. Arguments worth putting forward include:

- the necessary compliance with regulations in force;
- the resulting benefit in terms of image, internally and externally, as an "ethical" entity;
- improvement in the entity's operation, etc.

For large enough bodies, it could be useful to set up a risk-mapping steering committee, in order to involve and inform elected officials and management on a regular basis and take major decisions (whether or not to call in an external service-provider, schedule for presentation to the deliberative assembly, etc.). Such support is essential in order to get departments to collaborate, not only in drafting mapping but also to ensure that new proposals and actions resulting from it will be supported at the highest level.

Second step: Involve staff in risk mapping development

In order to ensure its success and pertinence, the project and its goals should be presented to elected officials, departments and staff, and they should all be involved in the mapping's development.

This crosscutting approach to mapping ensures a comprehensive overview of the body's activities and therefore of potential risks.

Involving heads of department right from the start helps make them aware of their responsibilities with regard to ethics. They act as essential relays of information, and will eventually become key actors in effective implementation of mechanisms for prevention of conflicts of interest.

Step three: Use available internal documentation

Before any supplementary information is collected, the Risk Mapping Manager should get hold of and analyse data that is already available. One of the most useful sources of information is documentation on past and present disputes within the entity. Its systematic analysis enables identification of recurrent or structural operational problems, as the case may be.

For local authorities, observations made by deconcentrated services with respect to pre-control of legality are also an invaluable source of information, which may also be complemented with Regional Chambers of Accounts' opinions and audit reports. Finally, problematic subjects that are regularly included in management meeting agendas, or which have already formed the subject of briefing notes, constitute information enabling identification of the main points to consider in greater depth during identification of risk factors.

Step four: Conduct interviews and/or disseminate pertinent questionnaires

In a second phase, risk mapping requires that relevant information be provided to the individual responsible for its development. This may be ensured by conducting interviews with elected officials, heads of department and staff identified as sources of information, distributing questionnaires to be completed, requesting documents or spontaneous information, etc.

2. Methodically identify risk factors

This paragraph sets out to identify the main risk situations requiring identification during risk mapping of a public entity, without however claiming to be exhaustive, in particular due to the wide diversity of public entities' activities and forms.

Identification of risks connected with conflicts of interest

The leading cause of ethical risks is conflict of interest. It resides in relations that elected officials and staff maintain with third parties in the context of their duties. It would seem essential to identify categories of third parties and, for each category, relations that are regularly maintained, the nature of such relations, and the entity's internal functions relating to the third parties concerned.

The following may be identified:

- users (or customers);
- suppliers and service-providers, whether or not in the context of public contracts;
- partners (associations, for example), whether they are bound by some form of agreement or relations are informal;
- lobbyists;
- experts, who are required to provide various public entities with reports and/or opinions that have a major influence on decision-making;
- members of the family circle;
- personal relations.

Identification of risks connected with combinations of activities

The second risk factor to analyse is that of secondary activities exercised by elected officials and staff in addition to their functions within the entity. Information on types of secondary activities carried out, the fields in which they are carried out and the number of staff concerned should be available from the Human Resources Department in anonymised aggregated format. Similarly, mapping should also incorporate risks connected with professional and voluntary activities carried out by elected officials alongside their mandates.

For local and regional authorities, risks connected with elected officials' activities in the context of their mandates, in particular when they are acting as official representatives in external bodies, must be fully understood, and even form the subject of specific risk mapping, with a view to developing an up-to-date recusal system.

Generally speaking, risk mapping should focus on connections that present structural risks, and exclude connections arising from individual situations, which should be handled on a case-by-case basis and for which recommendations are provided in Part Three of this guide. Hence, there is no reason to target spouses' professional activities or staff's voluntary activities; in any event, these cases are covered in the section on prevention of conflicts of interest.

Prioritise risks in order to establish action priorities

Once risk areas have been identified, they must be evaluated in order to determine response action priorities (Code of Ethics; training sessions, setup of various procedures, etc.), and so establish a clear and consistent implementation timeframe.

The more a risk is identified by risk mapping as major, due either to its nature (criminal risk; other legal risk, risk to image) or to the probability of its occurrence or coming to maturity (over the short, medium or long term), the more actions in response to it should be prioritised. The most urgent tasks should be assigned with all due speed, to elected officials as well as by department and even by staff member.

Updating risk mapping on a regular basis

The Risk Mapping Manager must also update the mapping regularly. Indicative periods may be decided upon (once a year, for example) and adapted depending on events impacting risks (internal reorganisation; mergers of municipalities, elections, etc.). The Manager may also designate an individual from one of the departments, the Legal Department in particular, who has the necessary information available to identify new structural problems.

Sheet 3

Why have a Code of Ethics?

“Code of Ethics”, “Guide to conduct” and so on: several titles may apply to one and the same document. The goal is for the organisation to have a clear, comprehensive reference document available, containing the ethical rules applicable, and which is easily identified and used by all staff and elected officials, as the case may be. A Code of Ethics provides a single reference framework to which all an organisation’s members may refer in order to guide their day-to-day actions.

Furthermore, a Code of Ethics enables specification and adaptation of general ethical principles to each body’s specific missions and activities. It also enables harmonisation of rules and practices, some of which may already be in place before the launch of the overall ethics initiative, within one and the same entity or among similar entities. A “skeleton” Code of Ethics is appended to this guide.

As regards regional and local authorities’ elected officials, a Charte de l’Élu Local (Charter for Local Elected Representatives) sets out the fundamental principles and reasserts the main ethical obligations incumbent upon them. It acts as a basis that may be usefully complemented by a more detailed code, adapted to each authority’s specificities.

Finally, a Code of Ethics is useful to Ethics Officers’ everyday work: first of all, it is the text governing their missions and specifying their resources; secondly, it is the document that defines the principles they will be applying in their role as advisors to elected officials and staff.

Sheet 4

How do you come up with a Code of Ethics?

1. Defining the scope of the code

The code's field of application must be defined in two respects at the very start of the project, in order to ensure its content is pertinent. First of all, it has to be decided which entity or part of an entity the code will apply to. For independent public bodies (public institutions and public housing offices, for example) and for local authorities, it is easy enough to decide that the code applies to the whole organisation.

For central administrations with larger workforces and divided up into various departments, appropriate levels must be identified. Senior Management level is pertinent in most cases. Depending on the administration concerned, it may nonetheless be more appropriate to target a lower level, such as the sub-directorate. It is also feasible for a general code to be adopted by a ministry and its departments and then adapted by each sub-directorate or profession with specificities of its own (Police and Gendarmerie within the Ministry of the Interior, for example). When an Ethics Officer has already been appointed, it is always necessary to ensure that the code's scope of application corresponds to their sphere of competence.

The second decision to be made is who exactly in the entity the code will apply to. Although different situations must be distinguished (elected officials, political aides, and staff under public or private law), it would nonetheless seem useful and pertinent to draw up a common document, showing that ethical rules apply to everyone. A shared code avoids encouragement of a feeling of there being a double standard in defining the obligations of different groups. It reasserts the fact that ethics should inform the actions of each and every individual, whatever role they play, and that they also protect all the organisation's members.

However, the code may usefully distinguish between elected officials and staff, under different headings for example, in order to take account of the fact that obligations may differ, either because a legal framework only exists for certain categories (e.g. obligations to make declarations to the High Authority), or, more simply, because issues differ according to function. This enables specification of obligations that apply specifically to this or that group while keeping a general part devoted to common principles and values.

If the choice is to come up with special codes for elected officials on the one hand and staff on the other, it is pertinent to include office members and political aides in the code applicable to elected officials, as it covers ethical issues such individuals are faced with.

Finally, it should be borne in mind that a Code of Ethics, as a manifestation of an employer's regulatory or hierarchical powers, may create obligations for the individuals subject to it, and act as the basis for disciplinary action. This only applies to staff, of course, not to elected officials.

2. Ensuring that the code is brought to the notice of the highest hierarchical and/or political levels

As with risk mapping, an entity's senior management must be involved in drafting the code, in order to show that the entire hierarchy is committed to it and how important the document is. Hence, if its composition can be entrusted to a member of the Executive Office, the Legal Department or an Ethics Officer, if one has already been appointed, the project and launch of consultations should be announced by the head of a local authority's executive body, the head of a central administration directorate or public establishment, etc.

3. Carrying out consultations with all stakeholders

A second condition for successful drafting and implementation of a Code of Ethics is the involvement of stakeholders and setup of consultations. As with risk mapping, involving the main actors concerned enables:

- initial awareness-raising on issues;
- the project's appropriation;
- enhanced accountability of elected officials, management and staff;
- obtainment of pertinent information leading to an appropriate, well accepted document.

Elected officials, heads of department and certain staff members may be called upon initially to highlight the main ethical subjects and difficulties that they see as recurrent, if such initial feedback has not been provided during the risk mapping phase. In certain large organisations, it may be worth identifying “relay” personnel, who work within departments but act as intermediaries with the Ethics Officer and management. Hence, at [Paris Town Hall](#), an internal network of ethics relays was set up and consulted on an initial version of its Code of Ethics. This approach led to the document being enriched by examples of concrete cases inspired by the Town Hall’s various departments.

During the consultation phase, it is also essential to involve the various staff representation bodies. An initial version may be submitted to them for their remarks. A meeting could be held for a face-to-face exchange of viewpoints with staff representatives, leading to any modification required to the draft code. For central administrations and local authorities, it is essential to present the draft code to the Technical Committee.

Within local authorities, prior consultation with elected officials is also important. Hence, in Regional and *Départemental* Councils, political group managers may be involved in several ways. A draft code may be submitted for amendment, a meeting may be held with all group managers, and individual meetings with the code’s main editor (the Ethics Officer, for example) may be proposed. Such consultations help forestall any criticisms that might arise, avoid the code being seen as a document that the majority wishes to impose on elected officials from opposition parties, and make a start on educational work.

4. Considering a referral to the High Authority on the draft code

The High Authority responds to requests for opinions made by public officials on matters relating to ethics that they encounter in the exercise of their mandates and performance of their duties. These opinions, as well as the documents on the basis of which they are delivered, are not be made public.

The High Authority regularly delivers opinions on draft codes submitted to it by individuals subject to declarative obligations. Hence, a regional or *départemental* president, mayor of a municipality with over 20,000 inhabitants, central administration director or hospital director can refer to the High Authority regarding draft codes applying to their authority's collegiate body or the departments they direct. Such referrals are not mandatory, but enable declarants to obtain confidential personalised advice.

The High Authority's board delivers an opinion on the draft code, proposes various modifications and suggests any complements it deems necessary. Some of its opinions are made public on its website, with the agreement of the individuals at the origin of the referrals, its opinion on the Paris Town Hall's [Code of Ethics](#) , for example, and the draft Code of Ethics submitted by the [social housing provider "Elogie-Siemp"](#).

All these precedents constitute the basis for the thinking that the High Authority presents in this guide.

5. Adopting the code

For the same reasons as the need to involve senior management in the project, and for the same reasons of legitimacy, the code must be adopted by the competent authority in the entity concerned (minister, administration director, etc.). This is both symbolic, as regards the importance accorded to the code, and necessary, in order to confer a legal value on the document and endorse its acceptance and enforceability, on the part of elected officials in particular.

Sheet 5

Structuring the Code of Ethics' content

Although the Code of Ethics' content must be adapted to the entity's specificities, which is feasible, due in particular to risk mapping, a number of items would seem essential in all codes governing public bodies.

1. Reminder of the ethical principles and values of public action

The great values relating to public service and, as regards public officials, civil servants' statutory obligations, constitute a good entry point in composition of a Code of Ethics. This being so, the obligations of dignity, impartiality, integrity and probity must be reasserted and clarified. The same obligations are highlighted in the Charter for Local Elected Representatives.

The second thing that needs stressing in the section on general ethical obligations is the obligation incumbent upon all civil servants and anyone holding an elective public office or tasked with a public service to prevent or put a stop to existing or potential situations of conflicts of interest. Legal enshrinement of this obligation requires that the entire public sphere is aware that prevention of conflicts of interest is a fundamental aspect of public ethics.

2. Essential items

Apart from reasserting principles and major legal ethical obligations, the code is also a means of setting up very concrete procedures and practices. Some procedures arise from legal obligations, such as appointment of an Ethics Officer or setup of an alert collection procedure. Others are the result of the entity's own wishes, but would seem essential for any organisation that is looking to implement an effective ethics policy.

This guide details such procedures, which must be validated by the code:

- instituting Ethics Officers. Specifying how they are to be designated, their form, the guarantees and resources they enjoy, and their missions;
- setting up mechanisms for the prevention of conflicts of interest (declarative mechanisms, recusal register, etc.);
- supervising gifts and invitations;
- supervising use of resources provided to elected officials and staff (overview of use of hospitality expenses, vehicles, etc.).

3. Adaptation to the entity's specificities

Any Code of Ethics must be adapted to the specificities of the entity concerned. Risk mapping and consultation provide factors that need to be taken into account to ensure this. For example, a public housing office's Code of Ethics may specify the rules bearing on occupation of the housing units it owns by individuals in managerial positions. In this respect, the "Paris Habitat" code requires its directors to undertake not to be lessees of a housing unit "managed by a social housing provider" of any kind. A code drawn up by the [Ministry for Europe and Foreign Affairs](#) might, for example, include special rules applying to ambassadors' spouses and to staff posted abroad.

4. Measures to ensure that the code is fully applied

If all public officials are responsible for their own compliance with ethical standards, the same is true for any staff that may be under their authority. Hence, heads of department must ensure their staff's compliance with ethical principles, which they may adapt to their departments' missions, in particular by adoption of a special version of the Code of Ethics.

Individual Ethics Officers or Ethics Advisory Committees (as the case may be) may be entrusted with the task of ensuring proper application of the procedures provided for in codes, and allocated to resources required to do so. Proper application may be ensured by designating the Ethics Officer or Advisory Committee as the individual or body competent to interpret and specify the code's provisions to staff and elected officials who have questions, as well as by *a priori* monitoring (study of the risk of a conflict of interest before recruiting an expert, for example, as was carried out by the High Authority for Health's

Ethics Officer), or *a posteriori* (e.g. checking reception of gift declarations).

5. The possibility of specialised codes and documents

So as not to overload the Code of Ethics with a host of meticulously detailed provisions, specialised complementary documents may be drawn up. They may be appended to the code or separate from it. As regards hierarchy of standards, it should be borne in mind that such documents' legal value is in no way superior to that of the regulatory and legal mechanisms they aim to clarify and implement. Various examples illustrate the pertinence of such documents:

- a code for relations with suppliers;
- a sourcing *code* (possibility of “meeting companies in order to evaluate their competences with regard to a public contract”);
- a document highlighting precautions and obligations in the context of public contracts (information is available on www.boamp.fr). Several municipalities have published their public procurement codes; [Lyon's](#) and [Toulouse's](#), for example, are available online;
- an alert collection procedure (legal obligation for public entities with at least 50 employees and municipalities with over 10,000 inhabitants);
- a code governing use of resources, digital resources in particular.

The principle of specialised codes is enjoying a measure of success abroad, where they are often known as “guides to best practices”. Hence, in the [United Kingdom](#), the State disseminated a guide to best practices concerning gifts and invitations among public servants, and another relating to denunciations, alerts and their management.

6. Review periods

Setting timeframes for periodical reviews within the code itself, and designating an individual responsible for such reviews (Ethics Officer, Legal Officer, etc.) ensures the document's continuing relevance. Such periods might well correspond to half an electoral term, the duration of an Ethics Officer's functions, or to a set number of years.

A review may also be provided for in the event of any major modification to the entity (merger of municipalities or Public Establishments for Intermunicipal Cooperation), its missions (new mission assigned to an independent administrative authority by law), legislative or regulatory changes, or any event revealing a flaw in the code and justifying an update.

Sheet 6

Communicating effectively on the Code of Ethics

Communication on the Code of Ethics adopted is an essential step, and should be paid as much attention to as all previous steps. If it is to be complied with, a Code of Ethics must be known about.

A dedicated communication campaign should be mounted at the time of its adoption. This may take the form of a range of actions to be carried out concomitantly:

- publication of a news brief on the entity's intranet, with a link to the code;
- request to the Ethics Officer or heads of departments to present it at departmental meetings;
- email communication campaign;
- posters on information boards, if applicable;
- information in the entity's newspaper, if it has one. A number of management centres use this tool. For example, the July 2017 issue of the [Petite Couronne Interdépartemental Management Centre's](#) newspaper devoted two pages to the newly appointed Ethics Officer (missions, contact details, etc.) intended for mayors and presidents of local authorities in the four *départements* adjacent to Paris.

The Code of Ethics must be easily accessible, by means of a permanent insert on the Intranet homepage, for example. Its existence and content must be highlighted on a regular basis.

1. To elected officials

Even if elected officials have already been informed about the code, during its adoption at a meeting of the deliberative body, suitable communication actions should nonetheless be carried out, such as its distribution to all elected officials, sending it by email, presenting it at start-of-year seminars, or even its signature, as is required from staff.

2. To new staff members

Upon a new staff member's arrival, a best practice already implemented by a number of Ethics Officers is to organise a short meeting between him/her and the Ethics Officer. During such meetings, which give the new member of staff an opportunity to identify the Ethics Officer and his/her missions, the code should be officially handed to and read and signed by the staff member. If the Ethics Officer does not have the time or means to carry out such an interview, it may be conducted under the same conditions by the new staff members' immediate superior.

In addition, if the entity organises periodic training sessions for new arrivals, it is important to give the Ethics Officer the floor in order to make him/herself known, present the Code of Ethics and elucidate its contents. He/she must make sure that its contents are fully understood, by giving concrete examples and inviting staff to ask questions if they have any doubts.

3. To the outside world

The Code of Ethics may be made public to a wider audience, on the entity's website for example. Doing so is above all recommended when the code applies to elected officials or senior political or public figures.

Such publicity has the advantage of informing the entity in question's partners, which will then be aware of the rules applying to gifts and invitations, as well as citizens, who may wish to know the ethical framework governing their public officials and representatives. It clarifies the situation and helps dispel various fantasies – about how public resources are used, for example.

The code's publication also provides an opportunity to communicate on the preventive mechanisms implemented within a public entity and remind people of the strong commitment to these matters, which should strengthen ties and trust between citizens and public officials.

Part 2

Instituting an Ethics Officer

Sheet 7 The Ethics Officer's missions

Sheet 8 Designation, positioning and form
of the Ethics Officer

Sheet 9 The Ethics Officer's resources and training

Sheet 10 Articulating elected officials' ethics
with staff ethics

Sheet 11 Articulating the Ethics Officer's mission
with the alert collection mechanism

The Law of 20 April 2016 created a “right to consult an Ethics Officer” specific to civil servants and public officials. It made it an obligation under law for administrations, regional and local authorities, and healthcare facilities to appoint an Ethics Officer, enabling staff in all three civil services to exercise this new right.

The idea of an Ethics Officer working within departments to advise public officials is by no means a French specificity, far from it. The Netherlands and the United Kingdom have similar institutions.

Although it contains a number of stipulations, the Decree of 10 April 2017 leaves administrations with considerable latitude in setting up an ethics advisory system, which may be in the form of an individual Ethics Officer or an Ethics Advisory Committee, and be either a full-time job or combined with other positions, that of Secularism Advisor for example. Such freedom provides local authorities with the opportunity to adapt general obligations to their own specificities. It also allows for an experimental phase, with a view to coming up with the most effective mechanism in the light of specific problem areas.

However, such flexibility is not without its disadvantages. The first risk is that we might see very different practices emerge among administrations and the various regional and local authorities, with some staff not having access to a service of the same quality, or general rules not being interpreted in the same way. The second risk is that, if administrations do not specify Ethics Officers’ missions or fail to allocate adequate resources or provide them with support from the management, these new additions to the civil service will be no more than empty shells.

This part of the guide endeavours to put forward a method and a number of solutions for administrations and local authorities who are instituting an Ethics Officer. It does not claim to cover all possible situations, but is intended to act as an aid to thought. The ideal situation presented is to be relativised and adapted to suit each entity’s resources.

It also makes various proposals with regard to elected officials’ ethics advisors, who, although they may not be Ethics Officers within the meaning of the law, and whose creation is simply the result of an executive body’s decision, have the same goals and the same impetus to disseminate a public culture of integrity.

Similarly, although staff under private law employed by State-owned companies are not targeted by provisions bearing on civil service ethics, the recommendations presented below may be useful to appointment of Ethics Officers in such bodies.

Sheet 7

The Ethics Officer's missions

The law entrusts Ethics Officers with two main missions:

- a mission of providing *“useful advice on compliance with ethical obligations and principles”*;
- special competence with regard to ethics alerts on conflicts of interest: *“In the event of a conflict of interest, a civil servant must have alerted one of his or her immediate superiors beforehand without avail. He or she may also approach the Ethics Officer to testify to such facts”*.

The Decree specifies this latter competence: *“If applicable, the Ethics Officer provides the persons concerned with any advice likely to bring such conflict [of interest] to an end”*.

In addition to these two main missions, Ethics Officers may also be entrusted with other missions, including the mission of providing staff with training on ethics.

1. Providing advice

Providing advice to those who ask for it is the Ethics Officer's primary mission, his or her *raison d'être*. Such advice bears on compliance with ethical obligations and principles, i.e. how to apply such obligations and principles in concrete terms in the day-to-day performance of their duties.

Ethics Officers' advice must above all be operational. Based on their knowledge of ethical principles, they help staff to apply them in the professional situations they encounter. Advice must be practical: how to refuse a gift, inform a superior of such-and-such a point, change your behaviour on a social network, etc.

It must bear on the civil service's ethical obligations and principles, including:

- dignity, impartiality, integrity and probity;
- neutrality and secularism;
- prevention of conflicts of interest; obligation of declaration of interest prior to appointment to certain positions;
- obligations of divesting oneself of the right of scrutiny of management of one's financial instruments, for certain jobs;
- obligation of declaration of assets, for certain jobs;

- combination of activities;
- referral to the Civil Service Ethics Committee;
- professional secrecy and professional discretion;
- responsibility, respect of the hierarchy, loyalty, refusal to obey an obviously illegal order or one that might seriously compromise the public interest;
- questions on spouses.

For elected officials' ethics advisors, advice may also be extended to such specific questions as ethics during election campaigns or when they are representing their local authorities, appointment and employment of authority staff and colleagues and the benefits granted them, adoption of such documents as local town-planning programmes, public purchases and public procurements, granting of subsidies to businesses or associations, use of authorities' human and material resources for personal or electoral purposes, etc.

The main subjects referred to Ethics Officers, as highlighted during the hearings carried out in preparation of this publication as well as in ethics authorities' activity reports, would seem to include questions of combined activities and the risk of conflicts of interest in the event of such combinations, switching to the private sector before a referral to the Civil Service Ethics Committee, questions of gifts and invitations, and of behaviour in the context of public procurements. As regards questions of combined activities and departures to the private sector, and, to a lesser extent, gifts and invitations, the underlying question is that of the risk of conflicts of interest.

Ethics Officers' special mission of making recommendations to put an end to conflict of interest situations they know about would therefore seem pertinent, as such situations underlie a great many of the questions submitted to them.

Their mission of providing advice enables Ethics Officers to gradually develop ethics-related jurisprudence for their administrations, healthcare facilities or local authorities. Ethics Officers might usefully maintain a collection of advice given and decisions taken, anonymising individual cases. Having written jurisprudence available is of use to Ethics Officers in that it ensures the consistency of their advice, and is also useful to their successors, as it lets them know what choices were made before their arrival.

Such collections are also among the tools that might be deployed at the service of the Ethics Officer's second main mission, that of training employees in ethics.

2. Training

This mission is not explicitly part of the Ethics Officer's role. However, it would seem to be central to their prerogatives and particularly necessary to dissemination of an ethics culture throughout the public sphere.

Who requires training? Although all the entity's management and staff have need of training, at least potentially, priorities should be established. Special attention should be paid to the training of new arrivals. As has already been mentioned, a session in the form of presentation of the code and of the various applicable obligations and principles may be carried out by the Ethics Officer as part of any existing training course for new arrivals. If no such course exists, it may be organised autonomously. Special attention should be paid to new staff from the private sector, who do not necessarily have the same reflexes or knowledge of the ethical principles governing the public sector.

In addition, management staff, heads of department, should be provided with in-depth training when possible. All heads of department are responsible for ensuring that the departments under their authority comply with ethical principles. They are essential relays for dissemination of ethics among the staff under their authority. It is they who are best able to pass on best practices. It is extremely important to have a thorough grasp of ethics, whatever entity they belong to.

Training sessions can also be designed for and provided to individuals exposed to special problems. For example, staff responsible for purchases, whether or not in the context of public procurements, and staff who are regularly called upon to represent their organisation to the outside world are faced with specific ethical difficulties, and it is of interest to adapt ethics training sessions to such specificities and present concrete cases drawn from their everyday experience.

As regards training elected officials, a distinction should be made between advice on ethical principles in general and any advice provided on legal obligations, in particular from the High Authority. For these latter, Ethics Officers may call on the help of the High Authority if they want to be informed of the obligations incumbent upon elected officials within the meaning of the Acts of 11 October 2013 (declarative obligations, referral prior to take-up of a private activity), in order to be provided with the latest information. Information is also available on the High Authority's website. In the event of a serious problem

arising, such as the risk of a conflict of interest, Ethics Officers may send public officials directly to the High Authority provided they are within its field of competence and may refer to it.

It would be of interest to introduce compulsory systematic ethics training of elected officials at the beginning of their terms of office. It would not necessarily be Ethics Officers who carried out such training, development of which could be entrusted to existing bodies responsible for training elected officials. As is done for staff performing certain duties, special training sessions could be provided to elected officials who are members of certain commissions or delegated to specific tasks. In its activity report for 2017, the [Provence-Alpes-Côte d'Azur Region's Ethics Commission](#) proposed to "provide for automatic special training on the Region's public procurements and purchases, for new members of the Call for Tenders Commission, which will provide an opportunity for delivery of the Code of Ethics on purchases, duly certified by an attestation of acknowledgement communicated to the Ethics Committee".

The development of tools is an integral part of an Ethics Officer's mission of training staff and disseminating a culture of ethics. Hence, the drafting of a guide to best practices, shoring up and illustrating the Code of Ethics with concrete cases, would seem particularly pertinent. Such guides illustrate principles that are sometimes too general with cases drawn from an entity's real-life experience, and better adapt them to its specificities. Ethics Officers may also create other tools, such as fact sheets, regular video information points to be broadcast on the intranet, or FAQs. For example, the [Ministry for Europe and Foreign Affairs](#) devotes a section of its ethics guide to recommendations for families of staff posted abroad.

If the Ethics Officer is unable to carry out the training mission without help, because the position is not full-time for example, external training bodies might be called upon, although, as mentioned above, there are still not many courses on these subjects. The Ethics Officer would then provide the necessary impetus for such courses, not delivering them him/herself, but coordinating them and possibly setting priorities in their respect. It is worth developing dialogue and thought on this question with public service schools or the National Centre for the Territorial Civil Service (CNFPT).

3. Other missions

Ethics Officers may be assigned other responsibilities. First of all, if the organisation does not already have a Code of Ethics, they could be assigned the task of drafting one, or of updating it if it exists. Ethics Officers may also be tasked with suggesting improvements and changes in their organisation's procedures and practices relating to ethics. The annual report that an Ethics Officer may be required to produce is also a useful medium for highlighting various (anonymised) cases and making such suggestions.

Other initiatives have also seen the light of day, in particular on the part of Ethics Officers overseeing elected officials.

For example, the [Provence-Alpes-Côte d'Azur Region's Ethics Commission's](#) activity report includes an in-depth analysis of elected officials' assiduity (absenteeism rate; reasons; statistical analyses of each political group, etc.) based on elected officials' attendance sheets and reasons for absences provided. The [Ile-de-France Region's Ethics Commission](#) is competent to monitor regional elected officials' compliance with the prohibition to occupy a regional social housing unit during their term of office.

Sheet 8

Designation, positioning and form of the Ethics Officer

1. Goals

Special attention must be paid to Ethics Officers’ designation and positioning, as these are guarantees of their independence, a necessary condition for establishing trust between staff and/or elected officials and them, and, by the same token, for the successful accomplishment of their missions. The goal is to obtain an Ethics Officer who inspires trust and whose positioning is a guarantee of the independence, credibility and legitimacy required for performance of his/her missions.

2. Method

Designation

TYPE OF PUBLIC ENTITY	DESIGNATION BY...
Ministries/departments under the Minister’s authority	Minister
State administrations and public institutions	Head of department
Regional and local authorities	Territorial authority
Regional and local authorities affiliated to a management centre	Management centre director
Public healthcare facilities	Authority vested with the power of appointment

The Decree of April 2017 stipulates that the highest hierarchical authority designates the Ethics Officer. It is essential that such designation is formalised in a written document, acting as notice of appointment. Designation at the highest level contributes to the Ethics Officer's legitimacy.

Such legitimacy will only be fully ensured, however, if designation is accompanied by guarantees of the Ethics Officer's independent status, which should also be included in the notice of appointment.

Guarantees of independence

Article 4 of the Decree also stipulates that the Ethics Officer shall be "*designated at a level enabling effective performance of his/her missions*", without going into further detail. The Ethics Officer's hierarchical level and grade should be high enough for him/her not to be subjected to pressure from above. If a "flexible" reporting line can be provided for by the General Secretariat or Presidency, it must absolutely go hand-in-hand with measures guaranteeing the Ethics Officer's real independence in carrying out his/her missions.

Hence, the notice or decision of appointment should formally specify that the Ethics Officer may not receive instructions from the President, any member of the Executive Board, or the Managing Director of Services in carrying out his/her ethics-related duties.

Other guarantees may also be included in the notice of appointment (and/or in the Code of Ethics): indicating that the Officer may not be dismissed, for example, or setting a term for the position and specifying that such term may only be modified with the Ethics Officer's express written agreement, a guarantee that would seem essential.

The question of combination with another position

Combinations of functions raise two types of questions, which have to be answered in the context of the ethics initiative.

Classical post

The first question is that of combination with a "classical" post within the department (lawyer, Human Resources Manager, etc.).

There are several advantages to this solution. First of all, it is easier to entrust an existing member of staff with the position of Ethics Officer. This type of combination can sometimes enable better identification of the individual concerned, who is known to all. Furthermore, experience with legal, managerial

or operational questions specific to the organisation enables quicker apprehension of the ethical issues likely to present themselves within it.

Such a combination can lead to major difficulties, nonetheless, the first being that of the Ethics Officer's real independence. It would appear more difficult for a staff member integrated into the chain of command in the context of his/her main functions to succeed in being fully independent as an Ethics Officer. Such limitation of independence, if only apparent, may inhibit a staff member who feels the need to consult the Ethics Officer, in case questions are asked. It may also be difficult for the member of staff appointed to devote enough time to his/her duties as an Ethics Officer. Although it is possible to provide for days or times dedicated to these duties, in reality, the time devoted to them risks being affected by the concurrent performance of another full-time or almost full-time function.

If, however, the organisation is not in a position to designate an Ethics Officer other than an existing member of staff, the operational compatibility of the two positions needs to be examined. For example, combination with a position in the Human Resources Department would not seem such a good idea, in particular because of the risk of confusion on the part of staff members when they consult the person concerned. Are they talking to their Ethics Officer? Are they talking to the Human Resources Manager? Such confusion risks being problematic if disciplinary action is involved. Consequently, combination with a position in the Legal Department would appear more suitable.

Either way, in a large enough organisation it would seem preferable to designate an Ethics Officer who does not hold another position within its departments.

The Secularism Advisor

A Circular from the Minister responsible for the Civil Service explicitly stipulates that advice on secularism *"may be provided either by a dedicated "secularism" correspondent or advisor or by the Ethics Officer"*. Logically enough, *"regional and local authorities affiliated to a management centre may, with the president of the centre's agreement, request that this function be performed by the Ethics Officer."* Such combination of duties would seem appropriate due to the potential overlapping of questions connected with compliance with the principle of secularism and wider ethical questions that staff may be faced with. In the absence of clear delimitation of the legal context to which a question refers, a staff member would then be sure of contacting the right interlocutor.

The Ethics Alert Officer

As combination with the function of officer for collection of ethics alerts is subject to special difficulties and challenges, it will be covered in a dedicated section of this guide.

Other duties entrusted to Ethics Officers

Other duties have been entrusted to some Ethics Officers. For example, the [Ministry for Europe and Foreign Affairs' Ethics Officer](#) also acts as an advisor on questions of gender equality.

Combining different advisory “caps” has the advantage of avoiding confusion with regard to these functions and who to refer to in the event of a problem arising. Such combination enables identification of the right interlocutor, as well as ensuring a measure of consistency in recommendations made, in particular when staff members' questions concern more than one subject, such as secularism and other ethics-related subjects. If such a choice is made, it is necessary to make sure that the person selected has enough time to carry out the various missions concerned and that clear distinction is made between procedures involved. Such officers must also extend their knowledge and skills to encompass the subjects covered and the missions entrusted to them.

Individual or collegial form?

Most Ethics Officers appointed since the new legislation came into force have been individuals. Two major alternatives to this trend may be noted, however:

- some ministries have set up ethics commissions or boards, which are themselves highly diverse in composition. Such is the case with the [Ministry of Agriculture](#), the [Ministry of Social Affairs](#), the [Ministry of Higher Education and Research](#), and the [Ministry of Culture](#), among others.
- ethics commissions set up by local authorities and with jurisdiction over elected officials, some of which existed before the Law of 2016. This solution was chosen by the [Provence-Alpes-Côte d'Azur Region](#), the [City of Nice](#), the [City of Paris](#), the [Ile-de-France Region](#) and the [City of Dunkirk](#), among others.

The question of individual or collegial form should be decided depending on the organisation's specificities, as both have their advantages and disadvantages. In all cases, there must be the same guarantees of independence and confidentiality, whatever the final form selected.

Collegiality may be an essential asset to thought on ethics. The Ministry of the Interior's [Ethics Commission](#) emphasises this need for exchange and deliberation before reaching a decision or providing advice on ethical matters. The choice of a collegial body enables real deliberation and affords the benefit of members' collective intelligence. It also makes it possible to call on qualified individuals from outside the entity, who might have a useful viewpoint on the subject in hand as well as greater objectivity. Collective deliberation reduces the individual responsibility shouldered by a single Ethics Officer, by sharing such responsibility.

However, opting for an ethics board also has a number of disadvantages. Full schedules or geographical distance may hamper responsiveness when a referral is made. This problem is highlighted by the Ile-de-France Region's Ethics Commission's [activity report for 2016-2017](#), which, among other things, puts forward the idea of holding meetings by videoconference. Also with a view to overcoming this constraint; the Ministry of Higher Education and Research's Ethics Board's [internal rules of procedure](#) allow for meetings in reduced composition in order to be more responsive, subject to information being provided to other members.

Another disadvantage may result from the fact that a board may by its very nature create a measure of distance between itself and an elected official or staff member, who may well be less inclined to refer to a commission that consult an individual Ethics Officer.

Choosing an individual Ethics Officer ensures proximity to the individuals concerned, likely to create trust and ensure reactivity in responding to referrals. Logically enough, though, the disadvantage here is the risk of Ethics Officers sometimes finding themselves in difficulty and with no one to turn to, isolated in the face of complicated problems. This can be overcome, in particular by fostering dialogue with peers.

The importance of these various factors should be assessed in the light of special situations of the public entities concerned. There would seem to be a middle-ground solution nonetheless. Institution of individual officers in departments within each directorate, for example, with a view to ensuring proximity with staff, is essential. It may be usefully combined with an ethics board or committee for the central administration or regional or local authority as a whole. Such board, acting as a kind of second-level advisor, would not be an appeal body but could be referred to by individual Ethics Officers when they are confronted with complex cases or feel the need to discuss matters with their peers. This type of organisation might well be envisaged in large-scale entities.

Internal or external?

The question of outsourcing the Ethics Officer is of particular relevance to regional and local authorities, although outsourcing or sharing are also a possibility for any administration, as the Decree stipulates that *“several heads of departments may designate one and the same Ethics Officer for public officials under their respective authority”*, and that, in the State administration, he or she may be *“designated by department heads from within or from outside their departments”*.

However, the applicable texts encourage outsourcing the function more for regional and local authorities, in particular when they are affiliated with a management centre as the function may be entrusted to the centre by default. This solution is both functional and practical and is appropriate for small authorities, which do not always have the resources to employ a full-time individual for this purpose. Outsourced Ethics Officers will also have a measure of objectivity when dealing with questions submitted to them, will not be influenced by their own position in an authority's departments, and should even enjoy greater independence. Nonetheless, authorities affiliated to a management centre can always appoint an internal Ethics Officer.

Despite its advantages, outsourcing may lead to major difficulties. The risk of breaching confidentiality is greater with an individual from the outside, and the Ethics Officer loses out as far as proximity is concerned. It involves a more complicated procedure and there are no ways for staff members to ask questions more informally. It is not recommended for authorities above a certain size. The 20,000-inhabitant threshold is a good indication of size, and is the one selected by the legislature for submission of local executive bodies' members to declarative obligations to the High Authority. When possible, it would seem preferable for such authorities to designate internal Ethics Officers. They will be more accessible, closer to hand, and staff would almost certainly refer to them more often. They will also have fuller knowledge of the way the entity operates and its internal dynamics, and be better able to assess the sensitivity of subjects submitted to them.

Referrals

Ways of referring to the Ethics Officer should be specified in the Code of Ethics, and may also be reasserted in the Ethics Officer's mission letter or in any other communication made on the subject.

It is recommended that there should be as many ways as possible of referring to the Ethics Officer, and that he or she can be referred to via all available means: telephone, email, letter, request for an appointment, etc. In the event of an initial telephone discussion or face-to-face meeting, it is recommended that the referral be confirmed in writing. A simplified referral form could be made available to staff, on the Intranet for example. Referrals by email should be made to the Ethics Officer's dedicated email address (of the "ethicsofficer@..." kind), to which only he/she has access. Similarly, for referrals by letter, envelopes should be marked "confidential" and the mail service should be instructed not to open such envelopes, so that the Ethics Officer alone gets to know their contents.

Ethics Committees fulfilling the role of Ethics Officer may generally be referred to by the minister or the ministry's Secretary-General, as is the case at the [Ministry of Higher Education and Research](#). Such referrals also provide an opportunity to request the board to deliberate on wider subjects and make general recommendations to the ministry concerned, and should be encouraged.

The subject of referrals becomes rather more delicate when it comes to Ethics Committees or Ethics Officers with jurisdiction over elected officials. The question of wider referrals open to third parties arises. For example, referrals to the [Ethics Officer for the City of Strasbourg's elected officials](#) may be made by any of the city's inhabitants; however, the Ethics Officer has emphasised the procedure's drawbacks in successive activity reports. Apart from the very low numbers of referrals, the Ethics Officer's main difficulty was in informing citizens of what action had been taken on their referrals, as outcomes are protected by confidentiality and professional secrecy. This had sometimes resulted in frustration and incomprehension on the part of the individual who had made the referral, who might then choose other ways of airing his doubts on an elected official's situation (press, social networks, etc.).

Finally, we come to the question of self-referrals on the part of Ethics Committees. This power would appear to be a good thing, as, for example, it enables a committee to deliver a report on an important subject and make general recommendations on possible improvements (although that could also be done in an annual activity report). Self-referral of individual cases seems a rather more complicated matter. In cases of individual referrals, it is the individuals making them who provide most of the information. With no requesters to provide details on their cases, it may be very difficult for the committee to obtain the information necessary to its deliberations. Nonetheless, the possibility is worth considering when the committee is in a position to request information from the departments concerned.

The Ethics Officer's ethics

Ethics Officers must comply with strict ethical standards, ensuring their positioning as reference points for elected officials and staff. In addition to the ethical obligations incumbent upon them, as upon any public official, *"the Ethics Officer is bound by professional secrecy and discretion"*. Ethics Officers must therefore pay special attention to secrecy and respect for the confidentiality of exchanges and information. Confidentiality is essential to the position's credibility and the trust accorded to it by staff.

Ethics Officers must also complete a declaration of interest. Prior to their appointment, they must communicate a sincere, accurate and exhaustive declaration to the authority vested with the power of appointment, which sends it to the hierarchical authority when the appointment has been made. In addition, in the event of any substantial changes in their interest, they must modify their declaration within two months.

It is up to the hierarchical authority to monitor any risk of conflict of interest and take measures to put a stop to it if required. It may refer to the High Authority if it *"does not think it is in a position to assess whether or not the civil servant is in a conflict of interest situation"*. The High Authority may then make recommendations.

3. Communication on the Ethics Officer

As with the Code of Ethics, internal communication on the Ethics Officer is essential to the success of his/her mission. Heads of department also have an obligation to communicate in this respect: *“The heads of department bring the decision to designate the Ethics Officer, along with any necessary information on how to get in touch with him/her, to the knowledge of staff under their authority, by any means at their disposal”.*

Designation of the Ethics Officer also forms the subject of an administrative document that must be published in an official bulletin with at least quarterly periodicity, or by transcription within three months in a register available to the public.

At the time of appointment

It is essential to communicate at the time the Ethics Officer is designated, in order to inform elected officials and staff of the person appointed, his/her missions and ways of referring to him/her. A memo is a simple, effective way of getting the message across. Nonetheless, it may be useful to draft a longer, more educational communication enabling its addressees to fully appropriate the new referral possibility. As with the code, it is recommended that such communication is relayed via the Intranet when one exists, or by sending emails to all staff when it does not. Information may also be provided by posters in the lift, hall or rest area, via an interview with the Ethics Officer published in the authority's in-house newspaper if one exists, etc. Other, more innovative mediums may be created, such as explanatory videos.

In addition to written communication, it is essential that Ethics Officers are presented in person to heads of department and the various management staff concerned. They may then introduce themselves and present their missions at an office or executive committee meeting. This emphasises the importance of their duties. It will be easier for heads of department to inform their staff, act effectively as the Ethics Officer's relays, and even refer to the Ethics Officer themselves if they have already met and talked with him/her.

Finally, an encounter with staff representatives may be organised, either on the occasion of a meeting of the Technical Committee or during a dedicated meeting. Staff representatives may turn out to be the Ethics Officer's real partners, once his/her missions, which are complementary to theirs, are fully understood. This relationship can be an important one, as the Ethics Officer's function is sometimes perceived as going hand-in-hand with those of unions in advising and lending support to staff.

For elected officials, the Ethics Officer may be presented at a meeting of the executive board or even during a session of the deliberating body, or it may be suggested that he/she meet with each political group.

During exercise of duties

There must be regular communication over the course of the Ethics Officer's term of office. Hence, news or information points relating to ethics, published monthly, quarterly or more frequently on the Intranet, provide an opportunity to remind staff of the ways they can refer to the Ethics Officer.

If training sessions for new arrivals are organised on a regular basis, the Ethics Officer may be invited to take part in them, in order to introduce him/herself and present the Code of Ethics.

Finally, presentation of an annual activity report may provide an excellent opportunity to remind the deliberating assembly or executive committee of the Ethics Officer's missions and actions.

Sheet 9

Ethics Officers' resources and training

1. Goals

Selection of the Ethics Officer's profile should be carried out with the following goal in mind: having a competent Ethics Officer, able to carry out complex mission successfully, whether judicial or otherwise.

2. Method

Profile

There is no standard Ethics Officer profile. At most, a few skills and qualities required to carry out the missions involved successfully may be highlighted. The Decree and Law provide a number of general indications with regard to training and profiles to prioritise. One key quality is required of the Ethics Officer, however: demonstration of probity above all suspicion.

One of the missions entrusted to the Ethics Officer is to make recommendations designed to prevent or put a stop to situations of conflict of interest that he/she has knowledge of. In view of the complexity of the definition of "conflict of interest" and its characterisation, it would seem necessary for Ethics Officers to have some degree of legal training. Other subjects submitted to them (combinations of activities, ethical principles, etc.) often have a close connection with legal matters and confirm the need for training in this field. Of course, such training may be acquired following appointment, via continuing training. Nonetheless, prior legal practice facilitates Ethics Officers' performance of their missions. This interpretation is confirmed by the Decree; which opens up recruitment of Ethics Officers to judges.

A measure of prior experience in a similar entity would also seem useful to the performance of Ethics Officers' missions. Several years' professional experience brings greater objectivity, after having already had to resolve ethical difficulties in their own professional lives, and provides a more finely shaded view of things, which is a useful characteristic in an Ethics Officer. The possibility of recruiting retired public officials is very much in line with this idea.

Possessing a general culture of the principles of public service and sound knowledge of the ways the administration works are also undoubted assets for the position. However, the Ethics Officer may be recruited from other professional environments, the private sector in particular. He/she may bring new methods into play, provide interesting viewpoints and widen the general scope of the office. As it is a recently created position, requiring special skills that the administration does not always have on tap internally; it may be pertinent to recruit contract staff.

Finally, the indication of a *“level enabling effective performance of his/her missions”* also refers to a hierarchical level. In view of the preceding indications, the Ethics Officer could well be selected from among category A (or A+) Civil Service staff.

Other skills are required of an Ethics Officer, even though they do not result from a specific training programme, but rather from “soft skills” and human qualities. Hence, the ability to listen and a capacity for mediation would appear essential, as would strength of conviction.

The profession of Ethics Officer has recently been added to the list of careers in the territorial Civil Service. Eventual inclusion of the profession of Ethics Officer in other directories of Civil Service careers would be of particular use, in order to list the missions concerned, skills expected, qualifications required, etc.

Training

Developing continuing training offers designed for Ethics Officers is a major goal, as Ethics Officers appointed are public officials who already possess a measure of experience. Existing training programmes are still in the early stages of development. The timely initiative implemented by the [National Centre for the Territorial Civil Service \(CNFPT\)](#), whose first day of training for local authorities’ Ethics Officers was held in September 2018, is to be applauded.

Other entities focusing on the training of public officials, such as the Institute of Public Management and Economic Development (IGPDE), could well develop their offer to incorporate this new training need. Universities could also commit to this sector and provide degree courses and continuing training for Ethics Officers.

The High Authority has also started to organise one-off training courses, and plans to develop its activities in this respect. For the future, a training programme might well be created for Ethics Officers, possibly modelled on the national training plan developed by the General Commission for Territorial Equality (CGET), bearing on the values of the Republic, which trains

actors on the ground in secularism, or drawing inspiration from the certifications that the National Commission for Information Technology and Civil Liberties (CNIL) used to deliver to data protection officers.

As regards initial training, it is essential that public service schools, those training regional and local authority and healthcare facility management staff along with those training central administration executives, start focusing on this area. The National School of Administration (ENA) and the National Institute of Territorial Studies (INET) both offer their students sessions on ethics. The High Authority sometimes participates in them and will continue to do so. But this initial approach must be further developed and become an integral part of future public officials' training.

Over the longer term, initial training could be developed in contexts other than public service schools; by covering the subject in universities and Master's degree courses, in public law and public affairs, for example.

Resources

The resources made available to Ethics Officers are also essential to successful accomplishment of their missions as well as being guarantees of independence and competence. The Decree stipulates that *"the head of department provides the Ethics Officer [...] with the material resources, IT resources in particular, enabling efficient performance of missions"*.

The emphasis on IT resources makes it clear that one of the first things that has to be made available to Ethics Officers is a dedicated email address, consultable by them alone and enabling any staff member to refer to them. It may take a generic form such as `ethicsofficer@structure.fr`. Other office resources are equally important, including computer and dedicated telephone line. Some staff, in local authorities in particular, do not have computers available for their work, which is why it is important that other means of referral to the Ethics Officer are provided for.

The ideal situation is for the Ethics Officer to have an office available to receive individuals in complete confidentiality. An office also enables the Ethics Officer to organise regular referral hours and may facilitate dialogue and informal questions on the part of staff members. This is not always possible. If the body's resources do not run to provision of a dedicated office, the Ethics Officer must be allowed access to an office or room, at certain times or upon reservation, in order to conduct interviews.

The Ethics Officer requires other resources in addition to material resources. First of all, the Ethics Officer should be able to call upon the Legal Department or Human Resources Department in order to obtain help, an expert opinion on a legal point, information on internal organisation, etc. Ethics Officers must take care to request information that is general enough not to compromise the confidentiality of cases they are working on, even though this may prove difficult in a small organisation. The Human Resources Department's expertise is especially useful on questions of combined activities, which the Ethics Officer deals with from the viewpoint of the conflict of interest risk, a viewpoint complementary to that of human resources.

For Ethics Committees and Ethics Officers overseeing hundreds or possibly even thousands of staff members, other resources may be required. For example, a secretariat may be shared with a local authority's or ministry's Secretariat-General.

Finally, and still with regard to large authorities and administrations, assigning staff to the Ethics Officer should be considered, all the more so if the function is carried out by a single individual. In [Marseille, the Ethics Officer](#) works with a task officer, a lawyer who helps him "investigate" cases. The [Chairperson of the Ministry of Higher Education's Ethics Board](#) is considering the possibility of providing the Board with rapporteurs, an idea that might well be extended to other ministerial committees. Although such resources may not be necessary at the moment, they will probably become so with development of the Ethics Officer's activity.

Access to certain special information

The Code of Ethics may require that complementary declarations of interest, not required by law, be delivered to the Ethics Officer and to him/her alone in order to ensure their confidentiality. Although the relevant texts have nothing to say on this possibility, it is nonetheless encouraged. Ethics Officers must have access to declarations of interest in order to evaluate conflict of interest risks and, if required, make recommendations. It is advisable that such declarations be delivered to them directly. If such choice is not made, Ethics Officers must have access to declarations, without having to request one or other of them specifically. The simple fact of requesting access to a declaration of interest (which might, for example, be marked confidential and kept in a staff member's Human Resources file) and so communicating a name compromises the confidential nature of the Ethics Officer's work.

Other documents may be useful to the Ethics Officer's activity; he/she may be the recipient of declarations of acceptance of

gifts, requests for performance of a side activity, or documents specific to the entity's activity.

To take the High Authority [as an example](#), the note setting the Ethics Officer's missions provides for him/her being the recipient of various specified documents:

- declarations of interest by staff members to whom signature authority has been delegated;
- a copy of the list of declarants with whom a staff member has a connection of interest;
- recusal measures implemented following identification of a conflict of interest;
- side activities that staff wish to carry out and which are likely to interfere with the performance of their duties;
- gifts that are unlikely to put their recipients in a conflict of interest situation, official gifts in particular.

3. Dialogue with peers: towards Ethics Officer networks

The last "resource" that would appear essential to any Ethics Officer is rather a very special one: the fact of being able to benefit from exchanges, feedback and dialogue with their peers, in particular via a network of Ethics Officers. Such networks may be local (composed of a region's Ethics Officers), by type of entity (Ethics Officers from administrations, for example) or national. They may, of course, include all kinds together, rounding themselves out further to add to their numbers; all such initiatives should be encouraged.

Under certain conditions, a network at limited territorial level (*département* or region) might also enable Ethics Officers to replace one another when one of them is in a conflict of interest situation and has to avoid dealing with an individual case, as is under discussion between [Ethics Officers in the Auvergne-Rhône-Alpes Region](#).

A network of Ethics Officers working in the public sphere, bringing together those overseeing staff members and those dealing with elected officials, would seem to be an especially useful tool, and all Ethics Officers that the High Authority has met with have declared themselves in favour of such a network being set up. Ethics Officers are there to lend their support to staff members on a daily basis. Being able to draw on collective thought and the experience of Ethics Officers who have been on the job for a long time and have had to deal with similar situations would be of great help to these new administrative arrivals.

Institutionalising regular exchanges would also enable development of a corpus of common positions and reflections, and help ensure a measure of consistency in ethics-related action within the public sphere; over and above the specificities of each department.

The High Authority could take part in running such a network, provide knowhow, put Ethics Officers in contact with one another, and bring practical help in the form of useful documents. In this respect, it plans to develop a dedicated page on its website.

Sheet 10

Articulating elected officials' ethics and staff members' ethics

This has already been mentioned in the section on the code, but it is important to remember that ethics are everyone's business, elected officials and staff members alike. Harmonising ethics mechanisms applicable to elected officials and agents enables their all-round demonstration and avoids any feeling that a "double standard" is being applied to the obligations incumbent the two activity areas. This in no way prevents specific rules being applied to one or other of the two due to different situations, but the main principles are the same.

The question of articulation between rules applicable to elected officials and those applicable to staff becomes less prominent if the code and Ethics Officer are common to one and the same authority, which is recommended. If there is a distinct Ethics Committee or different code, as is often the case with large authorities, some form of articulation must be found. Such articulation may be informal, via regular dialogue between Ethics Officers, invitations to take part in work or respective sessions, or even shared work on general subjects.

Or it may be more formal in nature, with the code or Ethics Committee's internal rules of procedure expressly stipulating that the staff Ethics Officer is also a full member of the committee competent for elected officials. The [Hauts-de-France Region](#), for example, decided that the Chair of the Ethics Board competent for staff members (composed of Ethics Officers from the regional head office, local branches and secondary schools) would be a full member of the Ethics Committee competent for elected officials, and would there act as a link between the two bodies.

Sheet 11

Articulating the Ethics Officer's mission with the alert collection mechanism

Public officials are subject to a longstanding obligation foreshadowing the modern whistleblower: that of informing public prosecutors of crimes and misdemeanours that they have come to know about in the performance of their duties.

The "Sapin Law" of 9 December 2016 provided for general protection of whistleblowers along with an obligation to set up alert collection procedures in certain public entities. Whistleblowing provides new grounds for criminal irresponsibility, when the conditions set by law are complied with. Any form of reprisals or sanctions against whistleblower is now prohibited. Protection is provided by alert collection procedures, including guarantees of confidentiality in particular. Such procedures may be embodied by appointment of an Alert Officer as recipient of ethics-related alerts.

The High Authority for Transparency in Public Life is not competent to specify or interpret this mechanism; or to help or lend support to whistleblowers. The Defender of Rights is responsible for provision of guidance to whistleblowers.

Nonetheless, it would seem necessary to take a brief look at the question of whistleblowers in this guide, for two reasons. First of all, the Ethics Officer is designated by law as a possible recipient of alerts relating to situations of conflicts of interest, which may be regarded as a category of ethics alert, and which bear on wider situations. Secondly, in reality, many Ethics Officers are also appointed as Alert Officers, whether in local authorities or administrations, as such possibility is expressly provided for in the texts concerned. The question of articulation between the two functions is therefore raised emphatically. The combination of the two "caps" also arouses no few concerns among Ethics Officers.

1. Developing a reliable and practical alert collection procedure

The mandatory implementation of alert procedures on the part of various public bodies aims to put the bodies concerned in compliance and, above all, to ensure they possess a reliable alert collection system enabling effective alerts and real protection of whistleblowers. In order for this to happen, the system must be known to and understood by all staff members. We hardly need to detail the ways in which the procedure might be publicised, as they are much the same as those suggested for the Code of Ethics and the Ethics Officer's appointment.

2. Method

The alert procedure stipulates exactly how an alert is collected and handled within the entity. It must be drawn up and defined in a document of its own. As an illustration, the High Authority has published its alert collection procedure on its website. There is no need to incorporate it into the Code of Ethics, although the Code may refer to whistleblowers and direct them to the document concerned. It is essential to formalise the alert procedure.

The obligation to set up alert procedures is not commonly found in other countries' legislation on whistleblowers. However, the [Netherlands](#) have adopted a similar system to that provided for in the "Sapin II" Law, applicable to all entities with over 50 employees. Since enactment of the Law of 1 July 2016, their system has been complemented by a "Whistleblowers' House" (*Huis voor Klokkeluiders*) tasked, among other things, with providing whistleblowers with advice. For other countries, it is mostly best practices that are disseminated, as in the [United Kingdom](#), whose government published a guide on 20 March 2015, giving examples of what a reporting policy and its management might consist of. Generally speaking, protection of whistleblowers is a matter for legislation.

The procedure may provide for appointment of an Alert Officer as first-level recipient of alerts. Although the law does not envisage the combination of the Alert Officer's and Ethics Officer's duties, such possibility is provided for in the Decree bearing on procedures for collection of reports from whistleblowers employed by legal entities governed by public or private law or State administrations. It is even specified that such combination is possible for military personnel.

The Decree's emphasis on the necessity of the Alert Officer having "adequate capacity" to combine the function with that of Ethics Officer should be borne in mind. It may refer to capacities in terms of time available to carry out the two

missions, or in terms of competences: as the missions are very different to each other, individuals must be trained in both of them.

The Ethics Officer's mission, provision of advice and personalised support, is very different from the Alert Officer's, who evaluates and gives a legal characterisation of the facts submitted to him/her and decides what action to take. The two missions must be presented to staff in clearly and comprehensible fashion, so that they can benefit from advice on ethics as well as report on situations they have come to know about. Entrusting them to one and the same person risks creating a measure of confusion, which is why, if such a choice is made, special attention must be paid to communication, in order to clarify the differences between two competences. In addition, even if the same individual has access to them, it is important to create different channels of referral, two separate email addresses in particular, one for referral to the Ethics Officer and the other for alerts.

Whatever the case, the procedure must be clearly outlined. For example, the [Ministry for the Armed Forces](#) has issued orders that specify alert levels and channels as well as the articulation between the ministerial Ethics and Alert Officer and members of the network of advisors active at various ministerial levels. The ministerial Officer oversees this network. Alert Officers for civilian staff are inspectors attached to the Secretary-General for the administration. For military personnel assigned to the Ministry of Defence, as well as for civilian and military Alert Officers, the Alert Officer is the ministerial officer. The Order also stipulates that *"Alert Officers may refer to the ministerial Ethics and Alert Officer for advice on any question of procedure concerning application of this Order"*.

It would therefore seem that combinations of the Alert Officer's and Ethics Officer's functions is possible, under the following conditions:

- that the individual or committee concerned is provided with adequate resources to carry out the two missions;
- that there are separate documents on alert collection procedures and the Ethics Officer's missions (Code of Ethics, for example);
- that two distinct referral email addresses are created;
- that adequate communication is ensured to avoid any confusion between the two missions on the part of staff concerned.

Part 3

Preventing conflicts of interest and ensuring ethical management of your organisation

Sheet 12 Detecting pertinent tied interests

Sheet 13 Preventing conflicts of interest

Sheet 14 Supervising liberalities: gifts and invitations

Sheet 15 Supervising use of resources provided to elected officials and staff

The two preceding parts focus on presenting the procedures to implement in order to define an effective ethics policy. This third part is more interested in the ethics policy's content, through prevention of conflicts of interest, supervision of advantages and use of the entity's resources.

Prevention of conflicts of interest has become a priority for the whole public sphere. The Acts of 11 October 2013 created an obligation to prevent or, failing that, put a stop to all conflicts of interest, incumbent upon members of the Government, parliamentarians, individuals holding local elective office, and those entrusted with a public service mission. The obligation was extended to all public officials.

In order to assess potential conflict of interest situations, the definition provided by the legislature should be referred to: "a conflict of interest is any situation that causes interference between a public interest and public or private interests, which is likely to influence or appear to influence the independent, impartial and objective performance of a duty".

Sheet 12

Detecting pertinent connections of interest

Declaration of interest mechanisms aim to identify pertinent connections of interest with a view to defining conflicts of interest. It is never a matter of obtaining an exhaustive list of all an individual's connections of interest, which would constitute an excessive invasion of his/her privacy, but rather of being made aware of connections of interest that might give rise to a conflict of interest risk within the Civil Service or entity concerned.

There are two goals: preventing the ethical risk of a conflict of interest, such as failures to live up to the principles of independence, impartiality and objectivity that are the foundations of public decision-making, and the criminal risk of taking illegal advantage, by implementing appropriate precautionary measures if necessary.

1. Understanding the definition of conflict of interests

The law has not established any new incompatibilities of exercise. Over the course of their various activities, all individuals form numerous connections of interest, professional and personal alike. These are not problematic in themselves. But, if they interfere or seem to interfere with performance of a public duty, they may require implementation of various precautionary measures.

Such interests may be:

- direct, such as the individual concerned having a professional side activity, e.g. teaching at a university or being a consultant to a third party, or indirect, such as his/her spouse's profession;
- private, such as holding shares in a company, or public, such as another elective office;
- material, regarding a company's share capital for example, or moral, such as exercise of voluntary community responsibilities;
- present, i.e. existing at the time the declaration is made, or past, i.e. recently come to an end.

Secondly, it is necessary to assess whether or not one or more of these interests interferes with the public duties performed. Interests that have no connection with positions held will never be likely to bring about a conflict of interest situation.

Three aspects must be taken into account in order to assess interference:

- a material aspect: when the interest and public duty exercised are in the same activity sector.
- a geographical aspect: when the public official's interest is connected with the territory in which he/she performs a public duty.
- a temporal aspect: interests may interfere if they are contemporary or recently held with regard to the performance of duties.

By analogy with the field of declarations to the High Authority, it may be assumed that interference decreases gradually over the course of time and disappears entirely at the end of five years. For interests abandoned before taking up a post, the further back in time they are – in particular as regards former professional relationships – the lower the conflict of interest risk.

Finally, the interference's nature and intensity must be taken into account. In order for a conflict of interest situation to exist, the interference must influence or seem to influence independent, impartial and objective performance of a public duty. Such intensity is assessed depending on each situation, but two questions help determine it:

- how far do the prerogatives that a manager enjoys in performance of his/her public duties enable satisfaction of his/her interest?
- how much may his/her interest benefit from his/her public duties?

The greater the manager's prerogatives and the more direct the benefit, the greater the conflict of interest risk.

When all three factors are combined, interest, interference and intensity, reasonable doubt arises as to a duty's impartial performance, along with a risk of conflict of interest. Reasonable doubt arises *in concreto* when, after consideration of the various aspects of a case, a public official's subjective impartiality may be called into question.

2. Detecting: the declaration of interest as a key tool

The declaration of interest is of key importance to prevention of conflicts of interest. It enables ethics-related questioning of a public official's performance. It is a means for formalising and structuring ethics-related work in order to determine situations in which preventive measures should be considered.

For each category of interest summarised in the declaration, declarants must ask themselves: "given my position, does the connection of interest referred to here risk putting me in a conflict of interest situation?".

The declaration of interest system enshrined in the Act of 2013

In the declaration of interest system provided for in the Act of 11 October 2013, certain connections of interests must be declared systematically, due to the major conflict of interest risk attached to them. Hence, declarations of interest made to the High Authority include 8 categories:

- 1°** Professional activities which give rise to remuneration or gratuities and which are performed on the date of appointment;
- 2°** Professional activities which gave rise to remuneration or gratuities and which were performed over the last five years;
- 3°** Consulting activities performed on the date of appointment and over the last five years;
- 4°** Involvement in the managing bodies of a public or private organisation or of a company on the date of appointment or over the last five years;
- 5°** Direct stakes in the capital of a company on the date of appointment;
- 6°** Professional activities performed on the date of appointment by the spouse, civil union partner or common law spouse;
- 7°** Volunteer work likely to give rise to a conflict of interest;
- 8°** Elective duties and offices performed and held on the date of appointment.

Information required of the declarant is particularly extensive under this system. The invasion of privacy is justified by the high levels of responsibility entrusted to them and which make them duty bound to demonstrate exemplarity and show proof of absolute probity. Although there is no need here to list all the individuals subject to declarations of interest to the High Authority, a few categories are worth reminding readers of.

For regional and local authorities: elected officials, members of executive bodies and their colleagues

- presidents of regional councils, their directors, deputy directors and chiefs of staff, and regional councillors to whom authority or functions have been delegated;
- presidents of *départemental* councils, their directors, deputy directors and chiefs of staff, and regional councillors to whom signature authority or duties have been delegated;
- mayors of municipalities with over 20,000 inhabitants, their directors, deputy directors and chiefs of staff, and deputy mayors of municipalities with over 100,000 inhabitants, to whom signature authority or duties have been delegated;
- presidents of Public Establishments for Intermunicipal Cooperation (EPCIs) with their own tax system and more than 20,000 inhabitants or whose total operating revenue is in excess of five million euros; presidents of EPCIs without their own tax system whose total operating revenue is in excess of five million euros, their directors, deputy directors and chiefs

of staff, and vice-presidents of EPCIs with their own tax system and over 100,000 inhabitants, to whom signature authority or functions have been delegated;

— for other authorities, those with special status in particular, details are available on the High Authority's website.

For central administrations

— individuals occupying a position at the Government's decision, to which they have been appointed by the Council of Ministers: mostly Ministries' secretaries-general, central administration directors or equivalent, prefects, chancellors and ambassadors;

— military personnel *"whose rank or nature of functions justifies it"* (Act of 20 April 2016);

— for other categories, see the High Authority's website.

For publically owned companies

— CEOs and general directors of legal entities in which more than half the share capital is directly owned by the French State;

— CEOs and general directors of legal entities whose annual turnover exceeds €750,000 and in which regional and local authorities or their grouping holds more than half the share capital;

— for other categories, see the High Authority's website.

Declarations of interests to the High Authority are required within two months following election or appointment (unless an exception is made). The law also requires that an amended declaration be submitted to the High Authority in the event of there being any substantial modification of interests.

The Act of 20 April 2016 also instituted a declaration of interest system for certain civil servants, not to the High Authority but to their appointment authority. Their appointment is conditional on provision of such declaration of interest. The civil servants concerned are those who are particularly exposed to conflict of interest risks due to their level of responsibility or the nature of their duties. Jobs concerned are determined by decree and, for some, specified by Orders. In the event of difficulties arising during analysis of a declaration of interest, the hierarchical authority (which receives the declaration following the appointment) may refer to the High Authority and obtain confidential recommendations.

The possibility of an adapted complementary declarative system

Scope of application

The declarative system presented in this paragraph is not obligatory. Nonetheless, conflicts of interest are also a risk for individuals not legally subject to making declarations of interest. This is why it is recommended that an optional, flexible declaration of interest system be established, in particular for elected officials and heads of department.

It is neither possible nor recommended to impose declarations of interest as complete as those provided for by law on elected officials and staff who are not legally subject to them. With no legal basis, such invasion of privacy would be disproportionate.

The more flexible declaration of interest system recommended should be designed so as to ensure a balance between the need to prevent conflicts of interest and the need to protect the privacy of individuals concerned. Only interests strictly necessary to prevention of conflicts of interest should be declared.

Individuals occupying responsible positions, such as heads of departments, and individuals in regular contact with people outside the organisation, in public procurement departments in particular, are likely to have more connections of interest that might create conflicts of interest given the nature and importance of their duties. Nonetheless, there is no need to require all staff to make declarations.

It would seem reasonable to request elected officials to provide such more flexible declarations of interest if they are not already subject to declaration in compliance with the Act of 2013, due to their special missions or duty of exemplarity.

This declarative system must be presented to all those who may come under it, and its goals must be highlighted, in particular its function of protecting elected officials themselves, as it can only be voluntary. Rather than simply another burden on the individuals concerned, an optional declaration is an opportunity to protect themselves against possible conflicts of interest. It acts as a real safety net.

Interests to declare

In order to ensure the system's proportionality to its goal, only interests likely to create conflict of interest situations should be declared. Hence, although the headings mentioned above may serve as a guiding thread, individuals cannot be required to complete them all. The headings help declarants to assess risks for themselves and declare pertinent interests.

Other headings adapted to an organisation's specificities may be added. For example, a social housing provider might ask his managers if they have any connections with tenants.

Although interests to declare are limited, they must nonetheless be specific enough to enable the Ethics Officer to assess conflict of interest risks. As an example, in its first activity report, the [Ile-de-France's Regional Ethics Commission](#) stressed that it is not enough simply to declare the name of the legal entity in which the elected official performs an activity, and that it is necessary to give a brief description of the entity's field of activity in order to assess the conflict of interest risk. The report also suggests that the declaration should state whether the legal entity concerned is likely to conclude a contract with the Region or receive subsidies from it.

Such declarations of interest must be strictly confidential. They may be entrusted to the Ethics Officer or commission responsible for elected officials' ethics, for assessment of conflict of interest risks and, if required, dialogue with individuals concerned.

Declarations of interest are of little use if they are not kept up to date. It is therefore pertinent to provide elected officials and staff concerned with a yearly reminder of the fact that they must update their declarations of interest if there have been any changes since they were originally submitted. A commitment to update information when required may be made when the first declaration of interest is submitted. Its updating might also provide an opportunity for an interview with the Ethics Officer.

Recusal register

The declaration of interest may be complemented by other tools for especially important categories of interests, in the context of a specific operational goal. For example, some local authorities keep a register listing external bodies in which elected officials represent them, in order to implement an efficient recusal system before each session of the deliberating assembly, which is a best practice worth encouraging. Recusal may also concern community responsibilities and personal connections, in particular with regard to recruitment and urban-planning policy. It is an invaluable practical tool. For example, the [City of Nantes](#) has introduced a register of this kind, which is kept by the Meetings Department, which also organises the recusal system. In the [Hauts-de-France Region](#), before each meeting of the Commission, the Department dedicated to monitoring conflict of interest risks sends emails to any elected officials who may not take part in the voting on a given subject. When several recusals are required in the course of a deliberating assembly, the meeting's agenda may be organised to ensure that the least amount of time will be taken up by members' leaving the session, with the help of the register of elected officials' interests.

Sheet 13

Preventing conflicts of interest

Once interests have been identified, mechanisms for prevention of conflicts of interest may be activated.

For local authorities, the conflict of interest problem goes hand-in-hand with that of the councillor with interests, creating a risk of illegality in an assembly's decisions. Prior awareness of the connection of interest enables organisation of a recusal system and avoidance of such risk of illegality. The notion of interests is given a broad interpretation by administrative courts.

The main tools for preventing conflicts of interest are public knowledge of the interest, recusal from decision-making in connection with an interest, and abandonment of the interest. Choice of the most suitable prevention measure will depend on the type of entity in which the individual concerned works, as well as, on a case-by-case basis, the nature of interests in question. The following measures are suggested in graded fashion, so as to adapt them to the intensiveness of the interference, starting with the lowest.

1. Publicising the interest

The first recommendation is ensuring transparency with regard to the interest held. Making your interest known to your immediate superior first of all, and to your colleagues and other members of the commission or deliberating assembly for elected officials, and then possibly to other interlocutors, may well be enough to defuse the conflict of interest risk before it takes shape. A public announcement of an interest at the start of a collegial decision-making session connected with the interest concerned may also enable any doubts to be dispelled.

In the [Netherlands](#), civil servants are obliged to report their side activities if these are likely to generate a conflict of interest. As regards senior civil servants, such side activities form the subject of a publication.

2. Recusal

Recusal is a major tool for preventing conflicts of interest. It consists of not seeking, preparing or giving an opinion on a decision that would ordinarily fall within one's area of responsibility, in order to avoid a conflict of interest. Recusals are organised in several steps:

- identification of the subject/ matter requiring an individual's recusal;
- organisation of the recusal procedure:
 - delegation of decision-making and signature authority (no instructions may be given to the delegatee);
 - prior publicity so as not be informed of factors bearing on the decision;
 - not taking part in preparatory meetings;
 - leaving the room when the time for making the collegial decision comes round;
- dissemination of the recusal procedure's content to individuals concerned.

Recusal does not always enable avoidance of a "general" conflict of interest situation. It is therefore necessary to make sure that the person considered for appointment to a given post is not in a situation in which application of recusal rules would lead to his/her having to refrain from taking part in the body's work so often that the its normal operation would be hampered.

Recusal methods provided for by law

Members of administrative or independent public authorities

A member of an administrative or independent public authority who recuses him/herself must not only forewarn the president but also "take no part in any meeting or deliver any opinions relating to the decision in question." This excludes the member from participating in any examination, preparation or deliberation on the matter in which he/she has an interest. Recusals must also be mentioned in the minutes of members' meetings.

Local elected officials

There is also a procedure for overseeing recusals on the part of local elected officials. Presidents of local authorities and mayors in conflict of interest situations must issue an Order listing all the items on which they recuse themselves and, so as to ensure the recusal's effectiveness, designate "the person tasked with substituting for them", such person not being permitted to receive any instructions on their part. Hence, pursuant to this Article, a mayor issues an Order in which he specifies the competences he recuses himself from and designates a deputy to whom he has delegated his signature

authority, and to whom he may give no instructions. He must then recuse himself, on a case-by-case basis, when a file concerns a matter in which he holds an interest.

In addition, depending on the position he/she occupies, anybody vested with local executive authority and who wishes to practise as a lawyer in parallel to his/her mandate is subject to the rules governing the legal profession, which in particular prohibit the direct or indirect accomplishment of any professional action against the local authority concerned or any public institutions depending on it.

More generally, such elected officials must refrain from handling any cases, in their role as lawyers, which might concern the affairs of the local authorities in which they hold office. This implies that neither they nor even the firm they work for may act as lawyers for the local authority, represent clients whose interests are opposed to those of the municipality, or provide advice to companies with regard to those of their activities that are connected with the municipality. Nor may they provide legal advice to companies active within the municipalities concerned, even for cases that have nothing to do with local authority affairs. Therefore, they may not take such companies as their own clients, direct cases to do with such companies to their firm, or handle their cases if the firm they belong to takes such companies as clients.

For other professions practised in parallel to an elected public office, elected officials themselves may need to modify their fields of activity outside their mandates in order to avoid any risk of a conflict of interest arising.

Other people entrusted with a public service mission

Finally, the Act and the Decree govern the situations of other individuals tasked with public service missions, when they have been delegated signature authority or are placed under the authority of an immediate superior. In the first case, in the event of a conflict of interest situation arising, they must inform the delegator in writing of the subjects concerned by the recusal. In the second case, they must at once inform their immediate superior (publicity of the interest), who may then designate another person to exercise the competence. In both situations, in order to ensure the recusal's effectiveness, the individual in the conflict of interest situation may not give any instructions to the people who are working on the matter concerned, or take part in any meetings or deliver any opinions to do with whatever has given rise to the conflict of interest.

Councillors with interests

In addition, in order to avoid any conflict of interest, municipal, *départementale* and regional councillors should refrain from sitting on a commission, attending debates or participating in voting on decisions in which they hold an interest.

Public officials

Public officials who find themselves in a conflict of interest situation must:

- when they hold a position within the hierarchy, refer to their immediate superior, who, following the referral or on his/her own initiative, will, if required, entrust the case or any decision to be made to another person;
- when they have been delegated signature authority, refrain from using it;
- when they belong to a collegial body, refrain from sitting on it or, as the case may be, deliberating;
- when they hold judicial office, be replaced in accordance with their rules governing their court;
- when they exercise competences devolving directly upon them, be replaced by a delegatee, to whom they must refrain from giving instructions.

Renunciation of the interest

If a conflict of interest situation cannot be resolved by a recusal, or when the interest in question is of such nature that it is possible to give it up (financial interest in particular), the best prevention method could be renunciation of the interest.

As an example, it is possible to give up voluntary functions, such as chairperson of an association or board of directors, if such chairpersonship creates a conflict of interest situation. More generally, public officials may be asked to give up a function performed alongside their public office if such function places them in a conflict of interest situation, in particular if the recusal measures necessary to prevent a conflict of interest risk would prevent them from carrying out their public duties to full effect.

Renunciation of a financial interest may be recommended when such interest creates a conflict of interest. It may be considered that any interference connected with this type of interest comes to an end when the person concerned gives it up, in contrast to a moral interest, which may, for example, remain after discontinuation of a professional activity. Apart from disposing of the securities in question, an individual may employ the mechanisms provided for in the legislation bearing on the “blind management” obligation incumbent on members of the Government, members of certain administrative and independent public authorities and certain civil servants. Hence, conclusion of a management mandate with an investment service such as a credit institution or portfolio manager may be a measure likely to prevent conflict of interest situations arising. As regards financial instruments held in unlisted companies, conclusion of a trust agreement or convention with a third party may also achieve this objective, as, in some cases and in order to avoid any possibility of a conflict of interest, absence of management

of the securities concerned should be complemented by a waiver of collection of dividends from such securities for the duration of the term of office concerned.

Other precautions in the context of professional activities

Other precautions should sometimes also be taken in order to ensure that a public duty is performed independently, impartially and objectively, even though they do not specifically aim to prevent conflicts of interest. These are more general ethical recommendations.

When public officials are involved in professional activities in parallel to their public duties, for example when a local elected official continues to work for a firm of lawyers or architects, they must take care not to use the resources made available to them by the public entity, whether premises, staff or vehicles, in the carrying out of their private activities. They must also demonstrate a sense of proportion in performance of their private activities, as their public duties, when intended to be full-time, are their main duties.

They must also refrain from taking advantage of their position as a public official in the context of their private activities, and, more generally, must not make use of their public duties to favour or promote their private activities.

As regards staff, a mechanism requiring prior authorisation from supervisors could be implemented when a staff member wishes to employ the services of one of the entity's suppliers for his/her private use.

Sheet 14

Supervising liberalities: gifts and invitations

Although exchange of gifts and invitations is often used as a tool for keeping up good relations with recurring partners, it is also a source of major risks which justify its supervision as part of an ethical approach.

1. Goals of supervising gifts and invitations

Avoiding criminal risks

Supervision of gifts and invitations first of all helps avoid the criminal risk connected with various offences to which public actors may be exposed.

The offences of passive corruption and influence trafficking prohibit elected officials and anyone entrusted with a public service mission from *“soliciting or accepting, without right, at any time, directly or indirectly, offers, promises, donations, gifts or advantages of whatever kind for themselves or for another”* in order to carry out or refrain from carrying out an act.

The offence of favouritism prohibits an elected official or anyone entrusted with a public service mission from *“procuring or attempting to procure for others an unjustified advantage by an act contrary to the legal and regulatory provisions guaranteeing freedom of access to equality of candidates in public procurements and concession contracts”*.

The Court of Cassation upheld the conviction for favouritism of a civil servant who had *“received, over and above his legal remuneration, gifts under various forms [...] from managers of companies working for the State; that the nature and scale of these gifts cannot be compared with traditional end-of-year presents”*, but that they had been given deliberately as the companies’ managers thought they would be able to obtain public contracts by doing so.

Preventing conflict of interest situations

Gifts and invitations may put their recipient in a conflict of interest situation: a gift, in particular and expensive one,

constitutes an interest that may interfere with the recipient's duties, in some cases enough to call the objective performance of his/her duties into question (allocation of a contract, choice of supplier, etc.).

2. How do you supervise advantages?

Defining obligations to refuse certain gifts and invitations

Devoting a section of the Code of Ethics to "liberalities" is useful in order to determine obligations to refuse certain gifts and invitations. It must be communicated internally to all staff and may then be used to inform the public that the authority in question is committed to transparency and probity on the part of all its staff, whatever the field of action concerned.

An obligation to refuse gifts and invitations exceeding a specified monetary value

It would seem necessary to set an explicit monetary ceiling, above which all gifts or invitations must be refused or, in the event of this being impossible (e.g. a gift given during an official ceremony), surrendered to the Ethics Officer. However, a gift or invitation whose monetary value is unquestionably below the ceiling may be accepted.

The ceiling may be the same for all gifts and invitations, or set according to type: an invitation to speak at a colloquium and including travel expenses may have a higher monetary value than a simple invitation to a meal, without however creating more significant ethical risks.

Determining the ceiling

Although it is up to each body to determine the ceiling best suited to its structure and activity, it must be set at a low enough level to limit risks of conflicts of interest effectively. Too high a ceiling leading to large numbers of gifts and invitations being accepted would make the system pointless.

A review of practices regarded as acceptable within the entity could provide initial guidance to setting the threshold. Drawing inspiration from examples of entities similar to your own also helps set a consistent threshold.

Some Codes of Ethics draw inspiration from the sum set by the General Tax Code, which allows for deduction of VAT on goods provided free of charge (gifts) when such goods are of a very low value, determined by Order. Such value is currently €69 per year per recipient. This reasoning was adopted by

the Paris Town Hall's Ethics Officer. A number of regional and local authorities, including the [Grand Est Region](#) and the [City of Nantes](#), have set a ceiling of €150, drawing inspiration from the [National Assembly](#) (for which there is a declarative obligation for any gifts/invitations worth at least €150, although this is not a limit obliging refusal of a gift).

[Members of Italy's Parliament](#) are prohibited from accepting gifts or advantages of an estimated value exceeding €250, even if they are given out of simple courtesy.

Even for gifts whose value falls below the threshold, common sense should be brought into play, and requirement of an immediate superior's opinion before any sort of advantage is accepted might be a measure worth introducing. The Code of Ethics could also require that, whenever possible, gifts received of lower value than the ceiling be shared with all members of the department. Cash gifts, even small sums, must be systematically refused.

In many countries, strict regulations are in force for public servants and elected officials. For example, in [Belgium](#) and [Italy](#), public officials are prohibited from accepting gifts of whatever kind in connection with their duties, in order to ensure their impartiality. In the [United States](#), regulations forbid civil servants to accept gifts from "prohibited sources", i.e. from sources external to an employee's administration or organisation but in connection with it. In the special case of the [House of Representatives](#), thresholds have been set. Members and employees may accept gifts from anyone provided their value is less than \$50, with a limit of \$100 worth of gifts in the course of a civil year given by the same person to the same employee. Similar rules are in force at the [Senate](#), with *Senate Rule 35*.

Exceptions for certain types of gifts

Certain gifts may be authorised due to their special role in professional relations, official gifts in particular, although here again discernment should be used. As a rule, they should be passed on to the local authority concerned.

The notion of common sense in acceptance of gifts is applied in the [United Kingdom](#), where public officials must think about three things before accepting a gift:

- receiving the gift must be in their administration's interest;
- gifts must not be too frequent, too generous or disproportionate;
- the gift must be refused if there is any relationship with a service provider.

Another aspect to take into account when assessing the appropriateness of accepting a gift of such nature, in addition to the procedure in which it is often included (reception of foreign delegations, etc.) is reciprocity in the exchange of gifts.

In order to better visualise what gifts or advantages might represent, the Ethics Officer could suggest that recipients think of a gift as if they had received its value in cash, which would help make them realise what the gift concerned represents.

Generally speaking, in the event of their being any doubt as to a gift or invitation, the recipient can always consult his/her immediate superior or Ethics Officer. In its 2017 activity report, for example, the [Provence-Alpes-Côte d'Azur Region's Ethics Commission](#) requested elected officials to refer to it in the event of doubt, as well as communicate an annual list of advantages received.

An obligation to refuse gifts and invitations offered during certain periods

Special precautions should be taken when contracts are being negotiated or public procurement procedures are underway. Gifts or invitations from partners involved in such procedures create special risks of favouritism, conflicts of interest and impairment of procedures.

It is therefore recommended that, during such periods, the entity's employees refuse any gift offered by an economic partner involved in the procedure, even if its value is below the ceiling that has been set. The adoption of such a policy may be communicated to partners in order to avoid beforehand any advantages being offered during negotiation periods.

In addition, certain relationships, between supervisee and supervisor for example, justify systematic refusal of gifts. Hence, the High Authority's internal rules of procedure stipulate that: *"Members, rapporteurs and staff shall not accept any gift or invitation from a declarant, with the exception of official gifts and invitations. They shall not accept any gift or invitation, of whatever origin, if they deem that it might put them in a conflict of interest situation"*.

Rules prohibiting public officials from receiving gifts exist in many countries. In [Germany's](#) federal administration, a general prohibition provides for a few exceptions, obligatorily subject to an immediate superior's authorisation, such as sums of money received in the context of a competition or prize. There is tacit approval for gifts worth less than 25 euros, which must nonetheless be declared.

Implementing a systematic gift and invitation declaration mechanism

In order to assess acceptability, it may also be useful to ensure overall monitoring of all gifts and invitations received by an entity's employees. In this respect, implementation of a mechanism for systematic declaration of gifts and invitations is especially pertinent. A model gift reception declaration is provided in the fourth part of this guide.

What must be declared?

All gifts and invitations must be declared, i.e. any item or service or invitation to a meal or other event which has a monetary value and which is offered without formalised recompense in a professional context. It is recommended that the declaration also covers gifts and invitations that have been refused, in order to ensure their overall monitoring.

The Code may include a threshold above which the declarative obligation comes into force. This avoids having to declare a simple ballpoint or notepad given during a meeting on a partner's premises, but obliges declaration of a good bottle of wine.

In entities whose employees are likely to offer gifts and invitations to third parties, State-owned companies in particular, it is recommended that these are also monitored.

How do you declare?

In order to facilitate the procedure, it would seem simplest to use a standard form made available to all employees in electronic format. The form should include the identities of the gift's recipient and giver, the nature of the gift or invitation, and its exact monetary value (for theatre seats, for example) or approximate value (for a bottle of wine, for example).

A model form is provided in the fourth part of this guide.

Who do you declare to?

One of the entity's management staff should be tasked with receiving declarations of gifts and invitations, and consulted as to their acceptance or refusal.

The selected individual might well be the Ethics Officer, who would then be able to centralise all data on the subject and, as the case may be, draw conclusions from their value, frequency and the people or entities offering them, to be included in an activity report, for example.

If the Ethics Officer is external to the entity, it would be preferable to designate a person from within it, someone responsible for human resources or legal affairs for example, and provide the Ethics Officer with information on gifts as well.

When a gift or invitation carries a significant conflict of interest risk, the designated officer can inform the recipient and his/her immediate superior of the fact, so that appropriate measures can be taken to put an end to the conflict. The designated officer or Ethics Officer could also communicate lists of gifts to the appropriate management staff on a regular basis.

Sheet 15

Supervising use of resources allocated to elected officials and staff

Use of resources that an administration, company or local authority allocates to elected officials or staff, a company car for example, is the final point that this part of the guide proposes to cover. As it does not fall directly within the High Authority's competence but is nonetheless related to its field of expertise, this part is mainly concerned with providing the reader with a few examples and best practices, continuing on from preceding recommendations.

1. Goals

Above all, supervision of resources allocated to elected officials and staff aims to guarantee use of a local authority's or administration's resources that are in line with its interests, and ensure satisfactory management of public funds.

There are two related risks: firstly, the criminal risk of misappropriation of public funds; and secondly, the reputational risk, which may sully the beneficiary's or entity's image if the abuse is made public.

Allocation of such major resources as accommodation or a company car is therefore conditional to an absolute need, such as the elected official or employee having to be available at all times. Uses to which resources are put should also be decided on and stipulated by the local authority's deliberating assembly or in the department's regulations.

The Criminal Code prohibits anyone holding public authority or discharging a public service mission from "*destroying, misappropriating or removing*" a document, funds, or any object issued to such individual "*due to his/her duties or mission*". Hence, an individual's misuse of public resources for purposes unconnected with his/her function, such as using a company car "*as if he/she owned it*" may constitute misappropriation of public funds.

As an example, a mayor was found guilty of misappropriating public funds for having his municipality acquire luxury vehicles out of proportion to its needs, which he put to personal use while also using the fuel card he had been allocated for exercise of his public office.

This notion is closely connected with the notion of breach of trust. As the Minister of Justice emphasised in a factsheet, misuse of public funds is *“a variety of breach of trust imputed to individuals whose functions oblige them to demonstrate exemplary probity. Misuse therefore consists of behaving as if one were the actual owner of the item allocated”*.

As an example, the Court of Cassation upheld a hospital director’s conviction for breach of trust, in the form of abusive use of public funds, for having used hospital funds to pay for *“work carried out purely for personal convenience”* in his official residence, and behaving *“as if he were the owner of the funds employed, without restraint, for purposes unrelated to the nature of the accommodation [...] and of no use to the legal entity”*. In addition, as regards regional and local authorities, the law specifies that *“official accommodation or a vehicle may be allocated to staff if absolutely necessary to their positions [...] Hospitality costs inherent to their functions are set by decision of the deliberating body”*.

2. Method options

Supervision via reference documents of appropriate legal value

Expenses incurred by elected officials and staff in the exercise of their offices or duties are the subject of an explicit regulatory framework; applicable texts are appended to this guide. Such professional expenses include hospitality costs, use of official vehicle and telephone, meal and travel reimbursements, and personal use of IT tools (printers, email address, etc.), and must be given thought to all the same and governed by an internal document of adequate legal value. If a specific detailed document seems necessary, the selected framework’s main principles should be incorporated into the Code of Ethics.

For regional and local authorities, a decision reached by the deliberating assembly in plenary session, valid for elected officials and staff holding functional positions alike, is the most appropriate document. For other staff, a memo may well be enough. For other administrations and organisations, a memo

detailing the general principles reasserted in the code would also seem to be the best medium.

Whatever kind of document is adopted, it must be permanently available to staff and elected officials, via an “ethics” tab on Intranet, for example, and/or posted on a general information board.

The document may go into considerable detail, providing reimbursement scales for any accepted mission or hospitality expenses incurred, for example. Scales may be differentiated depending on mission and therefore on appropriate hospitality needs.

In [South Korea](#), a Presidential Decree regulates the number of cars that may be allocated to central administration directors for day-to-day operations. The Decree is updated and published annually. In the [United Kingdom](#), each decentralised administration level must set up an independent panel tasked with assessing the scale of allowances granted to elected officials and deliver recommendations. Local institutions publish these reports on their websites. In the [Netherlands](#), private use of an official or department vehicle is quite common. But the practice is governed by law and regulations, and is subject to taxation through payment of a part of the tax on vehicle traffic, in proportion to the amount of private use. The system is declarative, with checks provided for.

The idea of publishing regulations in force in a local authority or administration is therefore very noticeable in these various foreign examples. First of all, it meets requirements of transparency as well as the constitutional obligation that all public officials have of answering to citizens. The need to enable citizens to monitor use of public resources is enshrined in these essential principles. Publication also helps dispel various fantasies about the resources made available to public officials.

Monitoring proper application

Finally, means of checking that rules are being complied with must be implemented. A relatively simple way of making sure of compliance with rules on use of hospitality costs and mission expenses is to prioritise reimbursement upon presentation of invoices rather than advances of expenses, or at least to require invoices even when expenses have been advanced. Justification of use of public resources is always required, and regular checks, some of them at random, are useful in this respect.

For local authorities, on the occasion of an inspection of the Regional Chamber of Accounts, existence of this type of procedure would help assess how appropriately public funds are being used.

Use of IT resources made available to elected officials and staff may be regulated through introduction of control mechanisms. Requirements with regard to security and prevention in the face of ethical and IT risks have led administrations and regional and local authorities to oversee use of the Internet and electronic messaging. For example, the disciplinary action taken against a civil servant was upheld by the Council of State after he posted his professional email address on the website of a sectarian religious association of which he was an active member.

They therefore have the possibility of installing filtering devices to block unauthorised websites, and prohibiting downloading of or access to personal messaging. Staff must be individually and collectively informed of setup, types and purposes of such devices, which must be proportional and cannot go beyond the obligations provided for by law and jurisprudence. As mentioned earlier, the document detailing such measures (Code, protocol or memorandum) must be available to elected officials and staff, whether it is dematerialised on Intranet or posted on an information board.

Part 4

Practical tools

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Sheet 16

Recap of the ethical approach

This document is intended to provide a summary of the main steps in the ethical approach. The main steps in drafting the Code of Ethics are presented in the following practical tool.

1. Mapping risks

- ✓ Organise the initiative
- ✓ Identify risk factors
- ✓ Prioritise risk factors
- ✓ Set a timeframe for updating the mapping

2. Draft a Code of Ethics

- ✓ Develop the Code's content
- ✓ Make sure of hierarchical/political support
- ✓ Consult other stakeholders
- ✓ Formalise the Code's adoption
- ✓ Communicate on the Code

3. Institute an Ethics Officer

- ✓ Define the most appropriate positioning and form
- ✓ Formalise the Ethics Officer's appointment
- ✓ Communicate on the Ethics Officer

Sheet 17

Steps in risk mapping

This document is intended to provide a summary of the main steps in risk mapping.

1. Organising the risk mapping initiative

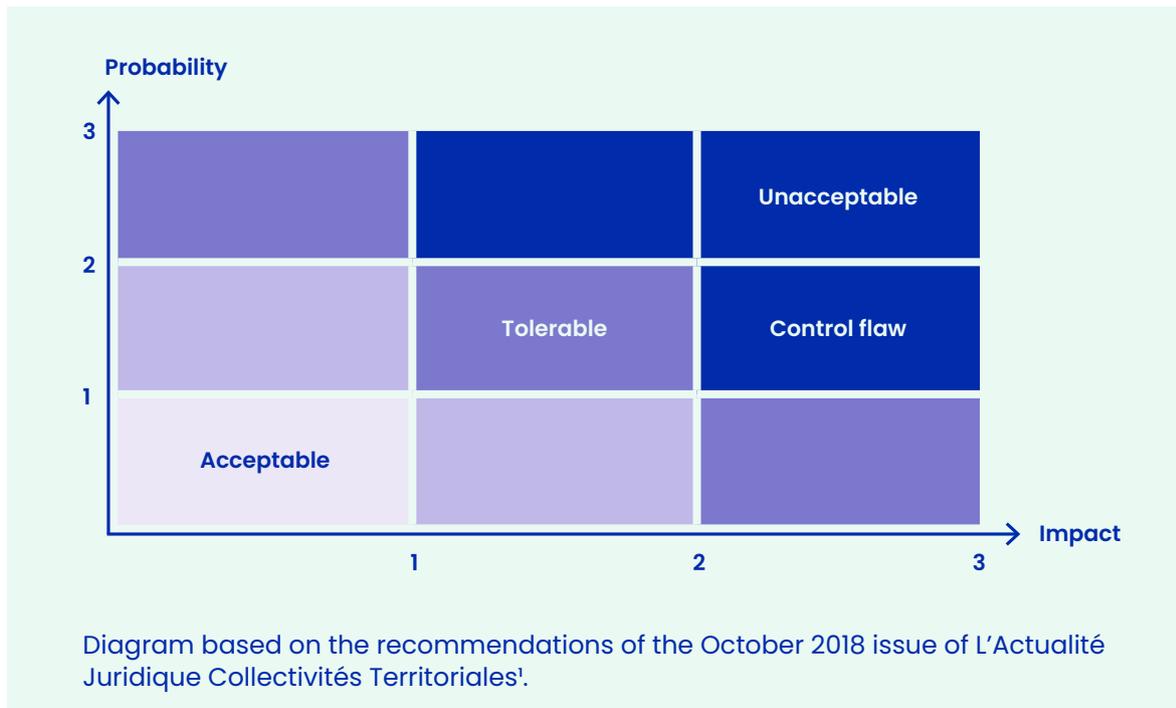
- ✓ Make sure of hierarchical/political support
- ✓ Involve staff in developing the mapping
- ✓ Use available internal and external documentation
- ✓ Carry out interviews and/or disseminate pertinent questionnaires

2. Identify risk factors

- ✓ Identify risks connected with conflicts of interest
- ✓ Identify third parties with whom staff and elected officials are in contact and the nature of their relationships
- ✓ Identify risks connected with combinations of activities

3. Prioritise risk factors

- ✓ Assess risks identified
- ✓ Determine response action priorities
- ✓ Establish an implementation timeframe



1. "La cartographie des risques, outil central de la compliance publique", Samuel Dyens, AJCT 2018. 491.

4. Set a timeframe for updating the mapping

- ✓ Adopt an indicative updating period
- ✓ Adapt the period to events that might have an impact on risks
- ✓ Designate a person responsible for identifying new risks

Sheet 18

Ethical principles

This document is designed to act as a basis for drafting a Code of Ethics, which may be adapted to the specificities of each entity.

A. Definition of the scope of the Code

- entities concerned (body, management, associated bodies);
- individuals concerned (elected officials, corporate officers, staff, temporary employees).

B. Reminder of the ethical obligations

- of dignity, probity, integrity and prevention of conflicts of interest, stemming from Article 1 of Act no.2013-907 of 11 October 2013 on transparency in public life.

C. For elected officials

- reminder of the local elected officials' code defined in Article L. 1111-1-1 of the General Local Authorities Code and provisions on councillors with interests within the meaning of Article L. 2131 11 of the same Code.

D. For public officials

- reminder of the obligations stemming from Chapter IV of Act no.83-634 of 13 July 1983 on the rights and duties of civil servants.

Sheet 19

The Ethics Officer

This document is designed to act as a basis for drafting a Code of Ethics, which may be adapted to the specificities of each entity.

Nota bene for public officials: reminder of the framework defined in Article 28 bis of Act no.83-634 of 13 July 1983 on civil servants' rights and obligations, and Decree no.2017-519 of 10 April 2017 on Ethics Officers in the Civil Service.

A. The Ethics Officer's status

- **Designation procedures:**
 - authority entrusted with appointment
 - nature of instrument of appointment
 - the Ethics Officer's positioning in the organisation
- **Guarantees of independence:**
 - absence of hierarchical instructions in the context of these duties
 - duration of the mandate set beforehand
 - training upon taking up the office
- **Guarantees of confidentiality:**
 - principle of secrecy of exchanges between the requester and the Ethics Officer
 - principle of communication of the Ethics Officer's opinions to the requester alone
 - IT guarantees (encrypted messaging, etc.) and physical guarantees (confidential envelopes, etc.)

B. The Ethics Officer's duties

- **Missions:**
 - collection of alert testimonies bearing on conflicts of interest
 - reception and analysis of declarations of interests and declarations of gifts and invitations
 - interpretation and application of the rules defined by the Code

- advice on ethics to individuals subject to the Code
 - reminder that this competence is exercised without prejudice to that of the High Authority stemming from 3° of Paragraph I of Article 20 of the Law of 11 October 2013 for individuals making declarations to the High Authority.
- periodic training of individuals subject to the Code
- proposals for changes in the Code
- presentation of an activity report

• **Resources:**

- IT and office automation resources
- access to office space or dedicated office
- possibility of requesting assistance from departments

• **Referral methods:**

- email address
- postal address
- telephone number
- reference to the referral form

• **Possible performance of other duties:**

- Alert Officer
- reference to the document defining the report collection procedure
- Secularism Advisor
- Gender Equality Officer.

Sheet 20

Ethical mechanisms and implementation of the Code

This document is designed to act as a basis for drafting a Code of Ethics, which may be adapted to the specificities of each entity.

A. Definition of conflict of interest

- reminder of Article 2 of Act no.2013-907 of 11 October 2013 on transparency in public life
- for public officials: reminder of Article 25 *bis* of Act no.83-634 of 13 July 1983 on the rights and duties of civil servants

B. The declaration of interest

- **Field of the declaration:**
 - individuals subject to a declaration complementing the one provided for by law
 - interests to include: those likely to create a conflict of interest
- **Methods of declaration:**
 - recipient: the Ethics Officer
 - temporality: at recruitment (or adoption of the Code for individuals already employed) and in the event of any significant change in interests
 - duration of conservation of declarations
 - reference to the declaration form

C. Gifts and invitations

- **The obligation to refuse gifts and invitations :**
 - determination of one or more monetary ceilings
 - determination of sensitive periods (contract negotiations and public purchasing procedures)
- **The declaration of gifts and invitations :**
 - recipient: the Ethics Officer
 - reference to the declaration form

D. Use of resources allocated

- **Resources specified**
(hospitality costs, vehicles, telephones, etc.)
- **Principles**
(reimbursement schedules, rules on personal use, etc.)
- **Oversight methods**
(reimbursement upon presentation of invoices, etc.)

E. Implementation

- **Disciplinary consequences of any misconduct**
- **Timeframe and procedure for reviewing the Code**

Sheet 21

Model for referral to the Ethics Officer

REFERRALS TO THE ETHICS OFFICER

"All civil servants have the right to consult an Ethics Officer, tasked with providing them with any advice useful to compliance with ethical obligations and principles [...]. This advisory function is exercised without prejudice to the head of department's responsibility and prerogatives".

(Article 28 bis of Act no.83-634 of 13 July 1983 on the rights and duties of civil servants)

- In compliance with legal and regulatory obligations, Ethics Officers are bound by an obligation of strict confidentiality. They are bound by the rules of professional secrecy and discretion. Your employer will not be informed of your action without express agreement on your part.
- The Ethics Officer's opinions are advisory.
- The Ethics Officer's mission does not include advising staff on their recruitment, career development, execution of their contracts, disciplinary action taken against them, or concerning rules for communication of administrative documents in the context of performance of their duties.

Subject

- A question** concerning my rights and ethical obligations, and in particular (*circle the most appropriate options*): professional secrecy/duty of confidentiality, neutrality/impartiality, dignity/probity/integrity, compliance with the hierarchical principle, secularism.
- Combination** of activities:
 - To work in the public sector (State, public institutions, local authorities)
 - To work in the private sector:
 - As an employee in a non-profit company or association or an EPIC
 - As an autoentrepreneur
 - In order to create or take over a company
 - As an individual entrepreneur or independent home sales representative
 - In a liberal profession
 - As a consultant
 - Other (please specify):

Activity field:

Proposed missions:

Proposed duration:

- Resumption** of an activity in the sector after temporary or definitive departure from the Civil Service
- Prevention** or management of (potential or acknowledged) conflicts of interest
- Obligations** of declaration of assets and/or interests
- Referral** to the Civil Service Ethics Committee
- Management** of financial instruments
- Other** (please specify)

Reasons for your referral

.....

.....

.....

REFERRAL TO THE ETHICS OFFICER (CONTINUED)

Identification

Last name: First name:
Telephone: Email:

Employer

Title:
Town/city:

Status

I am: Tenured Trainee Contract employee under public law Contract employee under private law

Hierarchical category: A+ A B C

Date of taking office/recruitment:

Weekly working time:

Full time

Full time with part-time duties as (indicate percentage):%

Part time (indicate percentage):%

Duties/missions:

My current administrative position

Active On parental leave On sick leave Available On secondment

Signature

I the undersigned hereby certify on my honour that the information provided is accurate.

Done in , on

Complementary documents and information

N.B.: Attach any useful document that might help inform the Ethics Officer on your request or situation. In the event of referral for a combination of activities, please attach the form provided for this purpose.

In order to enable the Ethics Officer to carry out his/her mission successfully, he/she may contact you to arrange a meeting or ask for any further information required for handling your request.

In compliance with the "Data Protection" Act of 6 January 1978 amended; you may exercise your right of access to and rectification of data concerning you, by contacting the Ethics Officer (address on the form).

Dispatch

To return, accompanied by any complementary documents (if required):

- by email to the following address: [Ethics Officer's email address]
- or by post addressed to the Ethics Officer, with the envelope marked "CONFIDENTIAL DO NOT OPEN": [Address]

Information on action to be taken on the referral:

Several points should be specified at the end of this document:

- whether or not an acknowledgement of receipt of the referral has been sent;
- information on the referral's acceptability;
- processing of personal data collected from the form;
- the approximate time it will take to deal with the referral;
- information to the requester on the Ethics Officer's final opinion and recommendations.

Sheet 22

Model for declaration of gifts, invitations and other advantages

DECLARATION OF GIFTS, INVITATIONS AND OTHER ADVANTAGES

[It may be useful here for the Ethics Officer to remind declarants of the current rules adopted by the body with regard to gifts and invitations. Such information may concern the declarative obligation's scope of application (individuals concerned, categories of gifts and advantages, minimum monetary ceiling, etc.); the procedure for processing declarations; publication or not of the list of gifts and advantages declared.]

Nature of the gift or invitation

Description:

Exact or approximate monetary value: €

Date offered (DD/MM/YYYY):

Context:

Accepted Refused Shared

Other remarks:

Giver of the gift or invitation

Last name: First name:

Entity:

Position:

Relationship between the giver and the recipient:

Recipient's identity

Last name: First name:

Position in the entity:

Signature

I the undersigned hereby certify on my honour that the information provided is accurate.

Done in

on

Signature:

Dispatch

To return to:

- by email to the following address: [Email address of the Ethics Officer or any other authority responsible for processing declarations]
- or by post, with the envelope marked "CONFIDENTIAL": [Address]

Sheet 23

Model for complementary declaration of interests

The declaration of interest form is intended for elected officials who are not required by law to declare their interests, and to staff in the same situation whose duties justify submission of a declaration of interest. The declaration must be accurate but need not be exhaustive: only interests strictly necessary to prevention of a conflict of interest within the body need be declared.

By comparison with the declarations submitted to the High Authority, interests that should be declared might concern:

- professional activities which give rise to remuneration or gratuities and which are performed on the date of appointment or over the last five years;
- consulting activities which are performed on the date of appointment or over the last five years;
- involvement in the managing bodies of a public or private organisation or of a company on the date of appointment or over the last five years;
- direct stakes in the capital of a company on the date of appointment;
- professional activities performed on the date of appointment by the spouse, civil union partner or common law spouse;
- volunteer work likely to give rise to a conflict of interest;
- elective duties and offices performed and held on the date of appointment.

This list is not set in stone and other interests may be added to it depending on the risks specific to each entity.

If further information is needed, the declarant may contact the Ethics Officer. It is recommended that this provision is included in the entity's Code of Ethics, along with details on transmission deadlines to which declarants are subject and whether or not information collected is made public.

DECLARATION OF INTEREST

INTEREST TO DECLARE	DESCRIPTION

Personal information

Last name: First name:
 Position:
 Date of appointment or taking office (DD/MM/YYYY):
 Date of eventual renewal (DD/MM/YYYY):
 Work telephone number:
 Work email address:

Signature

I the undersigned hereby certify on my honour that the information provided is accurate.
 Done in
 on
 Signature:

Dispatch

To be returned to the Ethics Officer:
 • by email to the following address: [Email address of the Ethics Officer or any other authority responsible for processing declarations]
 • or by post, with the envelope marked "CONFIDENTIAL": [Address]

Sheet 24

Example of procedure for collection of reports from whistleblowers

The High Authority for Transparency in Public Life has its own internal procedure for collection of whistleblowers' reports; it may be consulted online and is transcribed here as an example.

Pursuant to the provisions of Article 8 of Act no.2016-1691 of 9 December 2016 (the so-called "Sapin II" Act) and Decree no.2017-564 of 19 April 2017 for its implementation, this document establishes the procedure for collection of reports from the High Authority's staff or temporary external employees.

1. Scope of the report collection procedure

For application of this procedure, the whistleblower is a High Authority staff member, temporary employee, service provider or trainee who, in disinterested fashion and good faith, reports facts of which he/she has personal knowledge and which he/she considers constitute:

- a violation of the High Authority's internal rules of procedure;
- a crime or misdemeanour;
- a manifest serious violation of an international commitment regularly ratified or approved by France, of a unilateral act of carried out by an international organisation on the basis of such commitment;
- a manifest serious violation of the law or regulations;
- a serious threat or prejudice to the general interest;

In compliance with this procedure, the whistleblower first of all communicates the report to his/her direct or indirect immediate superior (section manager, head of unit, deputy secretary-general, president, etc.) or to the designated officer.

In the absence of due diligence on the part of the recipient of the alert in verification, within a reasonable time, of the report's acceptability, it may be communicated to the judicial authority or administrative authority. As a last resort, the

report may be made public. The report may also be sent to the Defender of Rights, so that it can direct the whistleblower to the appropriate body for collection of the alert.

The whistleblower may not be subject to direct or indirect disciplinary or discriminatory measures for having made a report in good faith. He/she is not criminally responsible for infringement of a secret protected by law (with the exception of national defence secrecy, medical secrecy, and secrecy of relations between lawyers and their clients), under the conditions set by Article 122-9 of the Criminal Code.

However, anyone making an abusive report is liable to the penalties provided for in Article 226-10 of the Criminal Code bearing on false allegations.

2. Methods of transmission and processing of reports

The report shall take the form of an encrypted email to the recipient's work address. For the exercise of his/her duties, the officer has the following email address: `alerte@hatvp.fr`, configured so as to receive encrypted messages.

The report email shall contain:

- the report issuer's identity, duties and contact details;
- the identity and duties of the individual(s) forming the subject of the report;
- a description of the facts reported;
- any information or document, in any form or medium, supporting the report.

An acknowledgement of receipt is sent within one working day, indicating the foreseeable reasonable period in which the report's acceptability is examined, which may not exceed fifteen days, as well as the means by which its issuer will be informed of action taken on the report.

When the report is not well enough documented to enable him/her to assess its acceptability, its recipient may ask the whistleblower for any complementary documents required. In such cases, the processing time indicated in the acknowledgement of receipt shall run as from reception of such documents.

The recipient of the report shall inform the individuals it refers to within one working day, or, if necessary, following adoption of any protective measures required to prevent destruction of evidence relating to the report.

The recipient of the report shall assess its acceptability and do everything necessary to verify the serious nature of the facts reported. To this effect, he/she may meet with any High Authority staff member. If needed, he/she shall obtain assistance from the Legal and Studies Department or the Ethics Officer. He/she shall keep a record of verification operations.

The recipient shall determine the action to be taken on the report:

- if he/she deems that the report is not acceptable or that the checks carried out establish that the facts reported do not constitute one of the violations concerned by the right to alert, he/she takes no action on the report. If there are factors suggesting that the report was made in interested fashion or bad faith, he/she shall inform the High Authority's Secretary-General, who may take disciplinary action;
- if he/she deems that the facts reported are liable to disciplinary action, he/she refers to the staff member's immediate superior;
- if he/she deems that the facts reported are liable to criminal sanction, he/she also informs the Public Prosecutor, in compliance with Article 40 of the Code of Criminal Procedure. The recipient shall inform the whistleblower and the individuals concerned on action taken on the report.

3. Guarantees of reports' security and confidentiality

The recipient of the report is bound by the obligations of confidentiality provided for in Article 9 of the Act of 9 December 2016. He/she may communicate information relating to the report only if such communication is required for verification or processing of the information reported. Third parties concerned are also bound by the same obligations.

Documents received in digital format relating to the report shall be kept by the recipient in an encrypted space to which he/she alone has access.

The Head of the Information Systems Department shall take all necessary precautions to preserve the security and integrity of data during its collection, transmission and conservation.

The recipient shall keep all paper-format documents relating to the report in the President of the High Authority's safe, to which he/she shall request access in writing.

The identities of the whistleblower and the individuals referred to shall be kept confidential by the recipient. Any factors that might help identify the whistleblower may only be divulged with his/her consent, except to the judicial authority. Any factors that might help identify the individual(s) called into question by a report may only be divulged once the seriousness of the alert has been established, except to the judicial authority.

Data relating to the report shall be destroyed by the recipient:

- immediately, if, upon reception of the report, the recipient considers that it does not fall within the scope of the system;
- two months after completion of all acceptability and verification operations, if no action is taken on the report;
- at the end of the disciplinary or legal proceedings when such actions are undertaken against the individual(s) called into question or the author of an abusive alert.

Sheet 25

The High Authority for Transparency in Public Life

For ethics-related cases, the first interlocutors are the immediate superior and the Ethics Officer.

1. Presentation

The High Authority for Transparency in Public Life is an independent administrative authority created by the Acts of 11 October 2013¹ bearing on transparency in public life. It replaces the Commission for Financial Transparency in Political Life, set up in 1988.

The President of the High Authority is appointed by the President of the Republic following opinions from the two Chambers' Law Commissions. The post has been occupied by Jean-Louis Nadal since 2013. In addition to its President, the High Authority's Board is made up of eight members. Six of them are from the State's highest courts and are elected by their peers, with one of the two other external members being elected by the President of the National Assembly and the other by the President of the Senate. All of the High Authority's members have a non-renewable, non-revocable six-year term of office.

Among other things, the High Authority for Transparency in Public Life is responsible for promoting transparency and disseminating a culture of integrity in the public sphere.

2. Missions

The High Authority fulfils several missions:

- prevention of breaches of probity, in particular through checking declarations of assets and declarations of interest submitted by public officials, and of management of financial instruments;

1. Organic Law no.2013-906 and Act no.2013-907 of 11 October 2013 on transparency in public life

- Control of “pantouflage” (i.e. public-to-private sector crossover) on the part of former members of the Government, presidents of local executive bodies and members of administrative or independent public authorities at the end of their terms of office (3 years);
- provision of advice on ethics;
- supervision of lobbying, with management of the register of lobbyists.

The High Authority publishes an annual activity report in which it takes stock of its action and makes proposals intended to reinforce the public sphere’s integrity framework.

3. Field of intervention

2. The complete list is available in Article 11 of Act no.2013-907 of 11 October 2013

Over 15,800 French public officials² are subject to the obligation of declaration of assets and interest to the High Authority, including:

- members of the Government;
- certain elected public managers: MPs and senators, French representatives at the European Parliament, and members of major local executive bodies;
- certain non-elected public managers, including ministerial advisors, members of the President of the Republic’s staff, Presidents of the Senate and National Assembly, members of administrative and independent public authorities, individuals occupying positions at the Government’s decision, senior civil servants, directors of public companies, presidents of sports federations, and members of the Higher Council of the Judiciary.

In addition, since 2016, the High Authority has been responsible for maintaining a common digital register of lobbyists. In January 2019, 1,760 lobbyists were registered, for over 6,500 declared activities.

4. Referrals

Optional referrals with a view to obtaining advice on ethics

In addition to checking declarations of assets and interests, the High Authority can deliver advice on ethics:

- to public officials subject to declaration of assets and/or interests: such declarants may request the High Authority’s advice on any ethical question encountered in the performance of their office or duties. Such advice is confidential and contains personalised recommendations;
- to institutions, when their directors fall within the scope of laws bearing on transparency in public life. Such requests

generally concern implementation of an Ethics Charter or Code of Ethics.

The High Authority may be referred to by letter addressed to the President of the High Authority at 98/102 rue de Richelieu, CS 80202, 75082 PARIS CEDEX, or by email to secretariat.hatvp@hatvp.fr.

Compulsory referral for control of exercise of an activity in the private sector

Prior to taking up an activity in the private sector within three years after their public responsibilities have come to an end, members of the Government, presidents of local executive bodies and members of administrative or independent public authorities³ must refer to the High Authority, which will check the private sector activity's compatibility with their previous public duties.

A double check is carried out:

- a preventive “criminal” check, subject to the criminal court’s assessment, in order to avoid any risk of illegal acquisition of an interest⁴;
- an ethical check, in order to verify that the requirement of prevention of conflicts of interest is not disregarded and that the activity in question does not violate the dignity, probity and integrity of previous functions.

The referral to the High Authority may be addressed to the President of the High Authority, either by email to secretariat.president@hatvp.fr, or by post to 98/102 rue de Richelieu, CS 80202, 75082 PARIS CEDEX, specifying:

- the nature of duties previously exercised and which justify a request for opinion pursuant to the abovementioned Article 23;
- the nature of the activity/activities envisaged when these duties are no longer exercised;
- any information likely to facilitate examination of the request.

5. Powers and means of action

The High Authority has investigative resources available for its control missions, including the assistance of the tax authorities, which are not bound by professional secrecy in its regard.

The High Authority also works in cooperation with the Civil Service Ethics Committee (see below) in order to facilitate exchange of information required for accomplishment of their respective missions.

3. List of public managers concerned specified in Article 23 I of Act no.2013-907 of 11 October 2013 on transparency in public life

4. Article 432-13 of the Criminal Code

Sheet 26

The Civil Service's Ethics Committee

For ethics-related cases, the first interlocutors are the immediate superior and the Ethics Officer.

The Ethics Committee is set to undergo reform and its missions are likely to evolve in the near future. The draft legislation on transformation of the Civil Service, presented while this guide was being composed, introduces several new provisions. In particular, it reinforces the Ethics Officer's role as front-line interlocutor. If the Bill is adopted, the following measures will come into force.

- Public officials henceforth subject to the ethic's officer's oversight will be those who occupy positions whose hierarchical level or nature of duties justify it, and who set out to create or take over a business or who leave the public sector for the private sector either definitively or temporarily.
- The administration will have to refer to the Ethics Committee when staff, civil servants or contract employees who have exercised an activity in the private sector over the course of the last three years take up or return to a job as director of State central administration or public institution.
- In the event of a Civil Service staff member's definitive or temporary departure to the private sector, the Commission may rule on the compatibility between the duties exercised and the planned activity, following referral by the hierarchical authority, only in cases where the Ethics Officer initially referred to was unable to reach a decision due to serious doubt.

1. Presentation

The Civil Service Ethics Committee is an institution under the aegis of the Prime Minister, created by Act no.93-122 of 29 January 1993 bearing on prevention of corruption, and transparency in economic life and public procedures. The Commission is common to all three branches of the Civil Service.

It is made up of 14 members, all appointed for a three-year term renewable once. Since 2017, it has been chaired by Roland Peylet.

The Civil Service Ethics Committee is responsible for assessing compliance with the ethical principles inherent to the exercise of a public office and to departure to the private sector.

2. Missions

The Ethics Committee may be required to deliver opinions or make recommendations, in particular on draft codes and individual situations.

The Ethics Committee aims to prevent any conflict of interest and illegal acquisition of interest. Nor may the exercise of an activity, whether actual or potential, compromise or call into question the service's normal operation, independence or neutrality, or disregard the ethical principles inherent to the Civil Service.

It must be obligatorily referred to in the event of any civil servant or non-tenured staff member (by staff members themselves or their governing authorities) involved in one of the following situations:

- a departure from the Civil Service, whether definitive (retirement or resignation) or temporary (availability or secondment) in order to exercise any lucrative activity, salaried or otherwise, in a private company or a body governed by private law, or any liberal profession (commonly known as “pantouflage”). On such occasions, the Committee examines the new activity's compatibility with the duties exercised over the course of the previous three years;
- a combination of activities, i.e. the exercise of a private activity alongside his/her public duties;
- a project for creation or takeover of a part-time business;
- participation, as a researcher, in creation of a company to valorise his/her research, or in the activities of existing companies.

In the absence of any prior referral by the civil servant concerned, the Chair of the Committee may look into the case on his own initiative, within three months as from the individual's recruitment or creation of the private company or body.

3. Powers and means of action

The Civil Service Ethics Committee may:

- request the civil servant and/or the authority he/she is (or was) governed by to provide any documents required for examination of the referral;
- collect any information necessary to the accomplishment of its mission from all public and private parties concerned;
- interview or consult any person whose assistance it deems useful.

Following the referral, the Committee delivers an opinion within two months, which may be:

- an opinion of compatibility (with possible reservations);
- an opinion of incompatibility;
- an opinion of incompetence, unacceptability or no need to adjudicate, as the case may be.

In the event of noncompliance, the civil servant may be subject to disciplinary action by his/her hierarchical authority. Retired civil servants may be subject to up to 20% deductions from their pensions during the three years following their departure. Contract employees risk having their contracts terminated without notice and without compensation.

Sheet 27

The Defender of Rights

For ethics-related cases, the first interlocutors are the immediate superior and the Ethics Officer.

1. Presentation and missions

The Defender of Rights is an independent administrative authority, inscribed in the Constitution since 2008 and instituted in 2011.

The Defender of Rights is appointed by the President of France for a non-renewable, non-revocable period of six years. Since 2014, the post has been held by Jacques Toubon.

The Defender of Rights is responsible for ensuring the protection of rights and freedoms and promoting equality.

The Defender of Rights is entrusted with 5 major missions¹:

- defending the rights and freedoms of users in their relations with central and local government, public establishments and organisations providing a public service;
- defending and promoting the overriding interests and rights of the child;
- combating direct and indirect discrimination and promoting equality;
- supervising observance of ethics by security forces in France;
- directing to the competent authorities any individual reporting an infringement under the conditions set by law, and ensuring respect for such individual's rights and freedoms.

1. Assigned by Organic Law no.2011-333 of 29 March 2011 bearing on the Defender of Rights.

2. An actor in the field of ethics: orientation and protection of whistleblowers

Organic Law no.2016-1690 of 9 December 2016 assigned a new competence to the Defender of Rights, entrusting it with the task of directing to the competent authorities any individual reporting an infringement under the conditions set by law, and for ensuring respect for such individual's rights and freedoms.

It should be borne in mind that the Defender of Rights does not process the alert itself – i.e. it does not carry out checks in order to ascertain or put an end to the reported malfunctions. It lends its support to whistleblowers in their referral to the appropriate body or authority, while protecting them, if necessary, against any retaliatory or reprisal measures taken against them.

A guide designed to orientate whistleblowers and remind them of the protection system in force is also available on the Defender of Rights' website.

In order to guarantee confidentiality of exchanges, whistleblowers may only refer to the Defender of Rights by post, under double cover. The outer envelope contains a sealed inner envelope marked "Alert report (and date of dispatch)". An acknowledgement of receipt is sent containing an identification number that will then be used for all exchanges with the Defender of Rights.

Appendix

Legal References

The legal references presented here are intended to help understanding of the ethics guide. Articles are sometimes abridged, with only their most relevant passages reproduced.

1. Laws

Act no.83-634 of 13 July 1983 bearing on civil servants' rights and obligations, the so-called "Le Pors" Law

Article 6 ter A: "In the event of a conflict of interest, a civil servant must have alerted one of his or her immediate superiors beforehand without avail. He may also testify to such facts before the Ethics Officer".

Articles 25 to 28: Ethical obligations and principles

Article 25: "Civil servants shall fulfil their duties with dignity, impartiality, integrity and probity. In the fulfilment of such duties, they are bound by the obligation of neutrality.

Civil servants shall fulfil their duties in compliance with the principle of secularism. In this respect, in fulfilment of their duties, they shall refrain from expressing their religious opinions.

Civil servants shall treat all persons equally and respect their freedom of conscience and their dignity.

Heads of department shall ensure that these principles are upheld in the departments under their authority. Heads of department may, after consulting employee representatives, devise a set of department-specific ethical principles that apply to all officials under their authority."

Article 25 bis: "Civil servants shall take care to put an immediate stop to or prevent situations of conflict of interest in which they find or might find themselves".

Article 25 ter: "Appointment to one of the jobs whose hierarchical level or nature of duties justifies it, included in a list established by Council of State Decree, is conditional on the civil servant's prior transmission of an exhaustive, accurate and sincere declaration of his/her interests to the authority vested with power of appointment.

Upon the civil servant's appointment to one of the jobs defined in the first subparagraph of the present Paragraph I, the authority vested with power of appointment shall transmit the declaration of interest produced by the civil servant to the hierarchical authority he/she reports to in fulfilment of his/her new duties.

II.- When the hierarchical authority observes that the civil servant is in a conflict of interest situation, within the meaning of Paragraph I of Article 25 bis, it shall take the measures required to put an end to it or enjoin the civil servant to bring an end to such situation within a set time limit.

When the hierarchical authority does not deem itself able to assess whether the civil servant is in a conflict of interest situation, it shall transmit the interested party's declaration of interest to the High Authority for Transparency in Public Life".

Article 25 quater: "I. Civil servants exercising economic or financial responsibilities and whose hierarchical level or the nature of whose functions justifies it are obliged, within the two months following such appointment, to take all the necessary measures to ensure that their financial instruments are managed, throughout the duration of their functions, under conditions excluding any right of inspection.

Civil servants shall justify all measures taken before the High Authority for Transparency in Public Life.

Documents produced pursuant to the present Paragraph I are not included in civil servants' files or communicable to third parties".

Article 28 bis: "All civil servants have the right to consult an Ethics Officer, tasked with providing them with any advice useful to compliance with ethical obligations and principles [...] Such advisory function is exercised without prejudice to the head of department's responsibility and prerogatives".

[Act no.84-53 of 26 January 1984 bearing on statutory provisions relating to the territorial Civil Service](#)

Article 23: "Management centres shall carry out the following missions for their staff, including those mentioned in Article 97, and all staff belonging to affiliated regional and local authorities and public institutions: [...] statutory legal assistance including for the function of Ethics Officer provided for in Article 28 bis of Act no.83-634 of 13 July 1983 bearing on civil servants' rights and obligations".

[Act no.90-1067 of 28 November 1990 bearing on the territorial Civil Service and amending certain Articles in the Municipalities Code](#)

Article 21: "Regional and local authorities' and their public institutions' deliberating bodies shall define the list of jobs for which official accommodation may be provided free of charge or for a fee by the authority or public institution concerned, due in particular to constraints connected with the performance of such jobs.

[...]

Their decisions shall specify any ancillary benefits connected with use of such accommodation.

Individual decisions shall be taken in application of deliberating bodies' decisions, by the territorial authority vested with power of appointment.

In application of the above provisions, official accommodation and a vehicle may be allocated if absolutely necessary to staff occupying one of the functional jobs [...]. Under the same conditions, official accommodation or a vehicle may be allocated if absolutely necessary to a job carried out by a member of the Office of a President of a General or Regional Council, Mayor or President of an EPCI with its own tax system and over 80,000 inhabitants. The hospitality costs inherent to their functions are set by decision of the deliberating body".

[Act no.2013-907 dated 11 October 2013 on transparency in public life](#)

Article 1: "The members of Government, persons who hold a local elective public office and persons entrusted with a public service assignment shall perform their duties with dignity, probity and integrity and shall ensure that they prevent or immediately put an end to any and all conflicts of interest. The members of independent administrative authorities and independent public authorities shall also carry out their duties impartially".

Article 2: "I- A conflict of interest is any situation that causes interference between a public interest and public or private interests, which is likely to influence or appear to influence the independent, impartial and objective performance of a duty.

When they consider that they find themselves in such a situation:

1° The members of the boards of independent administrative authorities or of independent public authorities shall refrain from sitting, or, where necessary, from deliberating on said boards. The persons who exercise specific powers within these authorities shall be replaced in accordance with the operating rules applicable to said authorities;

2° Subject to the exceptions provided for in paragraph two of Article 432-12 of the French Criminal Code, the persons who hold local executive offices shall be replaced by their delegatee, to whom they shall refrain from giving instructions;

3° Persons entrusted with a public service mission who have been granted a signing authority shall refrain from using such an authority;

4° Persons entrusted with a public service mission and placed under the authority of an immediate superior shall refer the matter to said superior; the latter, following referral or at his/her own initiative, shall submit, where appropriate, the preparation and drafting of the decision to another person under his/her line authority”.

Article 18-5: “Lobbyists shall perform their activities with probity and integrity”.

Article 20: The High Authority shall “respond to the requests for opinions made by persons referred to in 1° of this Paragraph I on matters relating to ethics that they may encounter in the exercise of their office or the performance of their duties. These opinions, as well as the documents on the basis of which they are delivered, shall not be made public”.

[Act no.2015-366 of 31 March 2015 aiming to facilitate local elected officials’ exercise of their mandates](#)

[Act no.2016-483 of 20 April 2016 bearing on civil servants’ ethics, rights and obligations](#)

[Act no.216-1691 of 9 December 2016 bearing on transparency, the fight against corruption, and modernisation of economic life, the so-called “Sapin II” Law](#)

Article 6: “A whistleblower is a natural person who reveals or reports, in disinterested fashion and in good faith, a crime or offence, a manifest serious violation of an international commitment regularly ratified or approved by France, of a unilateral act carried out by an international organisation on the basis of such commitment, of the law or regulations, or a serious threat or prejudice to the general interest, of which he or she has personal knowledge. [...]”.

Article 8: “I. – The report of an alert shall be brought to the knowledge of the direct or

indirect immediate superior, employer, or officer designated by him/her.

In the absence of due diligence on the part of the recipient of the alert mentioned in the first subparagraph of the present Paragraph I, in verification, within a reasonable time, of the report’s acceptability, it shall be communicated to the judicial authority, administrative authority or professional bodies.

As a last resort, failing its processing within three months by one of the bodies mentioned in the second subparagraph of the present Paragraph I, the report may be made public.

II. – In the event of serious and imminent danger or of a risk of irreversible damage, the report may be brought directly to the knowledge of the bodies mentioned in the second subparagraph of Paragraph I. It may be made public.

III. – Appropriate procedures for collection of reports from members of their personnel or occasional external staff shall be established by legal entities under public or private law with at least fifty employees, State administrations, municipalities with over 10,000 inhabitants, and the EPCIs with their own tax system of which they are members, *départements* and regions [...].

IV. – Any individual may send their report to the Defender of Rights in order to be directed to the appropriate body for collection of the alert”.

Article 17-I: “I. – Presidents, managing directors and management staff of a company with at least five hundred employees, or belonging to a group of companies whose parent company has its head office in France and which has at least five hundred employees, and whose consolidated turnover is in excess of 100 million euros, are obliged to take measures designed to prevent and detect commission, in France or abroad, of acts of corruption or influence trafficking, in accordance with the modalities provided for in Paragraph II.

This obligation is also incumbent upon:

1° Presidents and managing directors of public industrial and commercial undertakings with at least five hundred employees or belonging to a public group with at least five hundred employees, and whose turnover or consolidated turnover is in excess of 100 million euros;

2° According to the powers they exercise, directors of limited liability companies governed by Article L. 225-57 of the Commercial Code and with at least five hundred employees, or belonging to a group of companies with a workforce of at least five hundred employees, and whose turnover or consolidated turnover is in excess of 100 million euros.

When a company prepares consolidated accounts, the obligations defined in the present Article bear on the company itself as well as on all its subsidiaries within the meaning of Article L. 233-1 of the Commercial Code, and on the companies in which it has a controlling interest within the meaning of Article L. 233-3 of the same Code. Subsidiaries or controlled companies exceeding the thresholds mentioned in the present Paragraph I are assumed to have fulfilled the obligations provided for in the present Article if the company controlling them within the sense of the same Article L. 233-3 have implemented the measures and procedures provided for in Paragraph II of the present Article and if such measures and procedures apply to all subsidiaries and companies it controls”.

2. Decrees

[Decree no.91-1197 of 27 November 1991 organising the profession of lawyer](#)

[Decree no.2001-654 of 19 July 2001 setting the conditions and modes of settlement of travel expenses incurred by staff of local authorities and public institutions referred to in Article 2 of Act no.84-53 of 26 January 1984 amended, bearing on statutory provisions relating to the territorial Civil Service and revoking Decree no.91-573 of 19 June 1991](#)

[Decree no.2005-235 of 14 March 2005 relating to reimbursement of costs incurred by local elected officials and amending the General Code of Territorial Authorities](#)

[Decree no.2006-781 of 3 July 2006 setting the conditions and modes of settlement of travel expenses incurred by civilian staff employed by the State](#)

[Decree no.2014-90 of 31 January 2014 implementing Article 2 of Act no.2013-0907 of 11 October 2013 on transparency in public life](#)

Article 1: “When a member of the Board other than the Chairperson deems that their participation in a deliberation would put them in a conflict of interest situation, they shall inform the Chairperson in writing as soon as they become aware of such situation, or, at the latest, at the start of the meeting at which the matter in question is to be deliberated.

The Chairperson shall immediately inform the Board’s other members of conflicts of interest he/she has knowledge of, pursuant to the first subparagraph, and anyone else concerned”.

Article 2: “The member of the Board who decides to abstain may not take part in a meeting or deliver any opinion relating to the deliberation in question”.

Article 5: “The present Article is applicable to Presidents of Regional Councils, the President of the Executive Council of Corsica, the President of the Assembly of French Guiana, the President the Executive Council of Martinique, Presidents of General Councils, elected Presidents of French Overseas local authorities’ executive bodies, Mayors, and Presidents of EPCIs with their own tax systems.

When they deem that they are in a conflict of interest situation, whether by reason of their own powers or by delegation by the deliberating body, individuals cited in the previous subparagraph shall issue an Order outlining the content of questions on which they consider themselves unable to exercise their competences and, under the conditions provided for by law, designate the person tasked with replacing them”.

Article 7: “Persons entrusted with a public service mission, with the exception of those listed in Chapters I and II of the present Decree, when they deem themselves to be in a conflict of interest situation:

1° If they have been delegated signature authority, shall inform the delegator in writing without delay, specifying the content of

questions on which they consider themselves unable to exercise their competences. They shall refrain from giving instructions bearing on such questions to the persons placed under their authority;

2° If they are placed under the authority of an immediate superior, shall inform him/her without delay in writing, specifying the content of questions on which on which they consider themselves unable to exercise their competences. When the superior deems that the matter should be handled by another person under his/her authority, the person removed from the case shall take no part in any meeting or deliver any opinion relating to the questions concerned”.

Decree no.2014-747 of 1 July 2014 bearing on management of financial instruments held by members of the Government and presidents and members of independent administrative authorities and of independent public authorities active in the economic sphere.

[Decree no.2016-1967 of 28 December 2016 bearing on the obligation to transmit a declaration of interest provided for in Article 25 ter of Act no.83-634 of 13 July 1983 on civil servants' rights and obligations](#)

Article 5: “Individuals performing the function of Ethics Officer provided for in Article 28 bis of the Law of 13 July 1983 are also subject to the obligation of declaration”.

Article 7: “The declaration of interest shall include the following items [...]. Any substantial modification in interests shall form the subject of a complementary declaration updating the declaration referred to in the first subparagraph and indicating the nature and date of the event that led to the modification”.

[Decree no.2017-519 of 10 April 2017 bearing on Ethics Officers in the Civil Service](#)

Article 2: “Ethics Officers are designated for a period decided on by one of the heads of department referred to in Article 25 of the abovementioned Act of 13 July 1983 and which may only be modified with their express

agreement. At the end of the period, their mission may be renewed under the same conditions”.

Article 3: “With the exception of qualified individuals from outside the Civil Service, the Ethics Officers referred to in Article 2 shall be selected from among judges and civil servants, whether in active employment or retired, or from among contract staff under permanent contract”.

Article 4: “Ethics Officers designated must be of sufficiently high level to enable effective exercise of their missions.

Several heads of department may designate a single Ethics Officer for public officials under their respective authority. An Order from the competent ministry or territorial authority may also designate a single Ethics Officer for departments under its authority and public institutions under its supervision.

In State administrations and public institutions, the Ethics Officer is designated by the head of department from within or outside their department.

In public bodies under the abovementioned Act of 26 January 1984, he/she is designated by the territorial authority, with the exception of regional and local authorities and public institutions obligatorily or voluntarily affiliated to a management centre, in which case he/she is designated by the President of the management centre.

In the establishments mentioned in Article 2 of the abovementioned Act of 9 January 1986, he/she is designated by the authority vested with power of appointment”.

Article 5: “Heads of department shall bring the decision on designation of the Ethics Officer, as well as the required information on how to get in contact with him/her, to the knowledge of staff under their authority, by all available means”.

Article 6: “Heads of department shall make available to the Ethics Officer they designate in accordance with the procedures provides for

in Article 4 the material resources, IT resources in particular, enabling effective performance of missions”.

Article 7: “The Ethics Officer is bound by professional secrecy and discretion [...]”.

Article 8: “When facts likely to qualify as a conflict of interest are reported to them on the basis of Article 6 ter A of the abovementioned Act of 13 July 1983, Ethics Officers shall, as necessary, provide the individuals concerned with advice likely to bring the conflict to an end”.

[Decree no.2017-547 of 13 April 2017 bearing on management of financial instruments held by civil servants and staff occupying certain civilian jobs](#)

[Decree no.2017-564 of 19 April 2017 bearing on procedures for collection of reports from whistleblowers within legal entities under public or private law and State administrations](#)

Article 4: “In the bodies mentioned in Article 2 of the abovementioned Act no.84-16 of 11 January 1984, in the first subparagraph of Article 2 of the abovementioned Act of 26 January 1984 and in Article 2 of the abovementioned Act no.86-33 of 9 January 1986, the Ethics Officer mentioned in Article 28 bis of the abovementioned Act of 13 July 1983 may also be designated to carry out the advisory missions referred to in Paragraph I. The Ethics Officer provided for in Article L. 4122-10 of the Defence Code may also be designated to carry out the advisory missions referred to in Paragraph I”.

[Decree no.2018-63 of 2 February 2018 bearing on the obligations of transmission of declarations of interests and assets provided for in Articles L. 4122-6 and L. 4122-8 of the Defence Code](#)

3. Orders

Order of 3 July 2006 setting the rate for mission allowances provided for in Article 3 of Decree no.2006-781 of 3 July 2006 setting the conditions and modes of settlement of travel expenses incurred by State civilian employees

Order of 26 August 2008 amending the Order of 3 July 2006 setting rates for mileage allowances provided for in Article 10 of Decree no.2006-781 of 3 July 2006 setting the conditions and modes of settlement of travel expenses incurred by State employees

Order of 5 January 2007 setting the maximum of the flat-rate allowance provided for in Article 14 of Decree no.2001-654 of 19 July 2001 setting the conditions and modes of settlement of travel expenses incurred by staff at the local authorities and public institutions referred to in Article 2 of Act no.84-53 of 26 January 1984 amended laying down statutory provisions bearing on the territorial Civil Service and revoking Decree no.91-573 of 19 June 1991

Ministry for the Armed Forces, Order of 9 October 2017 bearing on the network of Ethics Officers provided for in Article L. 4122-10 of the Defence Code

Ministry for the Armed Forces, Order of 23 August 2018 bearing on the procedure for collection of alert reports at the Ministry for the Armed Forces, taken pursuant to Paragraph III of Article 8 and Paragraph I of Article 15 of Act no.2016-1691 of 9 December 2016 bearing on transparency, the fight against corruption, and modernisation of economic life

4. Circulars

Minister for the Civil Service, Circular of 15 March 2017 bearing on compliance with the principle of secularism in the Civil Service.

5. Codes

[General Local Authorities Code](#)

Article L. 1111-1-1: Charter for Local Elected Officials

“Local elected officials are members of councils elected by universal suffrage to freely administer regional and local authorities under the conditions provided for by law. They exercise their mandates in compliance with the ethical principles enshrined in this Charter for Local Elected Officials.

Charter for Local Elected Officials

1. Local elected officials perform their duties with impartiality, diligence, dignity, probity and integrity.
2. In the exercise of their mandates, local elected officials pursue the general interest alone, to the exclusion of any direct or indirect personal interest, or any other special interest.
3. Local elected officials ensure that any conflict of interest is prevented or put a stop to. When their personal interests are in question in matters submitted to the deliberating body of which they are members, local elected officials undertake to make them known prior to the debate and vote.
4. Local elected officials undertake not to use the resources and means made available to them for fulfilment of their duties or functions for other purposes.
5. In the fulfilment of their duties, local elected officials refrain from taking measures that provide them with personal or professional benefits after their mandates and duties have come to an end.
6. Local elected officials take regular part in meetings of the deliberating bodies to which they are designated.
7. Elected by universal suffrage, local elected officials are and remain accountable for their actions throughout the duration of their mandates, before all of their territorial authorities' citizens, to whom they account for acts carried out and decisions taken in the context of their missions".

Article L. 2131-11: "Decisions in which one or more Council members with interests in the matter they are taken on, either in their own name or as a proxy, are illegal".

Labour Code

Article L. 1121-1: "No one may impose restrictions on people's rights and on individual and collective freedoms that are not justified by the nature of the task to be performed or proportionate to the intended purpose".

Code governing relations between the public and the government departments

Articles R. 312-3: "The administrative documents cited in the first subparagraph of Article L. 312-2, emanating from the State's central administrations, are, subject to the provisions of Articles L. 311-5 and L. 311-6, published in bulletins with at least quarterly periodicity and including the wording "Official Bulletin" in their titles.

For each administration, Ministerial Orders determine the exact title of the bulletin(s) concerning it, the scope of their content and the place or website where the public may consult them or procure a copy".

Article R. 312-4: "The instructions and circulars cited in the first subparagraph of Article L. 312-2, emanating from the State's administrative authorities working within *départements*, are published in the compilation of each *département's* administrative documents issued at least four times a year. Such publication may be by electronic means. Those of such documents that emanate from authorities whose competence extends beyond the limits of a single *département* are published in the compilations of administrative documents issued by each of the *départements* concerned".

Article R. 312-5: "The instructions and circulars cited in the first subparagraph of Article L. 312-2, which emanate municipalities, *départements*, regions or Corsica's territorial authority, are published as their executive authorities decide:
1° Either by inclusion in an official bulletin issued at least once a quarter;
2° Or by transcription within three months in a register made available to the public.
Such publication may be by electronic means. Mayors, presidents of *départemental* councils, presidents of regional councils, and the president of the executive council of Corsica's territorial authority shall inform the Prefect concerned of the form of publication adopted".

Article R. 312-6: "The instructions and circulars cited in the first subparagraph of Article L. 312-2, which emanate from public institutions, other persons under public law and persons under

private law responsible for management of a public service, are published as their board of directors decides:

1° Either by inclusion in an official bulletin issued at least once a quarter;

2° Or by transcription within three months in a register made available to the public.

Such publication may be by electronic means”.

Criminal Procedure Code

Article 40: “Any established authority, public official or civil servant who, in the exercise of their duties, learns of a crime or offence, is required to inform the Department of Public Prosecution thereof without delay and to transmit to the Department any information, reports or documents relating thereto”.

Criminal Code

Article 432-11: “The direct or indirect request or acceptance without right and at any time of offers, promises, donations, gifts or advantages of whatever kind for himself or for another person, when done by a person holding public authority or discharging a public service mission, or by a person holding a public electoral mandate, is punished by ten years' imprisonment and a fine of €150,000, where it is committed:

1° to carry out or refrain from carrying out an act relating to their office, duty, or mandate, or facilitated by their office, duty or mandate; 2° or to abuse their real or alleged influence with a view to obtaining from any public body or administration any distinction, employment, contract or any other favourable decision”.

Article 432-12: The taking, receiving or keeping of any interest in a business or business operation, either directly or indirectly, by a person holding public authority or discharging a public service mission, or by a person holding a public electoral mandate who at the time in question has the duty of ensuring, in whole or in part, its supervision, management, liquidation or payment, is punished by five years' imprisonment and a fine of €500,000, the total of which may be brought to the double of the proceeds derived from the offence”.

Article 432-14: “An offence punished by two years' imprisonment and a fine of €30,000 is committed by any person holding public authority or discharging a public service mission or holding a public electoral mandate or acting as a representative, administrator or agent of the State, territorial bodies, public corporations, mixed economy companies of national interest discharging a public service mission and local mixed economy companies, or any person acting on behalf of any of the abovementioned bodies, who obtains or attempts to obtain for others an unjustified advantage by an act breaching the statutory or regulatory provisions designed to ensure freedom of access and equality for candidates in respect of tenders for public service and delegated public services”.

Article 432-15: “The destruction, misappropriation or purloining of a document or security, of private or public funds, papers, documents or securities representing such funds, or of any other object entrusted to him, committed by person holding public authority or discharging a public service mission, a public accountant, a public depository or any of his subordinates, is punished by ten years' imprisonment and a fine of €150,000”.

Code of Ethics for Members of Parliament

Article 5: “MPs have the duty of making known any personal interest that might interfere with their public action and taking all necessary measures to resolve such conflict of interest to the benefit of the general interest alone”.

General Tax Code

Appendix 2, Article 206-IV-3°: “The coefficient of admission is null in the following cases: [...] When the good is provided without remuneration or for remuneration substantially lower than its normal price, in particular as commission salary, gratuity, discount, rebate or gift, whatever the recipient's position or form of distribution, except when the goods concerned are of very low value. An Order from the Minister responsible for the budget shall set their maximum value”.

6. Decisions by the High Authority for Transparency in Public Life

Decision no.2016-141 of 14 December 2016

relating to a request for an opinion from the president of a *départemental* council (available in an appendix of the High Authority's 2016 activity report)

Decision no.2017-11 of 8 February 2017 relating to Paris Habitat's draft Code of Ethics

7. Internal rules of procedure of the High Authority for Transparency in Public Life

Article 13: "Members, rapporteurs and staff shall not accept any gift or invitation from a declarant, with the exception of official gifts and invitations. They shall not accept any gift or invitation, of whatever origin, which they consider likely to put them in a conflict of interest situation".

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A longstanding requirement, public actors' ethics have been updated by several recent laws, including the Acts of 11 October 2013 bearing on transparency in public life and the Act of 20 April 2016 bearing on ethics and civil servants' rights and obligations. This latter law provides civil servants and public officials with a new right, that of requesting advice from an Ethics Officer.

Since 2014, the High Authority for Transparency in Public Life has focused on disseminating a culture of integrity. Publication of this practical guide is a concrete expression of its wish to share its expertise in the field of ethics.

This work aims to assist public officials and Ethics Officers in ethical management of their institutions and modernisation of their ethical instruments. Consequently it provides advice and recommendations enabling application of real "ethical knowhow".

Divided into sheets and practical tools, a range of subjects is covered, including carrying out risk mapping, adoption of a Code of Ethics, institution of an Ethics Officer, implementation of mechanisms for prevention of conflicts of interest, and best use of material and financial resources made available to elected officials and staff.

This guide is also intended for members of local executive bodies who wish to introduce a Code of Ethics, as well as heads of department who need to designate an Ethics Officer, and, of course, Ethics Officers themselves.

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