



## Public consultation on the OECD draft Recommendation on Public Integrity **Comments by PSI and TUAC**

24 March 2016

### **Table of contents**

Whole-of-society culture of integrity .....	1
Scope of the recommendation .....	2
Whistle-blower protection.....	2
A workplace environment that is conducive to employee protection.....	3
Annex: Marked-up proposal of the text .....	4

1. The Trade Union Advisory Committee to the OECD (TUAC) and the Public Services International (PSI) welcome the opportunity to comment on a proposal of review of the 1998 OECD Recommendation on Improving Ethical Conduct in the Public Service, which is up for public consultation<sup>1</sup>.

2. The TUAC and the PSI support the OECD work on public integrity. In our joint statement to the OECD Public Governance Ministerial Meeting in October 2015, Helsinki, Finland, we called upon the OECD to devise “a people-centred approach to public governance of inclusive growth”, including by “ensuring transparent and accountable policy processes within government, with parliamentary bodies and commit to the highest public integrity standards, including better whistle-blower protections within public administrations”<sup>2</sup>. Public integrity is essential to support public trust in government. Better whistle-blower protections within public administrations will assist in increasing public trust and stamping out corruption. PSI has been working on its anti-corruption campaign for many years now and has developed strong policy objectives in this regard

3. We welcome the OECD Draft Recommendation on Public Integrity. We believe that the current text could be improved on some key aspects, as shown in our comments below followed, in annex, by our proposals of amendment to the text.

### **Whole-of-society culture of integrity**

4. The introduction (last paragraph p3) recognises that a robust public integrity framework requires an approach that encompasses both the public and private sector. Invariably corruption involves a nexus between the public and private sectors and a system that creates artificial legislative barrier between the two in terms of governance and jurisdiction will not function as needed. This importance of an integrative approach is echoed in the preamble of the recommendation (bottom of page 5) and is fleshed out under recommendation III.5

5. As shown in our suggested marked-up proposal, current text of III.5 could be improved in stressing the importance of independent civil society organisations that can speak on behalf of citizens and of democratic environment in workplace, be it in the private sector or

<sup>1</sup> <http://www.oecd.org/governance/ethics/public-consultation-draft-recommendation-on-public-integrity.htm>

<sup>2</sup> <http://www.oecd.org/governance/ministerial/stakeholders.htm>

the public sector. Our proposals of change would consist in new reference to social dialogue and to the role of trade unions and employer organisations, and in including an amended version of section on the role of civil society, currently placed under IV.13, which would recognise the role of workers and their trade unions as watchdogs and in promoting transparency.

### **Scope of the recommendation**

6. We agree with the proposal for a broad scope of the recommendation- to include public central and local administration, other public services, but also privately delivered services under Public-Private Partnership (PPP) arrangements as well as state-owned enterprises (SOE), which under the OECD standard definition, including private companies where the state has a minority ownership. This broad scope follows the above logic of an integrative approach to public integrity.

7. We do however have an issue with the current wording of the text where the “public sector” is to be defined *per se* as including privately managed and for profit arrangements which are to be found in many PPP arrangements, not to speak of commercial SOEs. While the scope of the Recommendation should be large, there should be no confusion made between public sector functions and privately managed businesses. Our proposal of amendment to section I seeks to ensure such distinction.

### **Whistle-blower protection**

8. We welcome section Section III.6 (b) and (c) on whistle-blower protection. Public integrity and accountability is best achieved through an effective and comprehensive whistle-blower disclosure and protection regime, which serves to encourage the disclosure of wrongdoing by (i) protecting the whistle-blowers from reprisal and (ii) rewarding them for contributing to integrity through the disclosure.

9. In this regard, the recent OECD report “Committing to Effective Whistle-blower Protection”<sup>3</sup>, of 16 March 2016, recognizes that whistle-blower protection “is essential for safeguarding the public interest, for promoting a culture of accountability and integrity in both public and private institutions, and for encouraging the reporting of misconduct, fraud and corruption wherever it occurs”.

10. Thus, it would make sense to elaborate further on the key elements that should be included in a robust whistle-blower protection system, ensuring that workers who disclose wrongdoing are both protected from reprisal and rewarded for doing what is fair and just. As shown in our marked-up proposal, the text could include wording providing for:

- Pay protection, so whistle-blowers know they will be financially supported;
- Legal defence funding for whistle-blowers,
- Work reassignment options, so those who disclose are able to contribute in another area of the workplace that is not being investigated for corruption;
- Financial rewards based on the qui tam principle, and
- A reverse legal onus for reprisal complaints.

---

<sup>3</sup> <http://www.oecd.org/gov/committing-to-effective-whistleblower-protection-9789264252639-en.htm>

## **A workplace environment that is conducive to employee protection**

11. Even with a robust whistle-blower protection regime in place, this individual action (i.e. reporting misconduct, denounce corruption) is not exempted from pressures, reprisal or even threats to the whistle-blower's personal safety. In such cases, the best guarantee for his/her protection and advice is trade union representation, which in turn will balance this relationship of unequal forces. Our amendment to section III.6 (a) addresses this issue.

## Annex: Marked-up proposal of the text

### Draft Recommendation of the Council on Public Integrity

(...)

On the proposal of the Public Governance Committee:

***I. AGREES that, for the purpose of the present Recommendation, the following definitions are used:***

- **Conflict of interest** involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.
- **Corruption** refers to the abuse of a position or office for private interests;
- **Integrity** refers to the consistent alignment of and adherence to stated values, principles and norms;
- **Integrity system** includes the laws, regulations, policies, organisations and officials specifically contributing to public integrity and could be tailored to specific type of sectors and public officials thereby creating co-existing **integrity sub-systems**;
- **Misconduct** refers to behaviour breaching standards and rules that can be formally sanctioned, either through disciplinary, administrative, criminal or civil law;
- **Public official** refers to any person who performs a public function or provides a public service, i.e. someone who holds a legislative, executive, administrative, or judicial position of any kind, whether appointed or elected;
- **Public sector** includes the legislative, executive, administrative, or judicial bodies at the central and subnational level, including public corporations. Considering the broad scope of the recommendation and the need for an integrative approach to public integrity, the term “public sector” is also applied to cover ~~non-commercial~~ state owned enterprises and Public-Private Partnerships. ~~It could also include as well as~~ entities that deliver in-kind services (e.g. health, education, and public transport) although these can be contracted out or privately funded in some countries. It could also include non-governmental organisations performing governmental functions, generally in receipt of funding or other support from government.

***II. RECOMMENDS that Members and non-Members having adhered to this Recommendation (hereafter the “Adherents”) ensure a coherent and comprehensive integrity system.***

**To this end, Adherents should:**

1. Demonstrate commitment at the highest political and management level to enhance integrity and reduce corruption, in particular through:
  - a) Establishing a coherent and comprehensive integrity system that takes into consideration a multilevel governance and whole-of-society perspective to integrity, that defines, supports, controls and enforces integrity and that is integrated into the wider management and governance framework.

- b) Ensuring that all public organisations have effective legislative and institutional frameworks, adequate resources and support to take responsibility for adequately applying the integrity system.
- c) Demonstrating exemplary personal behaviour, maintaining a high standard of propriety in the discharge of official duties.

2. Promote institutional responsibilities across the public sector to strengthen the effectiveness of the integrity system, in particular through:

- a) Establishing clear and effective responsibilities for leading and implementing all elements of the integrity system.
- b) Ensuring that government units or bodies (including autonomous or independent ones) responsible for the development, implementation, enforcement, and/or monitoring of elements of the integrity system have adequate mandate, capacity, expertise and resources to effectively fulfil their responsibilities.
- c) Fostering effective mechanisms for horizontal and vertical collaboration between government bodies, and where possible with and between subnational levels of government through formal or informal means to share lessons from good practices, to avoid overlap and gaps.

3. Develop a strategic approach, outlining objectives and priorities that address risks and success factors, in particular through:

- d) Setting strategic objectives and priorities for the integrity system based upon a clear risk-based approach to irregularities, misconduct and wrongful acts, and that takes into account relevant critical success factors.
- e) Providing transparent and up-to-date measurement processes, including credible and relevant data, benchmarks and indicators that measure the level of implementation, performance and overall effectiveness of the integrity system.

4. Set standards that promote ethical conduct for public officials, in particular through:

- f) Setting integrity standards that not only focus on minimum standards, but that also encourage high standards of conduct, good governance, adherence to public service values and an open culture that facilitates learning.
- g) Setting integrity standards in the legal system and organisational policies to provide a clear basis for -- disciplinary, administrative, and/or criminal -- investigation and sanctions.
- h) Setting clear and proportionate standards and procedures for high-risk positions and appointed or elected positions to prevent corruption and misconduct, including for the management of (latent) conflict of interests.
- i) Communicate public sector values and standards internally in public organisations, and to the private sector, civil society and the public with the expectation that these partners also respect those values and standards.

### ***III. RECOMMENDS that Adherents build a culture of integrity.***

**To this end, Adherents should:**

5. Promote a whole-of-society culture of integrity, partnering with citizens and the private sector, in particular through:

- j) Including in the integrity system the role and responsibilities of citizens and the private sector for respecting public integrity values, in particular by providing incentives to uphold those values as a shared responsibility.

- k) Raising awareness in society of the benefits of integrity and ethical behaviour to reduce tolerance of corruption and misconduct, and carry out, where appropriate, campaigns to promote civic education, public values and ethics, among citizens.
- l) Engaging all relevant stakeholders in the development and regular update and implementation of the integrity system to ensure relevance and effective performance.
- m) Engaging with the private sector, including employer organisations and trade unions, to uphold integrity in business operations and in the impact of business actions.

[formerly IV.13]. Safeguard integrity and the public interest in the broader decision-making process, in particular through:

- n) Promoting transparency and an open government, including actively providing access to information and open data, and active responses to request for information.
- o) Ensuring inclusion by granting all stakeholders - civil society organisations, trade unions, businesses, the media and the general public - equitable voice in the development and implementation of public policies. Including promoting integrity and avoidance of policy capture through management of conflict-of-interests, and transparency of lobbying activities and of financing of political parties and election campaigns.
- p) Enabling a civil society that includes 'watchdog' organisations, citizens groups and independent media, in order to ensure effective accountability.

6. Support open organisational cultures responsive to integrity concerns, in particular through:

- ⇒q) Encouraging an open organisational culture and democratic workplace environment where ethical dilemmas, integrity concerns, and errors can be discussed freely and where leadership is responsive to providing timely advice and resolving these issues. A democratic work place environment is best achieved by ensuring observance of workers' right to freedom of association as defined by the International Labour Organisation.
- ⇒r) Providing alternative channels for reporting irregularities and misconduct, including the possibility of reporting to a body with the mandate and capacity to conduct an independent investigation.
- s) Providing clear rules and procedures for reporting irregularities, concerns about misconduct and wrongful acts that cover a wide scope of wrongdoings, and ensure in legislation and practice effective protection against all types of reprisals as a result of reporting, for all who carry out activities relevant to an organisation's mission. Effective protection can be achieved by ensuring whistle-blowers have access to (i) pay protection (so know they will be financially supported), (ii) legal defence funding, (iii) work reassignment options (to enable them to contribute in another area of the workplace that is not subject to investigation), (iv) financial rewards based on the qui tam principle, and (v) a reverse legal onus for reprisal complaints.

⇒t)

7. Invest in integrity leadership to demonstrate an organisation's commitment to integrity, in particular through:

- ⇒u) Including integrity leadership in the profile for managers at all levels of the organisation, and as a requirement for selection, appointment or promotion in a management position. In addition, assessing the performance of managers with respect to the integrity system at all levels of the organisation.
- ⇒v) Supporting managers in their role as ethical leaders by establishing clear mandates, providing organisational support (internal control, human resources instruments, legal advice etc.), training and guidance to increase awareness and skills for exercising

appropriate judgement for integrity, in particular in case of conflict of interest, whistleblowing, or disciplinary issues.

8. Create a merit based professional public sector dedicated to public service values and good governance, in particular through:

Ⓢ)w) Effective, transparent and consistent human resource management policies that promote a public ethos, a merit based professional public sector, prevent favouritism and nepotism and address risks for abuse of position and misconduct.

Ⓣ)x) Ensuring that central units or bodies (including autonomous or independent ones) responsible for the development, implementation, enforcement, and/or monitoring of elements of the merit based system within their jurisdiction have the mandate, expertise and resources to effectively fulfil their responsibilities.

Ⓢ)y) Foster management frameworks that promote managerial responsibilities to identify and mitigate integrity risks.

9. Provide sufficient guidance and timely advice for public officials to support a culture of integrity, in particular through:

Ⓢ)z) Providing public officials throughout their career with clear and up-to-date information about the organisation's policies, rules and administrative procedures relevant to maintaining high standards of integrity.

Ⓢ)aa) Offering induction and on-the-job integrity training to public officials throughout their career in order to raise awareness and develop essential skills for analysis of ethical dilemmas; and to make codes of conduct and other integrity standards practically applicable and meaningful in their own contexts.

Ⓢ)bb) Providing informal guidance and consultation mechanisms to help public officials apply integrity standards in their daily work, and to respond properly to conflict of interest situations. In addition impartial advice and guidance (provided internal and/or external to the organisation) should be made easy accessible to public officials.

#### ***IV. RECOMMENDS that Adherents ensure accountability, and effective control and enforcement of public integrity.***

##### **To this end, Adherents should:**

10. Apply an internal control and risk management framework to effectively safeguard integrity in public organisations, in particular through:

Ⓢ)cc) Ensuring an effective control environment with clear objectives that demonstrate managers' commitment to integrity and public service values, and that provides a reasonable level of assurance of an entity's efficiency, performance and compliance with laws, regulations, and standards. In particular, the internal control system should help to improve the performance – coherence, effectiveness and efficiency – of the integrity system.

Ⓢ)dd) Ensuring a strategic approach to risk management that includes assessing integrity risks and addressing control weaknesses on a risk basis. This includes building in warning signals – such as red-flags – within critical processes, and an effective monitoring and quality assurance mechanism of the risk management system, including fraud and corruption risks.

Ⓢ)ee) Ensuring control mechanisms are coherent with effective and clear procedures for responding to credible suspicions of violations of laws and regulations, and facilitate reporting to the competent authorities without fear of reprisals.



11. Ensure that enforcement mechanisms respond effectively to all cases of irregularities, misconduct or corruption, in particular through:

~~bb)~~ff) Applying fairness and objectivity in the disciplinary or administrative process and through defining responsibilities and ensuring institutional capacity, at the organisational and central level where relevant to respond effectively and timely to reported cases.

ee)gg) Fostering effective mechanisms for collaboration and exchange of information between relevant internal bodies and external public authorities where concurrent disciplinary and criminal cases would increase the timeliness and proportionality of enforcement mechanisms.

~~dd)~~hh) Providing transparency within the organisation and to the public, about the outcomes of cases and the effectiveness of the enforcement mechanisms, in particular through developing relevant statistical data on cases, while respecting confidentiality and other relevant legal provisions.

12. Ensure effective external oversight and control that promote public accountability and integrity, in particular through:

ee)ii) Ensuring that autonomous or independent regulatory and investigative entities defend the public interest through the impartial enforcement of laws and regulations applying to both public and private organisations, as well as citizens.

ff)jj) Ensuring that external oversight entities are autonomous or independent, with adequate authority, mandate, capacity, expertise and resources to fulfil their responsibilities, including the right to impose sanctions, as established in law.

gg)kk) Facilitating organisational learning and building public trust by providing adequate response (including redress where relevant) to the sanctions, rulings and formal advice by oversight bodies and regulatory entities.

~~13. Safeguard integrity and the public interest in the broader decision-making process, in particular through:~~

~~hh)a) Promoting transparency and an open government, including actively providing access to information and open data, and active responses to request for information.~~

~~ii)a) Ensuring inclusion by granting all stakeholders – civil society organisations, businesses, the media and the general public – equitable voice in the development and implementation of public policies. Including promoting integrity and avoidance of policy capture through management of conflict of interests, and transparency of lobbying activities and of financing of political parties and election campaigns.~~

~~jj)a) Enabling a civil society that includes 'watchdog' organisations, citizens groups and independent media, in order to ensure effective accountability.~~

***V. INVITES the Secretary-General to disseminate this Recommendation.***

***VI. INVITES Adherents to disseminate this Recommendation within the public sector.***

***VII. INVITES non-Adherents to take account of and adhere to this Recommendation.***

***VIII. INSTRUCES the Public Governance Committee to monitor the implementation of this Recommendation and to report thereon to the Council no later than five years following its adoption and regularly thereafter.***