Paolo Giusta

ETHICS MATTERS

Practical Micro-Ethics for Civil Servants of the European Union

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We always make mistakes because, when we take decisions, we consider only some parts of our life, and no one considers the life as a whole. Who wants to throw an arrow, has first to know what he wants to hit, and only after that can he point and shoot. Our plans go astray, since we do not have a purpose, towards which to orientate them. There is no favourable wind for those who ignore which harbour they aim at. It is normal that doom plays such a big role in our lives, since we live according to doom.[1]

Seneca [Epistula 71, 2-3]

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[1] '*Peccamus quia de partibus vitae omnes deliberamus, de tota nemo deliberat. Scire debet quid petat ille qui sagittam vult mittere, et tunc derigere ac moderari manu telum: errant consilia nostra, quia non habent quo derigantur; ignoranti quem portum petat nullus suus ventus est. Necesse est multum in vita nostra casus possit, quia vivimus casu*'. The English translation from the original Latin text is ours.

FOREWORD

BY THE PRESIDENT OF THE EUROPEAN COURT OF AUDITORS

Ethics is a matter of growing importance worldwide, in the public sector as well as in private business and among civil society.

The European Court of Auditors has been amongst the first of the EU institutions to express its willingness to take this issue into in serious consideration, by adopting a code of good administrative behaviour in June 2000 and by organising, as early as in 2002, courses on ethics for its staff, which was at that time an absolute novelty in the panorama of the EU institutions and bodies.

The Court entrusted the task of giving such courses to Paolo Giusta, at that time a member of its Legal Service who, followed a degree on Public Ethics at the University of Rome. His final dissertation that is now being published will constitute the syllabus for future courses on ethics and will in my view represent a powerful awareness-raising tool.

Ethics is not only a matter of academic speculation. I am deeply convinced that ethics is also crucial to the accomplishment of the audit work the Court carries out and to the success of its mission of being the 'financial conscience' of the European Union.

I therefore hope that the considerations and the practical experience gathered in this work will stimulate the ethical refection and the moral judgment of the Court's staff, but also that it will constitute practical support in the various situations in which we can find ourselves in the exercise of the audit profession, as a source of inspiration and as a guidance for the many choices, based on value judgments, that we all have to make.

Hubert Weber
President of the European Court of Auditors

FOREWORD

BY THE AUTHOR

'Ethics Matters' is an adaptation of the final dissertation of the masters programme on Public Ethics I followed at the Gregorian University in Rome between January 2001 and January 2003.

At the time I was a member of the Legal Service of the European Court of Auditors and felt a need to give a personal contribution to answering the 'unprecedented demand for ethical judgment and decisive action' that was, and still is, resounding 'at increasingly higher decibel levels'[2] in the public service in general and in the European Union's institutions in particular. Against this background I proposed to the Court to follow this Public Ethics programme, and the Court of Auditors was prepared to invest in such a training programme in view of the later possibility of organising in-house ethics courses for staff.

The experience at the Court, where the courses were consolidated and are now a well-established part of the training curriculum for newly recruited officials, triggered an evolving process: at the European Commission – where were I moved in the meantime – I had the privilege to participate in an advisory role in the growing interest in ethics that is developing in this institution, where regular courses on ethics started in 2004, and an awareness-raising event open to all Commission's staff has been organised in July 2006.

This book, on top of being the result of an academic dissertation, intends to serve two purposes: on the one hand, it is a reference manual for the ethics training programme at the European Court of Auditors, and already partly reflects the content of the course and the exchanges which have occurred during the past sessions; on the other hand, it has the ambition of providing a humble input, reflecting my own opinions and not necessarily the position of the EU institutions, to the debate on ethics, ethical reasoning and decision making within the European institutions and out-

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[2] Lewis and Gilman 2005, p. ix.

side. This text is intended to be a living instrument: I encourage the readers to provide feedback, comments, and personal views on the opinions expressed in this book.

Many people must be thanked for their support: at the Court of Auditors, Chris Kok and Betrand Albugues, for their commitment in making the ethics training programme in this institution possible; Jan Inghelram, for the constant fruitful exchange of ideas, in particular for his always stimulating 'opposing views'; Gilberto Moggia, for his advice and research work; all those participating in the ethics courses, who shared precious suggestions, ideas, and experiences.

In the European Commission, I would like to express my gratefulness to Conrado Tromp, responsible for the training courses on ethics and the Commission deontology team, Donatienne Claeys Boùùaert, Christophe Keller, Caroline de Graef, Pedro Pinto Valente da Silva, and Jan Mikolaj Dzieciolowski, for their precious work in the frontline of ethics development in the institution and their encouragement towards the present work; Anna-Maria Giannopoulou, for her invaluable feed-back and editorial suggestions; Michel Servoz, for his understanding and open-mindedness towards more than one project 'outside the box'.

In Rome, two people in particular deserve recognition: Professor Antonio Maria Baggio for guidance, patience and an example of moral consistency; and Professor Sandro Barlone for his extraordinary capability to find flexible solutions.

I bear the entire responsibility for inaccuracies and omissions.

<div align="center">
Brussels, May 2006
paolo.giusta@iip.lu
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CONTENTS

INTRODUCTION

The sentence chosen for the epigraph suggests that ethics is about the meaning of what we do. It provides guidance and a sense of coherence in the decisions we take day by day. Our assumption is that ethics also plays this role in the administrative life of civil servants of the European Union (EU). There is in this book no recipe granting the meaningfulness of the administrative action of the civil servant. If an indication is given, it is that of taking the time and the courage of sharing views and beliefs when confronted with an ethical issue, to reach a shared understanding.

Why 'micro-ethics'? Willber[3] indicates that there is a difference between individual moral behaviour and decisions (what we call micro-ethics) and the moral content of a public policy (macro-ethics). Within the limits of the present work we focus mainly on the first level, that of individual choices and acts. The 'practical' aspect of micro-ethics elaborated here consists in the fact that the aim of the book is to provide guidance for exercising ethical judgment and taking decisions in the everyday life of a civil servant.

The structure of the book is conceived so as to build a framework orientated towards decision making. The first chapter examines how the consciousness of the crucial role of ethics for the European civil service developed in the past decade and explores the multifaceted character that this area has progressively taken. We will then propose a definition of ethics, and will try to characterise this concept as distinct from law, on the one hand, and from deontology, on the other hand. Emphasis will also be put on the importance of ethical systems as a reference standpoint (Chapter 2). In Chapter 3 we will start giving flesh and bones to the ethical system surrounding the decision, actions, and behaviours entered into by EU civil servants: in this respect we will search for the ethical foundation of the European integration project, in particular in the vision of the 'founding fathers', and explore a possible ethical charter expressing the main values of the EU today. This reference ethical framework will be completed, in Chapter 4, by the analysis of the most relevant rules

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[3] Willbern, Y. (1984), 'Types and Levels of Public Morality', *Public Administration Review*, in Bruce 2001, pp. 115-127.

and provisions containing aspirational values, to be then translated into operational values in the decision-making stage. Chapter 5 will be entirely dedicated to practical aspects and tips for decision making, from assessing whether, in a given situation, an ethical dilemma, a moral temptation or, more trivially, a tricky administrative situation occur, to ethical dilemma paradigms and ethical resolution principles. This chapter also underlines the importance of addressing ethical choices through a process of dialogue among all people involved in the administrative situation for which a course of actions should be determined based on a value judgment. We maintain that, as it is the case for the functioning of the EU institutions, at the micro-level the method of entering into a broad and open dialogue and reaching practical compromises are both pivotal for well-founded ethical decision making.

1 LET THERE BE ETHICS

DEVELOPMENT OF A CONSCIOUSNESS FOR ETHICS WITHIN THE EUROPEAN UNION INSTITUTIONS

And ethics was. Within the EU institutions, ethics had been for decades a concept more practised than spoken about. Towards the end of the 90's, a series of converging elements surfaced, at about the same time, and made the word 'Ethics' actually appear in the internal EU vocabulary[4]. We will briefly examine the progressive development of values, principles and guidelines in this process. Outlining the stages of this process shows, on the one hand, that ethics matters in the EU institutional context. On the other hand, it will help us to get acquainted with this concept, which we will try to define further on (Chapter 2).

The 'Committee of Wise Men'

The first time that an official EU document vigorously referred to ethics, with consequently much excitement in the European media and beyond, was in the two reports issued by a Committee of Independent Experts (CIE), also known as 'Committee of Wise Men', appointed by the European Parliament to investigate the Commission's (and individual commissioners') responsibility '*for the recent examples of fraud, mismanagement or nepotism*' brought to the Parliament's attention in 1998-1999. The release of the first report on 15 March 1999 led eventually to the collective resignation of the Santer Commission that same day, to avoid likely censure vote by the Strasbourg assembly.

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[4] A similar evolution has taken place in parallel in most OECD (Organisation for Economic Co-operation and Development) countries. The PUMA (Public Management Programme) Policy Brief No. 7, issued by the OECD in September 2000 ('Building Public Trust: Ethics Measures in the OECD Countries', http://www.oecd.org/dataoecd/60/43/1899427.pdf), points out that over one third of the (then) 29 countries members of the OECD had 'updated their core public service values in the last five years' (p. 2).

Certain excerpts from the two Reports outline some features of ethics, as a concept different – for example – from legal concepts such as fraud or corruption.

What ethics is not

The first report, bringing a 'negative'[5] conceptual clarification, specifies that:

(i)   irregularities, i.e. infringements of Community or applicable national rules if committed intentionally, in which case they will often involve fraud or result from serious negligence;

(ii)   fraudulent, i.e. intentional behaviour by act or omission (including corruption) intended to obtain an illegal benefit at the expense of the Community's financial interests;

(iii) ethically reprehensible behaviour, such as making public appointments, awarding contracts, or recommending individuals for rewards and benefits (even where no fraud or irregularity is committed) on the basis not of merit but of favouritism shown to family, friends or other relations; This is considered by the CIE as a '*conduct which, although not illegal* per se*, [is] not acceptable*.' (CIE 1999a, § 9.3.1.);

(iv)   serious or persistent infringements of the principles of sound administration (CIE 1999a, § 1.4.5.)*.*

This clarification occurs in a context where '*in the absence of specific rules or codes of conduct - the very concept of standards of proper behaviour entails grey areas of assessment*' (CIE 1999a, § 1.5.2.).

Standard of moral conduct and ethical responsibility

The CIE also set the principle that, even in the absence of formalised rules or ethics codes, '*there exists a common core of 'minimum stand-*

[5] In the first report the CIE puts the emphasis on of what EU officials and Members of an institution should not do, which they call 'various categories of reprehensible conduct'.

ards' [of proper behaviour], in addition to rules laid down in black and white, which binds holders of high public office.' (CIE 1999a, § 1.5.2.). These standards are 'based on ... the requirements of proper behaviour in the exercise of public office and the need for compliance with the highest standards of conduct in European public administration' (CIE 1999a, § 1.5.1.). They apply 'above all' (but not exclusively) to the commissioners and the members of their private offices.

As for the 'positive' content of the ethics framework for EU civil servants, the Committee also identifies a series of 'rules of conduct' that constitute the core of these 'minimum standards':

- '*acting in the general interest of the Community and in complete* independence*, which requires that decisions are taken solely in terms of the public interest, on the basis of objective criteria and not under the influence of their own or of others' private interests;*

- *behaving with* integrity *and* discretion *and - the Committee would like to add – in accordance with the principles of* accountability *and* openness *to the public, which implies that, when decisions are taken, the reasons for them are made known, the processes by which they were taken are transparent and any personal conflicting interests are honestly and publicly acknowledged'* (CIE 1999a, § 1.5.4.).

The benefits of behaving according to these rules of conduct are made clear: '*Only by respecting those standards will it be possible for holders of high office to have the authority and the credibility enabling them to offer the* leadership *which they are required to give*' (CIE 1999a, § 1.5.4.).

The first report also distinguishes several forms of responsibility:

- Ethical responsibility ('*the responsibility that this Committee is dealing with'), 'that is responsibility for not behaving in accordance with proper standards in public life, as discussed above* (CIE 1999a, § 1.5.1.);

- '*Political responsibility of the Commission dealt with in Article 144 of the EC Treaty [now Article 201, on the motion of censure], which is to be determined by the European Parliament.*' Such political responsibility includes the '*loss of control by the political authorities*

over the Administration that they are supposedly running', in instances of major mismanagement, fraud and corruption happening in their services pass 'unnoticed' at the level of the commissioners' (CIE 1999a, §§ 9.2.1. and 9.2.2.);

- *Disciplinary responsibility of individual commissioners dealt with in Article 160 of the EC Treaty, which is to be determined by the Court of Justice, on application of the Council or the Commission* (CIE 1999a, § 1.6.2.).

In September 1999, the CIE issued a second report, where an entire chapter is devoted to ethics and integrity[6].

The Committee carried out an in-depth analysis of 'Integrity and conduct in European public life'. Concerning commissioners, they emphasise, amongst others, the principle of collective responsibility of commissioners (a principle which encompasses the relations between commissioners, but also the relations with and between their departments and the accountability of commissioners vis-à-vis Parliament and their relations with the Council); the independence of commissioners and their private office, whose size and composition should avoid leading to an 'administrative culture based on party, ideological and/or regional/national divisions' (CIE 1999b, § 7.5.8).

Ethical principles in the public service

Concerning officials of the Commission, the CIE refers to the 'Principles for Managing ethics in the Public Service', adopted by the Council of OECD on 23 April 1998[7]. The following principles are mentioned in this context:

- 5. Political commitment to ethics should reinforce the ethical conduct of public servants (to 'create legislative and institutional arrangements that reinforce ethical behaviour and create sanctions against wrongdoing');

- 9. Management policies, procedures and practices should promote ethical conduct ('It is not sufficient for governments to have only rule-

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[6] CIE 1999b, Chapter 7, Integrity, Responsibility and Accountability in European Political and Administrative Life.

[7] PUMA Policy Brief No. 4, May 1998, http://www.oecd.org/dataoecd/60/13/1899138.pdf.

based or compliance-based structures... Government policy should not only delineate the minimal standards below which a government official's actions will not be tolerated, but also clearly articulate a set of public service values that employees should aspire to');

- 10. Public service conditions and management of human resources should promote ethical conduct ('Using basic principles, such as merit, consistently in the daily process of recruitment and promotion helps operationalise integrity in the public service');

- 11. Adequate accountability mechanisms should be in place within the public service ('Accountability should focus both on compliance with rules and ethical principles and on achievement of results');

- 12. Appropriate procedures and sanctions should exist to deal with misconduct ('Mechanisms for the detection and independent investigation of wrongdoing such as corruption are a necessary part of an ethics infrastructure. It is necessary to have reliable procedures and resources for monitoring, reporting and investigating breaches of public service rules, as well as commensurate administrative or disciplinary sanctions to discourage misconduct').

The Committee expresses two recommendations to give effect to the codes of conducts, both for commissioners (prepared at that time by the outgoing Commission) and for officials (which the new Commission was called upon to adopt):

- A permanent independent 'Committee on Standards in Public Life' should be created by interinstitutional agreement to formulate, supervise and, where necessary, provide advice on ethics and standards of conduct in the European institutions. This Committee on Standards should approve the specific codes of conduct established by each institution (CIE 1999b, §§ 7.7.1.-7.7.5. and Recommendation 81);

- All Commission staff should undergo professional training aimed at raising awareness of ethical issues and providing guidance, from both a personal and management perspective, on how to deal with practical situations as they arise (CIE 1999b, §§ 7.7.6.-7.7.9. and Recommendation 82).

The codes of conduct for commissioners and their departments should establish that each commissioner is responsible both for policy formula-

tion and the implementation of policy by his/her department(s). The commissioner shall therefore be answerable to the Commission as a whole for the actions of the department(s), and accountable to the European Parliament. Officials in departments shall answer to their directors-general, who shall in turn be accountable to the competent commissioner (CIE 1999b, §§ 7.9.1.-7.9.9.).

The administrative reform of the European Commission

The Reports from the Committee of Independent experts triggered the adoption of the White Paper on the Commission's administrative reform by the Prodi Commission. In fact, a wide-ranging reform process had already been set off by the Santer Commission, mainly covering financial management[8] and human resources policy[9]. Even before, reform initiatives arose on occasion, as it was the case of the Spierenburg report in 1979. This report, produced by an independent committee at the request of the Commission, already contained issues such as modernisation of staff management, better linkage between resources and tasks, more focused strategy.

These are likewise amongst the themes of the Commission's administrative reform undertaken in 2000.

Areas in need of reform…

The White Paper identifies several concerns to be addressed, which may be summarised as follows:

• Need to develop a 'culture based on service', whose reference principles are identified as being independence, responsibility, accountability, efficiency, and transparency (European Commission 2000, Part I, p. 7);

• Need for a more effective method of setting priorities and allocating resources to them (European Commission 2000, Part I, p. 28 and Part II, p. 13);

[8] SEM 2000 programme for promoting Sound and Efficient Management of resources.

[9] MAP 2000 programme on Modernisation of Administration and Personnel.

- Need for full development of human resources (European Commission 2000, Part I, p. 7 and Part II, p. 24);

- Need to adapt the Commission's systems for financial management and control to the type and number of transactions they have to deal with (European Commission 2000, Part I, p. 7 and Part II, p. 64).

The measures laid down within the administrative reform to address this concern, aimed at reinforcing the Commission as an institution, promoting better governance, modernising the administration, and increasing its effectiveness, are structured around *three reform pillars*:

1. The first area of reform is centred on balancing tasks with resources in order to obtain policy results. The main principles are refocusing on priorities (through a new emphasis on strategic planning); optimising the use of available resources and matching strategic objectives to services' operational programmes (through activity based management); and assessing the impact of the actions undertaken (by means of new instruments such as the ex-ante impact assessment of new policy initiatives).

   A key aspect of the Commission's reform is a shift away from simply following the rules towards a more pro-active approach, i.e. 'obtaining *results on its policy priorities*' (European Commission 2000, Part I, p. 7). The refocusing of the Commission's resources on development and monitoring of policies implies that implementation of these policies is progressively delegated to other bodies (Commission 2004b, p. 43); hence the creation of 'executive agencies' for the management of spending programmes.

2. The second pillar of the administrative reform concerns the modernisation of human resources policy 'from recruitment to retirement' (European Commission 2000, Part I, p. 12), to make the Commission a more effective organisation, 'to release further the energies and talents of the high quality staff of the Institution, and to provide better working lives for them' (European Commission 2000, Part I, p. 26).

   The main areas of change are a new, performance-based career structure (and, within this context, the creation of an inter-institutional office for recruitment of new staff; a new performance appraisal system of Commission staff, based on attainment of set objectives at individual level; a focus on continuous training of staff; new rules on

mobility: people occupying 'sensitive posts' – these are in particular, those with direct responsibility in managing financial and human resources – have to move to another position after 5 years); modern working conditions and equal opportunities (flexible working arrangements, equal opportunities fostered; measures against moral and sexual harassment introduced); safeguarding professional and ethical standards (setting-up an internal mediator function and an Investigation and Disciplinary Office of the Commission to enquire into wrongdoings and give advice; new rules in the Staff Regulations on reporting serious wrongdoings; strengthening of disciplinary proceedings and of the under-performance dismissal procedure).

3. The third main area of reform is a radical overhaul of financial management, control and audit, which seeks to improve management of EU money, efficiency and accountability. The main principle in this respect is *decentralisation of responsibilities*, i.e. the move from a financial ex-ante control system – which gives decision-makers a false sense of security, leading to a culture that 'de-responsibilises' managers (European Commission 2000, Part I, p. 26) – to decentralised management and controls. Each department is empowered to establish an effective internal control system appropriate to its own needs. A newly-created independent Internal Audit function (a central Commission service plus an internal audit capability in each department) regularly checks and reports on the quality and reliability of each internal control system.

The consequence is that Directors-General are made directly accountable for adequate internal controls in their departments and managers are made wholly responsible for the financial decisions they take. This responsibility finds expression in a declaration by each Director-General in their Annual Activity Report that adequate internal controls have been put in place and give reasonable assurance on the legality and regularity of operations, and that resources have been used for the intended purposes.

The administrative reform resulted notably in the adoption of amended financial regulations and implementing rules[10] (entered into force in Janu-

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[10] See Council Regulation (EC, Euratom) No 1605/2002, 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, Official Journal, L 248, 16.09.2002 (http://europa.eu/eur-lex/pri/en/oj/dat/2002/l_248/l_24820020916en00010048.pdf), and Commission Regulation (EC Euratom) No 2342/2002, 23 December 2002 laying down detailed rules for the implementation of the Financial regulation applicable to the general budget of the European Communities, Official Journal, L 357, 31.12.2002.

ary 2003), putting emphasis on responsibility of financial actors; in a reformed staff regulation[11] (May 2004), including provisions on careers more directly linked to merit, disciplinary arrangements, mobility, whistle-blowing, and obligations to report improper behaviour, as well as foreseeing new arrangement to facilitate officials in reconciling the professional and private sphere of their lives; in new instruments and processing concerning strategic planning and programming (from setting policy priorities at Commission level, to monitoring their implementation and reporting on achievement) and activity based management (for planning, monitoring and reporting at department level according to the institution's priorities); in a set of 24 internal control standards[12], based on one of the widely recognised internal control frameworks[13]; in the creation of new administrative structures such as a central Internal Audit Service[14] and internal audit capabilities in each Directorate-General[15], as well as executive agencies[16]; and in the setting up of four new permanent high level groups to improve coherence and co-ordination across the services[17].

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[11] Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004, Official Journal, L 124, 27.04.2004, p. 1).

[12] Communication to the Commission from Commissioner Schreyer in agreement with Vice-President Kinnock, Standards for internal control within the Commission's services and the baseline for implementation by 31 December 2001 (SEC(2001) 1037 of 18 December 2001).

[13] The integrated framework for internal control laid down by the Committee on Sponsoring Organizations of the Treadway Commission (COSO).

[14] See Articles 85-87 of the amended Financial Regulation, and Communication to the Commission from Vice-President Kinnock, Charter of the Internal Audit Service of the European Commission (SEC(2000) 1801 of 27 October 2000).

[15] See Communication to the Commission from Vice-President Kinnock in agreement with Mrs. Schreyer, Conditions for the Provision of an Internal Audit Capability in each Commission Service (SEC(2000) 1803 of 27 October 2000).

[16] See Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes, Official Journal, L 11, 16.01.2003 and Commission Regulation (EC) No 1653/2004 of 21 September 2004 on a standard financial regulation for the executive agencies pursuant to Council Regulation (EC) No 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes, Official Journal, L 297, 22.09.2004, p. 6.
The first executive agency set up is the 'Intelligent Energy Executive Agency' (see Commission Decision 2004/20/EC of 23 December 2003 setting up an executive agency, the 'Intelligent Energy Executive Agency', to manage Community action in the field of energy in application of Council Regulation (EC) No 58/2003, Official Journal, L 5, 09.01.2004, p. 85).

[17] The *Activity-Based Management (ABM) Steering Group* (composed of Directors general and cabinets of Commission central services, coordinates political and strategic questions related to reform); the *Directors General Group* (exchange and information forum among top managers to ensure consistent implementation of reform and other policies); the *Group of Resource Directors* (to discuss practical reform issues and ensure that the needs of operational services are taken into account); and the *Interservice Co-ordination Group* (to review the planning of the Commission's agenda and oversee in a co-ordinated way the work of ad-hoc groups dealing with specific issues).

…and ethics for a service-based culture

These three pillars of administrative reform are topped by the *cross-cutting idea of a service-based culture*, which acts like a pediment to complete the reform architecture. By putting emphasis on results and on the difference made for EU citizens, the Prodi Commission has clearly expressed the intention to change its image, as perceived by the public opinion, and to be (and to be seen as being) 'a world class public administration'[18].

It is in this area[19] that the importance of ethics and high standards of public behaviour is affirmed. Indeed, unlike the previously envisaged reforms, the 2000 White Paper puts a *special emphasis on ethics*. In doing so, it takes into account the concerns expressed by the CIE. In particular, the action plan included in the White paper recalls the actions already taken by the Commission (the adoption of a Code of Conduct for Commissioners, of a Code of Conduct governing relations between Commissioners and Departments and of a draft Code of Good Administrative Behaviour) and sets out the new actions to be carried out. Amongst those actions, the most relevant ones in the framework of this manual are:

- **Action 1: A Committee on Standards in Public Life**. The Commission would propose the establishment of such a Committee, recommended by the second report of the Committee of Independent Experts, to 'provide advice on ethical standards in the European Institutions', including assistance in the setting up, monitoring and implementation of Codes of Conducts applicable to EU institutions.

  Indeed, the European Commission proposed the setting up of this body[20], composed of five external experts, selected on the basis of the following criteria: independence, impeccable professional behaviour, sound knowledge of the legal framework and the working methods of EU institutions, geographical and gender balance. An inter-institutional agreement between the Commission, the European Parliament, the Council, the Court of Justice, the Court of Auditors, the Economic and Social Committee and the Committee of the Regions was supposed to constitute the basis for the Committee's existence. Due mainly to the

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[18] See the European Commission's site on reform, at http://europa.eu/comm/reform/2002/sheet4_en.htm.

[19] And, partially, under the pillar on modernising the personnel policy (see above).

[20] SEC(2000) 2077 final of 29.11.2000.

resistance of the European Parliament, which had concerns over the powers and general role of this body, the Commission was forced to admit that 'feedback from the European institutions on the Commission's proposal for an Advisory Group on Standards in Public Life made it clear that these institutions were not ready to move forward' and to conclude that, 'against this background, there is regrettably no prospect of progress in this area' (European Commission 2003, p. 4).

- **Action 2: A Code of Good Administrative behaviour in the relations with the public**. This action foresaw the final adoption by the Commission of the Code, establishing guidelines for good administrative behaviour in the relations with the public, which was a draft at this stage. This adoption took place on 17 October 2000[21] (See Chapter 4 for more details on the Code's content).

The Internal Control Standards No 1, 'Ethics and Integrity', as applicable on 31 December 2005, stipulates that 'Each DG shall ensure that staff are fully aware of the rules governing staff conduct and prevention and reporting of fraud and irregularities.' To ensure that this is the case, at least the following minimal requirements should be implemented:

- The following documents should be readily available to Staff: the Code of good administrative behaviour, the Rules of Procedure of the Commission and the Staff Regulation (particularly, Titles II and VI);

- Directorates-General should set up the necessary procedures (mail, intranet, note...) for a yearly update of the knowledge of their staff on the rules concerning Ethics & Integrity, in particular in terms of conflict of interest.

From compliance to culture

What is the state of implementation of reform measures six years later? The European Commission carries out yearly progress reports evaluating the degree of success in translating the reform into the subsequent administrative, management and cultural changes. By now, virtually all 98 actions laid down in the White Paper have been carried out, with the

[21] Decision 2000/633/CE, CECA, Euratom, OJ L 267, page 63 of 20.10.2000, appended to the Commission's Rules of Procedure.

notable exception of Action 1 (see above). Most actions gave rise to new regulations and procedures, and some of them triggered further developments, which were not foreseen at the time the reform was set in motion[22]. If the 'regulatory' part of the reform can broadly be considered as achieved, assessing the degree of implementation, and the real impact of this extensive programme, is much more difficult than providing the mere checklist of completed proposals (Hine and McMahon 2004, p. 22).

Some authors express doubts on the actual fulfilment of the Commission's reform mandate. Quinlivan and Schön (2001, p 28)[23] state that it is debatable whether the three reform pillars referred to above represent a strategy which is radical or sophisticated enough to transform the Commission. In particular, they identify the multi-cultural complexity of the Commission as potentially being the greatest stumbling block in the implementation of the NPM-inspired reform and conclude (p. 35) that the challenge for the Commission is to develop and mature as a learning organisation (defined as 'an organisation which facilitates the learning of all its members and continuously transforms itself').

As for the multi-cultural complexity of the European Commission, two anthropological studies prepared at the request of the Commission point out that, on the one hand, the pluralism of cultures and traditions proper to this supranational administration has centrifuge effects and may be a factor of instability and difficulties concerning, for instance, coordination. On the other hand, the permanent confrontation of cultural differences also plays a dynamic role. By striving to value and integrate those

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[22] See for instance the Communication from the Commission on a roadmap to an Integrated Internal Control Framework, to address the shortcomings deriving from sharing budget implementation tasks with Member States' authorities (COM(2005) 252 of 15 June 2005).

[23] These authors (p. 21) describe the European Commission's reform as being grounded in the new public management (NPM) philosophy. In particular; the different pillars of the reform would correspond to one or more of the various models used to identify characteristics of NPM:
- The first pillar, based on refocusing resources on core tasks and functions, has elements of both *Model 2* ('Downsizing and Decentralisation', including outsourcing of non strategic functions) and *Model 3* ('In search of excellence');
- The second pillar of the Commission's reforms aims at the more effective management of human resources, which forms part of NPM *Model 3*;
- The third pillar, which concentrates on improved financial management and accountability, is closely associated with NPM *Model 1* (increased attention to financial control and reinforced managerial responsibility).
We would add, as concerns the 'crosscutting' area of change, that 'a culture based on service' is rooted in our view on NPM *Model 4* ('Public Service Orientation', accompanied by a major concern with service quality, responsiveness to the citizens' expectations and accountability).

differences into a common, open-ended enterprise, the Commission continuously seeks the necessary balance between a soulless, homogeneous 'body' of civil servants and the risk of succumbing to the heterogeneity of the national origins. It is this dynamic tension which allows the Commission to be a forward looking institution, capable of visualising and shaping the future of the EU (Abélès, Bellier and McDonald 1993, p. 82), which is in our view the best asset for the institution responsible for promoting the EU policies.

With more specific reference to ethics, Hine and McMahon (2004, p. 2) point to the limited scope of the reform in this area:

> Although much of the service-culture element of the programme, which is sometimes seen as the 'ethical' dimension of Commission reform, is indeed about 'standards', it is about standards of service (consultation, responsiveness, openness etc) rather than about the ethics of office-holders.

They point to the (long) process underlying cultural change (p. 26), which is the final outcome of the reform (Figure 1.1.).

FIGURE 1.1 FROM COMPLIANCE TO CULTURE

[Source: Hine and McMahon 2004]
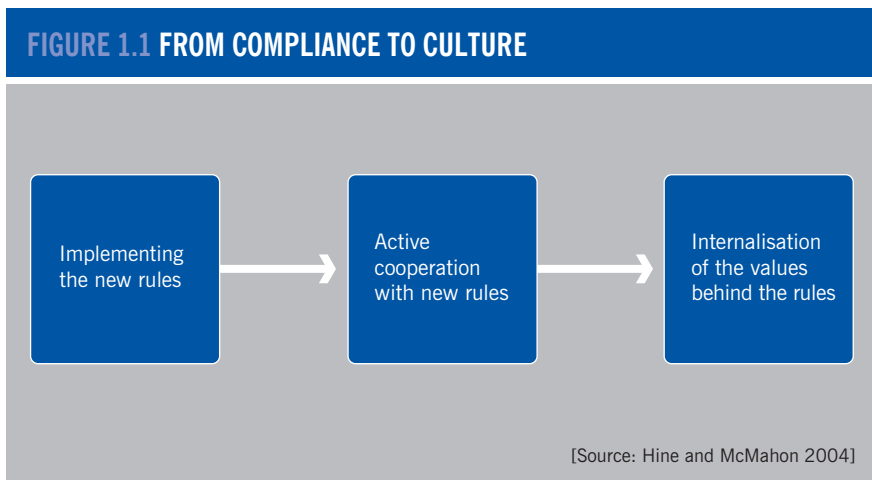
In doing so, the authors emphasise the risk that the reform model, mainly legally and procedurally driven (p. 24), while being the most effective for delivering a certain degree of coherence as well as order, certainty, and predictability (p. 30), achieves at the end of the process only formal compliance to the new rules.

In particular, the 24 Internal Control Standards, in which most of the reform effort and the reform ethics content[24] concentrate, may end up in producing no more than translating rules into administrative routine. This is in particular the case for the new major annual procedures, requiring a significant commitment of staff – chiefly middle management – time: annual performance review for all staff; annual risk analysis; annual management plans with activity-based budgets; annual internal audit; annual review of internal and external audit recommendations (Hine and McMahon 2004, p. 29, to which we would add the annual activity reports).

Rules and procedures, while important – Hine and McMahon stress (2004, p. 31) –, are not sufficient without underlying attitudinal and cultural support at all levels in the administrative hierarchy.

Further development of the overall administrative culture is the greatest challenge for the European Commission. This institution recognises that 'the Commission's ambitious reform programme launched in 2000 has essentially achieved its aim: the policy priorities set steer its action and decentralised financial management and control has increased responsibility at all levels, from Commissioners to individual members of staff, ensuring better value for money for EU citizens. The Commission considers that the framework now in place will enable it to achieve its aim of improving the effectiveness, efficiency and quality of its work' (Commission 2005, p. 5-6). 'It is not a question of launching a new reform. Now the time has come to take the system in place up to cruising speed and fully develop its performance potential based on the following strands:

- Promoting the Commission's accountability;

- Enhancing effective performance management;

- Reinforcing the Commission's responsibility and monitoring capacity' (Commission 2005, p. 18-19).

[24] Hine and McMahon analyse (Appendix 1) the ethical content of the 24 Internal Control Standards against a four-fold classification of value-clusters, according to the primary purpose of each of them:
- Ethics (which covers such value-goals as honesty, probity, integrity, fairness, discretion, loyalty, and openness);
- Democratic ends (which include lawfulness, neutrality, accountability, openness, and responsiveness);
- Professional ends (which include effectiveness, efficiency, service-quality, innovation, creativity and excellence);
- Service-oriented ends (which include fairness, tolerance, decency, courtesy, openness, and responsiveness).

These are, indeed, signs of a shift of emphasis from a procedure-based to a performance-oriented administrative culture, favouring the development of a sound ethical climate.

'Good administration' on the move

Parallel to the developments which led to the Commission's administrative reform, the concept of 'good administration' and, conversely, of maladministration, appeared in the EU institutional panorama.

The EU Ombudsman: ethics in dealing with the public

The Treaty of Maastricht introduced into the EU system a new body, the Ombudsman. According to Article 195 of the Treaty establishing the European Community and to the rules governing the performance of the Ombudsman's duties, the latter's main competences are:

- As a general mission, to receive and examine complaints submitted by EU citizens or residents concerning cases of maladministration in the activities of Community institutions or bodies;

- To conduct inquiries on his/her own initiative or on the basis of complaints he/she receives;

- As a follow-up of complaints, to draft reports to the European Parliament, the institutions concerned – accompanied by recommendations in cases of established maladministration –and to inform the complainants on the results of his/her inquiries;

- To present to the European Parliament an annual report on the results of his/her inquiries, and special reports on occasion.

The Ombudsman is a source of 'soft law', described as rules of conduct which, in principle, have no legally binding force but which nevertheless may have practical effects' (Bonnor 2000, p. 41). Although lacking the power to produce binding decisions or interpretation, the Ombudsman's statements, in particular those concerning the concept of 'maladministration', form part of the broad ethical framework in which EU civil servants operate.

In 1995, the first EU Ombudsman, Jakob Söderman, was appointed. One of his first acts in this capacity was to set up a definition of maladministration (Söderman 1996):

> Neither the Treaty nor the Statute defines the term 'maladministration'. Clearly, there is maladministration if a Community institution or body fails to act in accordance with the Treaties and with the Community acts that are binding upon it, or if it fails to observe the rules and principles of law established by the Court of Justice and Court of First Instance.

> For example, the European Ombudsman must take into account the requirement of Article F [now Article 6] of the Treaty on European Union that Community institutions and bodies to respect fundamental rights.

A non exhaustive illustrative list of cases of maladministration includes:

- administrative irregularities

- administrative omissions

- abuse of power

- negligence

- unlawful procedures

- unfairness

- malfunction or incompetence

- discrimination

- avoidable delay

- lack or refusal of information.

In 1998, the European Ombudsman undertook an own initiative enquiry into the existence and the public accessibility, in the different Community institutions and bodies, of a Code of Conduct on good administrative behav-

iour of the officials in their relations with the public. The underlying idea was that such a code, if implemented, would have enhanced relations between European citizens and the Community institutions and bodies, and expressed the EU commitment to democratic, transparent and accountable administration. In fact, the idea of such a code had been suggested by Roy Perry MEP earlier that same year[25]. This enquiry led to the publication of a Draft recommendation[26], containing a model for such a code of conduct.

On 6 September 2001, the European Parliament adopted a resolution approving a model Code of Good Administrative Behaviour which EU institutions and bodies, their administrations and their officials should respect in their relations with the public. In the meantime, most institutions had already adopted or were in the process of adopting a similar code (see Chapter 4 for the content of these codes).

The current European Ombudsman, Nikiforos Diamandouros, has made it clear that he relies on the provision of such a European Code of Good Administrative behaviour – an updated version of which was issued in 2005[27] – to assess whether maladministration has occurred[28].

The European Parliament is currently in a process of strengthening the framework surrounding the concept of maladministration. Indeed, on 8 November 2005 the Parliament almost unanimously adopted the Ombudsman's annual report for 2004[29]. On the same occasion, the Parliament requested that:

• All the EU institutions adopt a harmonised code of good administrative behaviour;

• The Ombudsman define more precisely the concept of '*maladministration*', drawing up a strict and exhaustive list of institutions and bodies covered and categorically excluding all complaints which fall under the responsibility of the Member States' authorities.

[25] See Foreword by the Ombudsman Nikiforos Diamandouros to the 2005 version of the European Code of Good Administrative Behaviour (http://www.ombudsman.europa.eu/code/en/default.htm).

[26] See http://www.ombudsman.europa.eu/recommen/en/oi980001.htm.

[27] See http://www.ombudsman.europa.eu/code/en/default.htm.

[28] Foreword by the Ombudsman Nikiforos Diamandouros, cit.

[29] See http://www.europarl.europa.eu/news/expert/infopress_page/020-2080-300-10-43-902-20051108 IPR02079-27-10-2005-2005–false/default_en.htm.

Good administration towards 'constitutionalisation'

When the first European Convention established the Charter of Fundamental Rights of the European Union, they included the concept of '*good administration*' in the list of the rights the EU recognises. The Charter was then proclaimed at the Nice European Council summit in December 2000 and was inserted as Part II in the Treaty establishing a Constitution for Europe[30]. The *right to good administration* reads as follows:

> 1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
>
> 2. This right includes:
>
> > (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
> >
> > (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
> >
> > (c) the obligation of the administration to give reasons for its decisions.
>
> 3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
>
> 4. Every person may write to the institutions of the Union in one of the languages of the Constitution and must have an answer in the same language (European Convention 2000, Chapter V, 'Citizens' rights').

The Ombudsman expressed the intention, through his code of good administrative behaviour, to explain in more detail what the Charter's right to good administration should mean in practice[31].

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[30] See http://europa.eu/constitution/en/lstoc2_en.htm. The right to good administration is Article II-101.

[31] Foreword by the Ombudsman Nikiforos Diamandouros, cit.

More citizens' rights

Close to the right to good administration, is the *right of access to documents* held by the EU institutions.

This right is now[32] the object of provisions in the EC Treaty[33], of a regulation adopted by the European Parliament and the Council[34], and is also proclaimed in Article 42 of the Charter of Fundamental Rights of the European Union. The latter states:

> Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of

[32] At the issue of a process of emergence of the principle of transparency of the EU action and openness of decision making, whose main preliminary steps were:
- The Declaration No 17 appended to the Maastricht Treaty (1992) on the right to access to information, which states: '...transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration...';
- The declaration approved by the Birmingham European Council (16 October 1992) entitled 'A Community close to its citizens' (Bull. EC 10-1992, p. 9), in which the Heads of State and of Government stressed the necessity to make the Community more open;
- Two Communications adopted by the European Commission in May 1993, on public access to the institutions' documents (Communication 93/C 156/05, OJ 1993 C 156, p. 5) and in June 1993 on openness in the Community (Communication 93/C 166/04, OJ 1993 C 166, p. 4);
- The approval of a Code of Conduct concerning public access to Council and Commission documents by these two institutions on 6 December 1993 (OJ 1993 L 340, p. 41), providing amongst other that '*the public will have the widest possible access to documents held by the Commission and the Council*';
- The adoption by the Council of a decision on public access to Council documents (Decision 93/731/EC of 20 December 1993, OJ 1993 L 340, p. 43), to implement the principles established by the Code of Conduct, and the adoption by the Commission of a similar decision on 8 February 1994 (Decision 94/90/ECSC, EC, Euratom on public access to Commission documents, OJ 1994 L 46, p. 58).
- The first judgement of a EU Court in a case of a refusal by an institution to grant access do a document, based on the exceptions provided both by the Code of Conduct and the Council's and Commission's decisions (Case T-194/94 *John Carvel and Guardian v Council of the European Union* [1995] ECR II-2765).

[33] Article 255 EC:
1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.
2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam.
3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.
Article 207(3) EC, on the functioning of the Council:
3. The Council shall adopt its Rules of Procedure.
For the purpose of applying Article 255(3), the Council shall elaborate in these Rules the conditions under which the public shall have access to Council documents. For the purpose of this paragraph, the Council shall define the cases in which it is to be regarded as acting in its legislative capacity, with a view to allowing greater access to documents in those cases, while at the same time preserving the effectiveness of its decision-making process. In any event, when the Council acts in its legislative capacity, the results of votes and explanations of vote as well as statements in the minutes shall be made public.

[34] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

access to European Parliament, Council and Commission documents.

The general principle is, therefore, that of full transparency (Article 2(1) of Regulation (EC) No 1049/2001).

Some exceptions to the general principle of citizens' access to documents are foreseen: access has to be refused if it is to protect the public interest, privacy and the integrity of the individual, commercial interests of a third party, court proceedings and legal advice, inspections as well as to protect investigations and audits and the institution's decision-making process, unless – in the latter two cases – there is an overriding public interest in disclosure (Article 4 of Regulation No 1049/2001). However, exceptions should not be interpreted, or applied, in a manner which renders it impossible to attain the objective of transparency[35].

The case-law established that in the case of a request for access to documents, where the institution in question refuses such access, it must demonstrate in each individual case, on the basis of the information at its disposal, that the documents to which access is sought do indeed fall within the exceptions listed in Regulation No 1049/2001 and provide a statement of reasons for such a refusal[36].

* * * * *

At the beginning of the 21st century the EU institutions were, therefore, provided with a wide-ranging series of rules setting out for the first time the ethical infrastructure applicable to their functioning. The time has come for us to explore the meaning of 'ethics', within and beyond this EU framework.

[35] See Case T-105/95 *WWF UK v Commission* [1997] ECR II-313, paragraph 56.

[36] See Joined Cases T-110/03, T-150/03 and T-405/03 *Sison v Council*, not yet published.

2 ETHICS: MORE THAN AVOIDING MISCONDUCT

DEFINITIONS

We already know from the CIE reports that 'ethically reprehensible behaviour', irregularities and fraudulent behaviour are not the same, and that ethical responsibility is different from political and disciplinary responsibility. We have seen also that other instruments applicable to the EU officials (the Commission's Internal Control Standards, the Ombudsman's code of conduct…) refer, explicitly or implicitly, to ethics.

Are these documents ethics? And, more generally, what is *ethics*?

Ethics: a journey towards decisions

Amongst the most classical definition of ethics, de Finance (1997, p. 10) describes ethics as being the 'prescriptive science of the human acts'. Prescriptive[37], since it exists to orientate human behaviour.

Rushworth Kidder (2003, p. 66), founder and chairman of The Institute for Global Ethics, says the best definition of ethics he has found is 'obedience to the unenforceable'[38]. Another definition he gives is: 'the practi-

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[37] The prescriptive character of ethics is put into question by various ethical theories, based on the so called 'Law of Hume'. According to this law, 'you cannot deduce *ought* from *is*', that is, value judgments cannot be made purely on the basis of fact judgments. From this derives the distinction between normative (what should be) and positive (what is) ethical theories. The latter ones are therefore *descriptive* rather than prescriptive.

[38] The expression comes from an essay written by Lord Moulton and published in 1924 in *The Atlantic*. Moulton said that there are three great domains of human action. *Positive law* is at one end, and *free choice* is at the other. *Ethics* – 'the obedience of a man to that which he cannot be forced to obey but where he is the enforcer of the law upon himself' – is in between (quoted by Shays 1996, p. 43).

cal application of values to decision making'[39]. In this respect, ethics has to do not only with 'right versus wrong' but more often with 'right versus right' (See Chapter 5). Along the same line, Brown (2000, p. vii) emphasises that 'the purpose of ethics is not to make people ethical; it is to help people make better decisions.' Lewis and Gilman (2005, p. 313) maintain that 'ethics is about decisive action that is rooted in moral values and publicly defensible in terms of moral principles, right results, or both'.

The French philosopher Paul Ricoeur (2002, p. 883-4) makes a distinction between ethics (*éthique*) and morals (*morale*). *Ethics* concerns personal choices: it is a project, a dynamic tension, an 'Odyssey' from the liberty with its potentialities to the actual action[40]. *Morals* refer to laws, norms, and prescriptions or prohibitions. They have to do with the society and its values. Ethics and morals meet insofar as the *moral agent* (each of us when taking a choice on the most appropriate course of action, based on moral judgment) 'internalises' the norm[41].

In the context of this manual, we will use primarily the word 'ethics', with reference to the decisions to be taken by the moral agent. If in some cases we use concepts such as 'moral order', 'moral value', it is within the same meaning.

Values are crucial as far as ethics is concerned. It is worth trying to define this concept, too. In its origin, the term 'value' indicates what appears in an obvious way as good (Dufeu 2005, p. 15). 'Value' may refer to the monetary measure of the object of a transaction as well as to the quality of actions. We can put different objects on a scale, rating them according to their monetary value. Likewise, we can consider that an action is preferable to another because of its intrinsic value. The ancient Greek philosophers were the first to actually try and establish a table of value-driven actions and attitudes, which they called '*virtues*' (boldness,

[39] Kidder, R. M., *Business Ethics: Should We Give It Up?*, in *Ethics Newsline*, 19 August 2002.

[40] Stages of this travel are: (1) *myself* (I can); (2) *you* (your freedom questions mine); and (3) *it* (the situation in which I operate, and which is already ethically marked by collective praxis, by the legal or other rules). Ricoeur also says that the ambition of ethics is to encompass all the intermediate stages between the freedom, which is the starting point, and the law, which is the destination point. In doing so, he comes close to the theory of the three great domains of human activity of the English lawyer John Fletcher Moulton (see above).

[41] I. e. recognises the superiority of the norm, and takes a position by reference to the norm (by either accepting or rejecting the conduct the norm prescribes) making use of his/her own freedom. Once again, ethics lies in-between freedom and law.

compassion, justice…). Aristotle in his Ethics consolidated this investigation and defined virtues as 'excellence in the field of actions' (Ricoeur 2002, p. 884).

The different norms and rules can contain values, or principles, which indicate in general terms the most appropriate – sometimes the only acceptable – action or behaviour in presence of the situation they refer to (see details on these *aspirational* values and their possible translation into *operational* values in Chapter 4). As concerns the moral judgment (also called 'value' judgement), values are the parameters against which the evaluation is made, which allows the consideration that certain behaviours and actions are preferable to others. As we will see (Chapter 5), weighting of values is the core of ethical decision making.

Law, Deontology, Ethics

We deem that the peculiar features of ethics stand out most clearly when compared to *law*, on the one hand, and to this specific set of rules which is *deontology,* on the other hand. We refer here to deontology as the body of special rules and duties applicable to a profession/to an organisation's staff[42]. Indeed, these are different concepts. Even though legal and deontological provisions contain ethical values, the mere adherence to those provisions, and implementation of those values, would at best constitute a sort of 'ethics *a minima*': compliance with what is legally deemed to be good. On the contrary, the real potential of ethics consists, in our view, in developing the moral agent's capacity of judgment to take the best decisions for him/herself and for the community.

We will consider the distinctions among these three disciplines from the perspective of their source, their scope, and their enforceability (this is the approach used by Pescatore 1960, p. 431).

Rules of the legal order are *established* by the legislator, an authority external to the moral agent. The same happens with deontological rules, which are set either by an official body of a specific profession (internal

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[42] And not with reference to the ethical theories based on the concept of *moral duty* (from the Greek word *déon*, which means duty), like Kant's (See also Chapter 5).

auditor[43], accountant[44] ...), or by the employer/the organisation (the code of conduct applicable to the International Monetary Fund staff[45], the values of IBM employees[46]...). Source of the moral rule is the single person: the moral value of an action or a decision is known by the individual's conscience and by nobody else in the same manner.

As for the *scope*, ethics covers the whole sphere of human actions, including those merely impacting on the individual him/herself, whereas law and deontology only govern social and professional life in their exterior expressions. The addressee of ethics[47] is the subject itself; law provisions cover, on the contrary, individuals as well as entities such as undertakings, societies and associations, towns, states, international organisations...

With respect to the *enforceability*, judicial sanctions are applicable in case of breach of legal norms; disciplinary proceedings and eventually sanctions ensure that deontological rules are complied with. Rules stemming from the individual's own conscience are by definition not enforceable[48].

A global perspective of these three different but contiguous orders is pictured in Figure 2.1. Contiguity does not entail overlapping: indeed, an action can be perfectly legal and yet contrary to ethics, and vice-versa.

The moral order is the realm of conscience dictating ethical choices. The conscience may be influenced, fed, educated, distorted by external factors (education, experiences, examples, diffused values in the society, rules applicable in the surrounding professional or private environment) but, in the strict sense, ethics exists where no binding rules laid down by an external authority apply.

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[43] See the Code of Ethics established by The Institute of Internal Auditors (http://www.theiia.org/index.cfm?doc_id=604).

[44] See the International Federation of Accountants (IFAC)'s Code of Ethics for Professional Accountants (http://www.ifac.org/Ethics/).

[45] See http://www.imf.org/external/hrd/code.htm.

[46] See 'Our values at Work on being an IBMer' (http://www.ibm.com/ibm/values/us/).

[47] Written rules derived from ethical assumptions, on the contrary, can apply to entities: e.g. a code of conduct that an enterprise, and not its staff, commits to comply with, a code of ethics for countries – see Chapter 4.

[48] Enforcement is, however, possible for the enablers of ethical choices, i.e. the various elements of the reference framework which give direction to one's conscience (see below in this chapter and Chapter 4).

FIGURE 2.1 LAW, DEONTOLOGY, ETHICS

	Law	Deontology	Ethics
Source	External authority	Professional body /Employer	Conscience
Scope	Society	Profession/Staff	One's own conduct
Enforcement	Legal sanction	Disciplinary measure	Free obedience

[Source: Paolo Giusta 2006]

Unlike compliance with legal rules, where only the questions 'what' and 'how' matter, in the ethical sphere the question 'why' also plays a central role. The ethical perspective is interested in knowing the reasons that support different decisions, and in scrutinising the quality of the reasoning underlying the choice made.

Ethics is a matter of inner conviction, more than of compliance to external rules.

Integrity

In the legal order, what matters most is that actions are legal; in the deontological field that actions comply with the professional or organisational rules. As concerns ethics, the core concept against which actions can be assessed is, in our view, the value of *integrity*.

The original meaning of 'integrity' comes from the notion of 'integral.' According to Brown (2005), an integral represents a whole. To create integrity, therefore, is to integrate the parts into a whole. The relationships between the parts and the whole offer, according to the author, four complementary meanings of integrity:

- *Integrity as consistency*. In terms of human action, integrity requires consistency between what one says and what one does. However, this expresses only the notion of an isolated self, whereas we are born to

live in relationships with others. 'The relational self exists prior to, and serves as the foundation for, expressions of the individual self'. We, therefore, have to consider points of view different from ours.

- *Integrity as relational awareness*. As a relational self, integrity requires a relational awareness, a consciousness of the relations in which one participates. Wholeness means that one's identity is not that of an isolated atom but rather the product of a larger social molecule and that wholeness includes — rather than excludes — other people[49].

- *Integrity as inclusion*. In groups and teams, inclusion requires readiness to overcome differences and disagreements. On the organisational level, it can also refer to listening to different voices, even disagreeable ones.

- *Integrity as pursing a worthwhile purpose*. Integrity is not only a means of integrating ethical principles into business practices, or personal actions. Integrity is an ethical principle in itself, which provides a guideline for right action.

Ethics and integrity allow, therefore, acting by having the whole as a perspective and overcoming the somewhat natural tendency to take one part for the whole[50]. Being able to encompass the whole is crucial to EU officials, who generally operate in a highly specialised and compartmentalised environment. Abélès, Bellier and McDonald (1993, p. 9) describe this environment as a 'society of houses', the houses being the different

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[49] This is the opinion of Robert C. Solomon, *A Better Way to Think about Business: How Personal Integrity Leads to Corporate Success* (New York: Oxford University Press, 1999), p. 40, quoted by Brown 2005.

[50] The danger of taking the part for the whole and, accordingly, acting as an isolated atom is vigorously depicted in Nietzsche's *Thus Spoke Zarathustra (Part II, Chapter XLII – Redemption):*
'When Zarathustra went one day over the great bridge, then did the cripples and beggars surround him. [...]
[Zarathustra said:] It is, however, the smallest thing unto me since I have been amongst men, to see one person lacking an eye, another lacking an ear, and a third a leg, and that others have lost the tongue, or the nose, or the head.
I see and have seen worse things...: namely, men who lack everything, except that they have too much of one thing – men who are nothing more than a big eye, or a big mouth, or a big belly, or something else big, – reversed cripples, I call such men. [...]
The people told me, however, that the big ear was not only a man, but a great man, a genius. But I never believed in the people when they spoke of great men – and I hold to my belief that it was a reversed cripple, who had too little of everything, and too much of one thing. [...]
This is the terrible thing to my eye that I find man broken up, and scattered about, as on a battle- and butcher-ground.
And when my eye fleets from the present to the bygone, it finds ever the same: fragments and limbs and fearful chances – but no men!'

Commission departments, whose staff are supposed to share the same vision and the same values.

Ethics serves as the vehicle which *ferries* people from the fragment to the whole and shapes a personal consistent whole across what the anthropologists' team referred to in Chapter 1 calls the various 'belonging to' ('*appartenances multiples*') and multi-layer identity ('*feuilletage des identités*') – for the EU civil servants: 'the' Commission, the department, the nationality... (Abélès, Bellier and McDonald 1993).

Putting integrity at the crux of ethical choices also helps to take into account the wholeness of situations which may be affected by our actions. There are, in our view, four levels where ethical choices cause an impact: (1) the moral agent's personal life, (2) the team which he/she operates in and the people whom he/she interacts with directly, (3) the organisation he/she works for[51], and (4) the 'customers' who finally – and most often indirectly – benefit from the result of his/her work, together with that of the team and of the entire organisation.

First sphere: Self

Integrity at a personal level is a prerequisite to put in practice the professional standards and the 'particularly correct and respectable behaviour one is entitled to expect from members of an international civil service' (See Chapter 4).

Even in the private field, integrity is at the core of the day-to-day enterprise of implementing one's mission, values, vision.

Stephen R. Covey gives a series of practical indications for developing personal integrity. He maintains (Covey 1999 p. 124) that by applying his principle-centred 'Character Ethics':

• One is guided by a compass which enables him/her to see where he/she wants to go and how he/she will get there;

• One uses accurate data which makes his/her decisions both implementable and meaningful;

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[51] The same applies in the communities the moral agent belongs to in his/her private life.

- One stands apart from life's situations, emotions, and circumstances, and looks at the balanced whole. His/her decisions and actions reflect both short- and long-term considerations and implications;

- In every situation, he/she consciously, proactively determines the best alternative, basing decisions on conscience educated by principles.

The first practical indication Covey gives is to develop a *personal mission statement*. This focuses on what one wants to be (character) and to do (contributions and achievements) and on values or principles upon which such being and doing are based[52]. By elaborating a mission statement, one expresses the uniqueness of each person, the added value that he/she can bring in the different environments to be influenced by his/her action.

The recent amendments to the Staff Regulations provide a good example of how to exercise integrity to achieve one's personal mission.

As a consequence of the reform's strive to help officials better reconcile professional and private life, the newly-introduced Article 55a of the Staff Regulations offers EU civil servants the right to request authorisation to work part time and, in certain cases (if part time is requested to care for a child...), the right to obtain such authorisation.

An official desiring to benefit from this provision has to first ask him/herself a question about his/her mission ('Is my mission focusing on career, and to what extent? Or is it focusing on family or other extra-professional commitments, and to what extent?'). Then, according to the answer given, he/she will have to set priorities and then accomplish actions coherent with his/her mission statement. Integrity is needed each time a choice is made on whether to follow the priority tasks, which may require a dose of sacrifice, or to use the energy for non-priority actions, possibly more pleasant or rewarding in the short term.

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[52] Covey describes the personal mission statement as 'a personal constitution, the basis for making major, life-directing decisions, the basis for making daily decisions in the midst of the circumstances and emotions which affect our lives. It empowers individuals with the same timeless strength [as a State's Constitution] in the midst of change' (Covey 1999, p. 108).

Covey suggests a Time Management Matrix where the two factors that define an activity are *urgent*[53] and *important*[54]. Priority activities, which one has to do to accomplish his/her mission, are in Quadrant II (See Figure 2.2.).

FIGURE 2.2 THE TIME MANAGEMENT MATRIX

	Urgent	Not Urgent
Important	**I** ACTIVITIES: Crises Pressing problems Deadline-driven projects	**II** ACTIVITIES: Prevention, *production capability (*)* activities Relationship building Recognizing new opportunities Planning, recreation
Not Important	**III** ACTIVITIES: Interruptions, some calls Some mail, some reports Some meetings Proximate, pressing matters Popular activities	**IV** ACTIVITIES: Trivia, busy work Some mail Some phone calls Time wasters Pleasant activities

[(*) i.e. the activities whereby you cultivate the abilities or assets which later produce results][Source: Covey 1999, p. 151]

Decisions to carry out a Quadrant II activity, and to resist the pressure of Quadrant I and III and the temptation of Quadrant IV, Covey points out, are a matter of integrity, of consistency to the principles that guide, from inside, the choices to make.

Other spheres: Communities (Team, Organisation, Customers)

Ethical decisions and actions have an impact not only on the personal life of the moral actor, but also on other spheres.

An official can, for instance, influence the good working climate in a team by sharing information, by proactively helping colleagues where he/she

[53] '*Urgent* means it requires immediate action... Urgent things act on us ... Urgent matters are usually visible. They press on us; they insist on action... They're usually right in front of us. And often they are pleasant, easy, fun to do. But so often they are unimportant! ... We *react* to urgent matters' (Covey 1992, pp. 150-151).

[54] '*Importance*, on the other hand, has to do with results. If something is important, it contributes to your mission, your values, your high priority goals... Important matters that are not urgent require more initiative, more proactivity. We must *act* to seize opportunity, to make things happen' (Covey 1992, p. 151).

notices a need, by respecting others' different approaches and taking into account their views when making decisions (see definition of integrity as inclusion and as relational awareness above).

A person acting with integrity may contribute more efficiently (he/she invests time in priority tasks) and effectively (by doing so, he/she delivers on priority objectives) to the achievement of the mission of the organisation he/she belongs to (see definition of integrity as pursing a worthwhile purpose above).

Finally, the whole society can benefit from this personal integrity, in particular, for the EU civil servant, the citizens as the beneficiaries (the 'customers') of the administrative actions. Indeed, ethical decision making allows better consideration of both the whole (the ultimate interest of the society) and the parts of the whole (an intermediate, or individual, interest) and the proper consideration of the elements at stake when determining the action to be pursued (see also Chapter 5 on ethical dilemmas).

To sum up, a diagram of the spheres affected by ethical choices, from self to the wider community, could look like the one presented in Figure 2.3.

FIGURE 2.3 SEQUENCE OF SPHERES THAT ETHICAL CHOICES MAY AFFECT

CUSTOMERS

ORGANISATION

TEAM

PERSONAL

[Source: Paolo Giusta 2006]
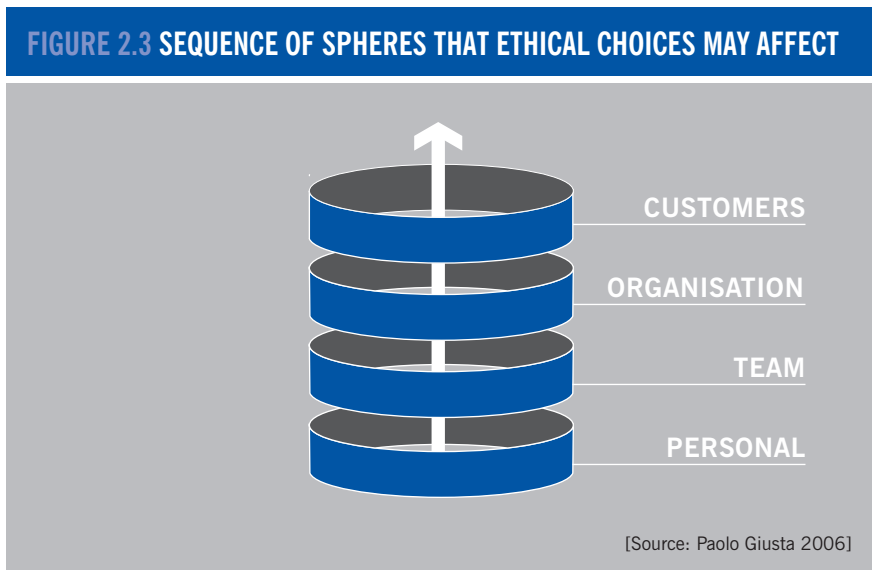
Public ethics and ethical systems

Ethics is about making choices dictated by one's own conscience. However, these choices take place within a context, where the conscience of the ethical actor is influenced by many factors.

The ethical systems,[55] within which one operates, guide the process of weighing the different values at stake, striking a balance and deciding on the most appropriate course of actions.

These ethical systems exist to make it more likely for public services, and servants, committed to professionalism and ethics, to attain their goals (United Nations 2000a, p. 5).

With reference to organisations, ethical systems are described as 'an ordered set of moral standards and rules of conduct by reference to which, with the addition of factual knowledge, one can determine in any situation of choice what a person ought or ought not to do'[56].

Coming to the public service, ethical systems take the form of 'a system of rules, activities, and agents that provide incentives and penalties for officials in the public sector to professionally carry out their duties and engage in proper conduct' (United Nations 2000a, p. 5). Demmke and Bossaert (2004, p. 14) refer to *public ethics*, defined as 'common values and norms in the public services'. The moral nature of these norms refers to what is judged to be right, wrong, good or bad behaviour. Whereas values serve as moral principles, norms state what is legally and morally correct in a given situation (*ibidem*).

The ladder of sources for ethical behaviour

Broadly speaking, an ethical system which serves as reference framework for decision making consists of several levels, from wider society up to (or down to depending on what you put at the top) the individual.

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[55] Ethical systems are also referred to as 'ethics infrastructure' (see *Ethics in the Public Service: Current Issues and Practice*, OECD, 1996) and 'national integrity system' (*The Role of a National Integrity System in Fighting Corruption*, The World Bank, 1997, quoted by United Nations 2000a, p. 5).

[56] Taylor P. (1975), *Principle of ethics* (Dickenson Publishing Company), quoted by Stewart D. W., 'Managing Competing Claims: An Ethical Framework for Human Resources Decision Making', (Bruce 2001, pp. 128-145).

Demmke and Bossaert (2004, p. 114) identify a whole series of 'layers of integrity', which together shape a comprehensive reference ethical system (Figure 2.4.).

The authors consider that incorruptible behaviour in the public sector does not depend on one single instrument such as effective disciplinary legislation, the setting-up of efficient control and monitoring bodies or an attractive code of conduct, but on the existence of an overall integrity system, or a multi-dimensional ethics infrastructure (Demmke and Bossaert 2004, pp. 6-7). They stress that the main characteristic of such a multi-dimensional approach is that ethics is considered a key principle of good governance (*ibidem*).

If applied to EU civil servants, the levels identified by Demmke and Bossaert can be translated into the following elements, all of which play a role in orienting the official's conduct:

- The EU society/societies[57];

- The EU legal, political and administrative system;

- The EU public service's rules and culture;

- The EU institutions and bodies, and the different sub-organisations within them;

- The individual level.

Amongst these levels, we will examine in more detail the EU legal and political context (Chapter 3) and the different rules laid down by and within the EU institutions (Chapter 4). Individual values are of key importance in a multicultural and multifaceted context as is the European public service: we will take them into account when dealing with ethical dilemmas (Chapter 5).

As for European society, we refer to the literature[58] on the diffused values present among citizens, which clearly influence decision making at EU

[57] Nikolaïdis, K (2004), 'We, the people of Europe...' *Foreign Affairs*, (83:6, pp. 97-110) refers to the European Union as a *demoicracy* rather than a *democracy*. The lack of a single *demos* implies that a unique European public space, a European society is not required.

[58] Cf. Halman, L., Luijkx, R., and van Zundert, M. (2005) and Dufeu (2005).

FIGURE 2.4 **LAYERS OF INTEGRITY**

Society

- Religion, Philosophy
- Values and norms
- Culture
- History
- Political and legal system

National legal, political and administrative system

- Constitution
- Trust in the political system and public sector
- Openness and transparency
- Efficiency and effectiveness
- Separation of powers
- Reliable and effective judicial and control system (e.g. police)
- Political leadership and commitment

Human Rights

National public service

- Image of the public service
- Working conditions
- Transparency of decision -making process
- Control
- Political leadership
- Codes of conduct
- National regulations
- Whistleblowing
- Disciplinary legislation

Democracy

Accountability

Organisational level

- Culture , communication, transparency, control, guidelines (codes of ethics)
- Human resource management, working conditions, training, procedures, leadership, role models, job rotation, recruitment

Individual level

- Individual ethics, personal philosophy, community values, professional values etc

Good Administration Efficiency Effectiveness

Rule of Law Fairness

[Source: Demmke and Bossaert 2004]

level. We only note, for illustration purposes, two phenomena that took place about the same time in 2004 on both sides of the Atlantic Ocean and which show how the ethical climate of different societies on similar issues can diverge.

On November 2 President George W. Bush was re-elected president of the United States, and the most relevant factor in determining the voters' choice was 'moral values', intended as referring to three specific issues: abortion, gay marriage and stem-cell research[59].

On October 5 the then Italian Minister for European Affairs, Rocco Buttiglione underwent a hearing before the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament, in his capacity of Commissioner-designate for the portfolio of Justice, Freedom and Security. Following the hearing, the parliamentary Committee rejected the appointment of Mr Buttiglione as Commissioner, based on unsatisfactory estimation of the moral and political convictions of the Commissioner-designate (in particular on some of the 'moral values' that played a role in the re-election of President Bush).

Does ethics need an ethical system?

This is the question asked by Demmke (2004, p. 14), with particular emphasis to public service codes of ethics.

Indeed, one could consider 'with the prophet Jeremiah that the laws of right behaviour are written on one's heart, not on paper'[60], and that an ethical system of principles and values is useless, since ethics is largely unenforceable anyway. Moreover, how can an ethical system in general and a code of ethics in particular 'possibly comprehend the diversity of the field and the complexity of the problems of moral reasoning?'[61]

[59] Cf. Kidder R. M., *'Moral Values' and the U.S. Election: A View from Overseas*: '22% of U.S. voters saw 'moral values' as their most important reason for voting as they did. No other issue – not the economy, not terrorism, not Iraq – was cited as often. As interpreted by commentators [in Europe], 'moral values' usually referred to three specific issues – abortion, gay marriage, and stem-cell research – that featured in the campaign.' (*Ethics Newsline*, 8 November 2004).

[60] Cf. Chandler, R.C. (1983), 'The Problem of Moral Reasoning in American Public Administration: The Case for a Code of Ethics' in *Public Administration Review* (Bruce 2001, pp. 238-254)

[61] *Ibidem*.

There is, firstly, a negative reason for the establishment of an ethical system: deterrence. As Alexander Hamilton put it,

> The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of society; and in the next place *to take the most effectual precautions for keeping them virtuous* [Emphasis added][62].
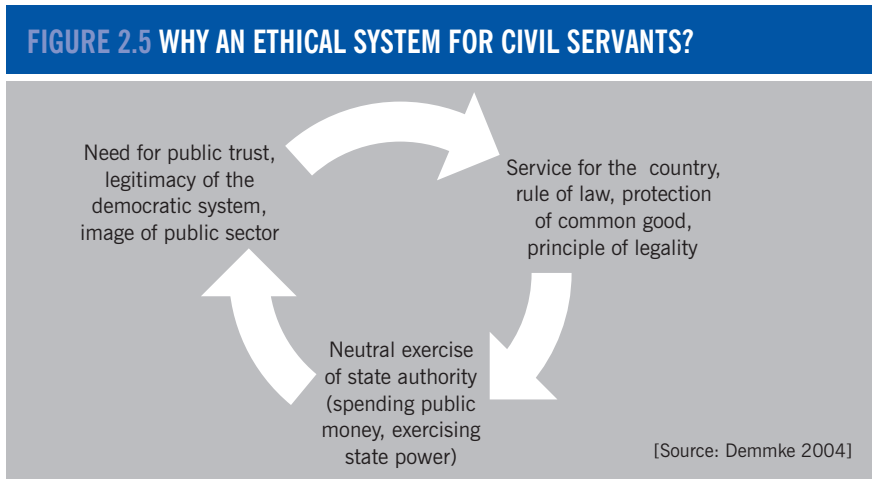
Ethical systems contain those 'precautions', including sanctions (from judicial proceedings to public reprobation towards a given behaviour shown, for instance, by a holder of a public office) aimed at ensuring that civil servants demonstrate an appropriate level of morality.

Secondly, there exists a series of positive reasons for the establishment of ethical systems for civil servants, including more particularly codes of ethics (see Demmke 2004, p. 15):

- One of the main reasons for ensuring that civil servants demonstrate a behaviour in dealing with public affairs that is ethically correct is the potential for senior public officials and politicians to be seen as role models for the general public;

- In addition, the level of power or responsibility awarded to such people makes it necessary to impose upon them minimum standards of conduct in the proper exercise of their duties. The more responsibilities and power bestowed upon them, the higher the standards should be: it is evident that unethical behaviour in public figures could lead to a lowering of standards in the general public;

- The importance of a reference ethical system for public officials can also be justified by the involvement of civil servants in developing and implementing legislation that in effect stipulates how the general public should conduct themselves. If people take important decisions about others, they must ensure that their own behaviour is beyond question;

- Finally, civil servants and politicians are employees in the public sector. As they are paid by tax revenues, the public has a right to expect certain standards of behaviour.

[62] Quoted by Chandler, The Problem of Moral Reasoning, cit., p. 245.

Demmke summarises the elements pleading for setting up of an ethical system in the virtuous circle of Figure 2.5.

FIGURE 2.5 WHY AN ETHICAL SYSTEM FOR CIVIL SERVANTS?

Need for public trust, legitimacy of the democratic system, image of public sector

Service for the country, rule of law, protection of common good, principle of legality

Neutral exercise of state authority (spending public money, exercising state power)

[Source: Demmke 2004]

Based on his survey of ethics in the public services of EU Member States, Demmke concludes that, at least formally, it seems that all Member States agree on a number of ethical principles on a pan-European scale, which constitute the common elements of a possible European ethical system (Figure 2.6.):

FIGURE 2.6 COMMON ELEMENTS OF A POSSIBLE EUROPEAN ETHICAL SYSTEM

Common European principles of Integrity are:

1. Commitment to the public

2. Integrity, honesty and fairness

3. Independence (and objectivity)

4. Accountability and responsibility

5. Openness and transparency

[Source: Demmke 2004]
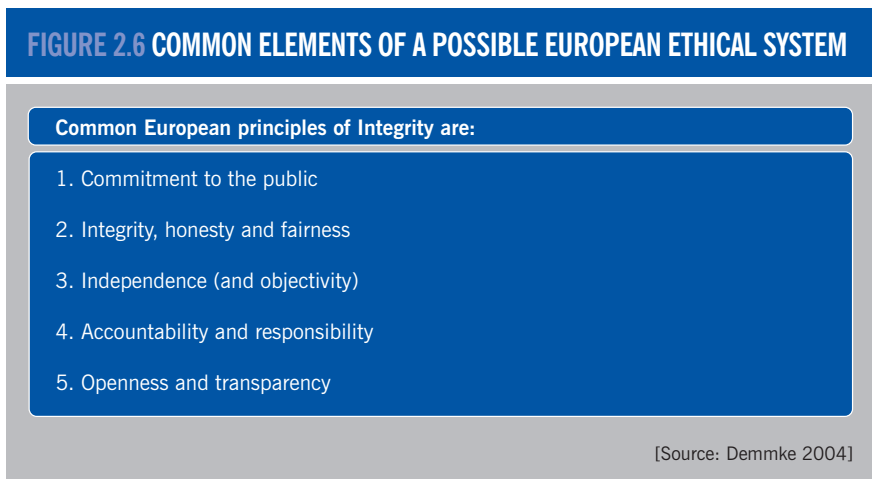
We will now examine more closely some specific elements of the ethical system that constitute the reference framework for the EU civil servants' action: the EU as an ethical enterprise (Chapter 3) and the various rules providing guidance to EU officials (Chapter 4).

3 'I CONSIDER THIS AS AN ENTERPRISE OF A MORAL ORDER'

THE EUROPEAN UNION AS AN ETHICAL PROJECT

It is often said that an ethical vision was at the core of the project of the 'founding fathers' of European integration. Ethics is also seen, on occasions, as an important component in the development of the EU project and in the current policies[63]. In this chapter, we will explore the presence of ethics in the EU project. We will follow in our reasoning the following pattern:

- First, we will focus on the *personality of the founding fathers*, who were animated by a strong ethical motive, making it possible for them to envisage a new, bold solution based on merging the interests which had previously been the cause for wars. We will do so by analysing the personality of Jean Monnet.

- Secondly, we will consider some of the *ideals* underpinning the vision of a united Europe at its beginning: peace, prosperity and supranationalism.

- Thirdly, we will try and translate those original ideals in a series of values applicable to the European Union as it exists today, 'united in diversity'.

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[63] Cf. amongst others ABER-Europe (2002), *Le sens de la construction européenne: un défi éthique* (Brest: Association ABER-Europe) and F. Riccardi: "Le 'Modèle européen' s'exprime de plus en plus en prenant en considération des critères écologiques, sociaux, *éthiques* et autres dans l'application des règles du marché unique" (*Bulletin quotidien Europe*, 5.10.2002, emphasis added).

What is the common feature which keeps the project stable from the founding fathers to the EU as it stands today? It is, in our view, the force that the project draws from the diversity of the components, the capability, unique in the world, to encompass the differences into a single project and, at its best, to take advantage of the diversities to create a stronger unity.

Ethical foundation of the European integration process

At the origin of the first European community, there was an extraordinary combination of historic circumstances, requiring innovative solutions after the disaster of World War II, and of the personalities of European leaders, able to ally a vision driven by ideals, a sound pragmatism, and the political instinct allowing them to exploit the window of opportunity which was present at that moment.

The man who undoubtedly contributed most to initiating the changing process was Jean Monnet.

Jean Monnet, the first statesman of interdependence[64]

Jean Monnet was the man of the main crises. A descendant of a family of producers of cognac, he used to say that without the wars he would have continued to sell cognac (Fontaine 1996, p. 84). What message can he give today to those who deal with (lesser) crises, or even routine administration?

A 'pragmatic visionary'[65] who takes the initiative

Monnet, of whom the British economist John Maynard Keynes said that by conceiving the American Victory Program he made it possible for World War II to be shortened by one year (Rieben 1996, p. 19), the former U.S. Secretary of State Henri Kissinger that 'no one more than Jean Monnet has marked the political life of our era'[66], and U.S. President John F. Kennedy

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[64] Cf. Francois Duchene (1994), *Jean Monnet: The First Statesman of Interdependence* (New York and London: W. W. Norton & Company).

[65] Roussel (1996, p. 19).

[66] In a speech given during the presentation of the Grenville Clark Prize to Jean Monnet in Paris, 15 November 1975, quoted in *Témoinages à la Mémoire de Jean Monnet,* Fondation Jean Monnet pour L'Europe (FJME), Lausanne, 1989.

that 'under [his] inspiration, Europe has moved closer to unity in less than twenty years than it had done before in a thousand'[67] came to public life almost by chance.

In September 1914, Jean Monnet, who was not yet 26, realised, from his already broad experience in world trade, that the UK and French supplies were not coordinated, which implied a waste of resources and unsound competition between war allies. Six weeks after the beginning of World War I, Monnet obtained an appointment with the then French Prime Minister, Viviani. He explained what he had observed to the Prime Minister, who sent Monnet to London as the French liaison officer in the British Supply Council, where Monnet played a major role in organising the Allies' supplies and naval freight during the war.

From then on, Monnet spent his days, and most often also nights[68], in observing the reality, addressing the one problem[69] which was the most important issue in a given moment and laying down plans to make changes happen. In most cases, it was a matter of changing the circumstances[70] in order to make the positive change he had set off almost 'ineluctable' in the new situation. He knew that the 'the technical problems are never unsolvable if they are addressed from the perspective of a great idea.'[71]

Monnet so described the essential lines of his action, when he found himself confronted with 'a crisis that called for an urgent effort of unity': unity of aim and of action; encompassing vision[72]; pooling of resources[73].

[67] On awarding Jean Monnet the Freedom Prize in 1963, quoted by Roussel (1996, p. 778).

[68] Monnet so describes the first working day of the ECSC High Authority, after the official ceremony: '*Nous restions seuls pour commencer une œuvre qui n'avait pas de précédent. Les lumières de la petite ville [de Luxembourg] s'éteignirent tôt, comme à l'habitude. Seules les fenêtres de l'immeuble de la place de Metz restèrent éclairées fort avant dans la nuit. C'était une autre habitude qui s'instaurait, celle des pionniers de l'Europe qui ne connaîtraient plus le repos*' (Monnet 1976, p. 439).

[69] Fontaine (1996, p. 64) notes Monnet's '*amazing capacity to turn his attention on only one point*'. Monnet explains that '*Il n'y a pas de limites, sinon celles de la résistance physique, à l'attention que l'on doit porter à ce qu'on fait si l'on veut réellement aboutir. Qu'on ne s'étonne pas et qu'on ne se plaigne pas d'avoir échoué dans des entreprises qu'on mène concurremment et auxquelles on ne donne que des soins partiels*' (Monnet 1976, p. 609).

[70] '*Il ne faut pas chercher à résoudre les problèmes, il faut changer le contexte dans lequel ils se posent*' (Roussel 1996, p. 909). '*Pour régénérer l'Europe, Monnet croyait profondément qu'il fallait s'évader des vieux schémas, prétextes à l'inertie*' (*Ibid.*, p. 21).

[71] Rapport sur l'entrevue du 23 mai 1950 à Bonn, entre J. Monnet et le Chancelier Adenauer (Archives de la Fondation Jean Monnet pour l'Europe, Lausanne), quoted by Roussel 1996, pp. 538-539 (the English translation is ours).

[72] The scale at which he used to reason was the world (Cf. Roussel 1996, p. 702 and Fontaine 1996, p. 139).

[73] '*Unité de vues et d'action; conception d'ensemble; mise en commun des ressources*' (Monnet 1976, p. 75).

The force of the collective action based on mutual trust

Monnet's working method was that of setting up a team of competent and motivated people. It was from this pooling of ideas that innovative solutions came.

'I think that one cannot act alone'[74], he said, 'My objective is the joint action.'[75] The Frenchman had the sense of teamwork in his blood. He used to say 'us', 'our' work, paper..., since he would not have done anything without a team[76]. Jacques-René Rabier, Monnet's head of cabinet, speaks of his 'strategy of trust': 'Jean Monnet was a man who trusted people... he knew how to value people... without appealing to competition and even less to ambition, he called for collaboration... he was interested in his collaborators and he developed personal, affectionate relationships with them.'[77] In doing so, 'he drew the best out of everyone.'[78]

Monnet considered the first team at the High Authority in Luxemburg the 'proof' of a new European spirit that was coming to life; this spirit, which was the fruit of the joint action of people of different backgrounds, could be practised, in Monnet's opinion, in the relations amongst nations as well[79].

The contribution Monnet brought to European and world affairs was based on the same idea of cooperation amongst people. Having experienced, in key positions during both World Wars, the clash of interests between national states, Monnet's method was to put the different states

[74] Letter to Michel Albert of 25 September 1970 (quoted by Roussel 1996, p. 19).

[75] Monnet 1976, p. 611. Here and in the following quotation of Monnet's excerpts, the English translation is ours.

[76] Fontaine 1996, pp. 94 and 99.

[77] Mentioned by Roussel 1996, pp. 458-9.

[78] Fontaine 1996, p. 76.

[79] Monnet 1976, p. 441. See also p. 452: '*je savais surtout que l'exemple que nous donnions [...] aurait une signification qui dépassait de loin la CECA et durerait plus longtemps qu'elle. Si nous réussissions à apporter la preuve que des hommes appartenant à des pays différents pouvaient lire le même livre, travailler sur le même problème avec les mêmes dossiers, et rendre inopérantes les arrière-pensées, inutiles les soupçons, nous aurions contribué à changer le cours des rapports entre les nations.*'
This way of working continued until the end of his involvement in public affairs. For instance, when in his late years he was President of the *Comité d'Action pour les Etats-Unis d'Europe*, Monnet used to share his office with the Committee Secretary-general, Jacques Van Helmont. '*This physical proximity was the source of a permanent dialogue*' (Rieben 1996, p. 32).

around the same table, to talk of clearly defined problems, and to jointly search for the common interest. 'Convincing people to talk to one another is the maximum one can do for the peace.' To this purpose, he created the conditions of a profound and permanent dialogue, knowing that good will is not enough. 'A certain moral force must apply to everyone: those rules produced by common institutions above the individuals and respected by the States.' He believed that a spirit of equality and a sense of trust[80] were necessary in this dialogue, so that 'nobody came to the table with the will to bring home an advantage over the other partners'[81]. These were the conditions to 'set in motion new developments which allowed people, who up till then had been separated or opposed, to unite in a common project.'[82] In this context, the foundation of Europe was a political, even more, a moral aspiration[83]: it consisted of creating progressively the widest common interest, governed by democratic common institutions to which the necessary sovereignty is delegated[84].

Lack of personal interest and ambition for the common good

Monnet never wanted to 'become someone.' He considered himself belonging to those people who create action and set things in motion; those people look first and foremost for the places and the moments where one can influence the course of the events. 'These are not the most visible places, not the most expected moments, and those who want to seize them must renounce occupying the front scene'[85].

Since he was not a career politician or civil servant, he observed world affairs through his experience and common sense, and envisaged often innovative ways which were invisible from the perspective of those who held the political power[86]. In all circumstances then he would present the new ideas to the politicians, leaving the latter to take the political responsibility for their implementation but also the public reward.

[80] '*Je n'ai jamais rien obtenu, ou du moins tenté d'obtenir, sans la confiance*' (Monnet 1976, p. 488).

[81] Monnet 1976, pp. 558-559.

[82] Van Helmont 1996, p. 52.

[83] Monnet 1976, p. 460.

[84] Monnet 1976, p. 615.

[85] Monnet 1976, p. 611.

[86] '*Je n'étais pas dans les affaires publiques, mais grâce à mes voyages et mes contacts variés, j'étais mieux placé que bien des hommes de gouvernement pour voir ce qui leur était dissimulé par leurs services, ou par leur propre optimisme, ou au contraire par la peur d'une écrasante responsabilité*' (Monnet 1976, pp. 136-7).

Those having worked with Jean Monnet say that 'Monnet's extraordinary power came from his absolute lack of self-interest. One knew that he never asked anything for himself'[87]. They were prepared to serve him because they knew that he himself was at the service of an idea. 'Not very anxious to appear, Monnet had a unique aptitude to mobilise others' power for the common good'[88]. According to François Fontaine, it was Monnet's high moral vision, together with his 'creative genius', which put him in a position where he could act for the common interest.

The ideals of the founding fathers of Europe

The same moral vision animated some of the statesmen who were later on defined as the founding fathers of European integration. Foresi and Sensini (2002, pp. 212-213) so describe the personality of Alcide De Gasperi, Robert Schuman and Konrad Adenauer: 'All three were fron-tiersmen... all three German-speaking. All three had lived through regional and global conflicts, and the horrors of the last war led them definitively to where another essential characteristic guided them: faith in solidarity.'[89]

EU Law Professor J.H.H. Weiler (1998, p. 241) points to the founding fathers' spiritual background, an important component of the ethical vision of these outstanding personalities.

> The idea, then, in 1950, of a Community of Equals as providing the structural underpinning for long term peace among yesteryears enemies, represented more than the wise counsel of experienced statesmen.

> It was also a call for forgiveness, a challenge to overcome an under-standable hatred. In that particular historical context the Schu-manian notion of Peace resonates with, is evocative of, the distinct discourse, imagery and values of Christian Love, of Grace – not, I think, a particularly astonishing evocation given the personal back-grounds of the Founding Fathers – Adenauer, De Gasperi, Schuman, Monnet himself.

[87] So expresses himself the French diplomat Jean Laloy (Roussel 1996, p. 699).

[88] Fontaine 1996, p. 63.

[89] The English translation is ours.

Pioneers of dialogue and cross-border cooperation, these three states-men had a clear idea of the fact that the economic project of pooling the coal and steel production had a highly political foundation, and was, in fact, a moral undertaking[90]. It was Schuman's conviction that '[Europe] cannot and must not remain an economic and technocratic undertaking. It must have a soul, awareness of its historical affinities and of its present and future responsibilities, and political determination in the service of a single human ideal' (Schuman 1963, p. 78)[91].

De Gasperi considered the European Coal and Steel Community as the first stage of a large political and human ideal, the ideal of a higher form of living together amongst the peoples[92]. In his mind, 'If it is not united, Europe is lost'[93].

When Jean Monnet visited him in Bonn on 23 May 1950 to present the Schuman Plan, Adenauer said that European integration would become his life's mission. He affirmed: 'Like you, I consider this enterprise under its most elevated aspect, as an enterprise of a moral order. The different governments concerned have to take care of ... their moral responsibility, taking into account the vast hopes that the [Schuman] proposal has arisen. [...] I consider the achievement of the French plan as the most important task imposed on me. Should I manage it, I consider that I will not have wasted my life.'[94]

What was the ethical and political vision of the founding fathers?

Weiler identifies three main ideals of the European integration: peace, prosperity, supranationalism. He explains that the interest of exploring European integration ideals resides, first, in the mobilising force of ideals: ideals are part of the matrix which explains socialisation, mobili-sation, and legitimacy, and they are a key element to understanding why certain elites or masses support or tolerate European integration, in par-ticular in its formative years. Secondly, ideals are important from a social

[90] Mensing, H. P., 'L'orientation européenne et atlantique de Conrad Adenauer avant 1933 et après 1949' (in Smets 2001, p. 72-73).

[91] The English translation is ours.

[92] Cf. Rede von Alcide de Gasperi. Verleihung des Internationalen Karlspreises zu Aachen an Alcide de Gasperi am 24. September 1952 (http://www.karlspreis.de/portrait/1952_2.html). The English transla-tion is ours.

[93] Foresi and Sensini (2002, p. 213).

[94] Rapport sur l'entrevue, cit.

perspective: ideals are 'a principal vehicle through which individuals and groups interpret the reality, give meaning to their life, and define their identity – positively and negatively'. Thirdly, ideals serve as a useful element to place ideas in their historical context: they are an essential part of the cultural history and the cultural identity of an era (Weiler 1998, pp. 243-244).

Ideals are closely related to ethics. They encapsulate the values which orientate the ethical choices. In the foundational period of the European Communities, the three ideals put forward by Weiler acted as the cornerstones of this political and ethical project.

Peace

'Peace, in the immediate wake of World War II, was the most explicit and evocative of ideals for which the would-be-polity was to be an instrument' (Weiler 1998, p. 240). The ideal of peace lies at the core of the founding act of the first European Community, the Schuman Declaration of 9 May 1950:

> World peace cannot be safeguarded without the making of constructive efforts proportionate to the dangers which threaten it...

> The gathering of the nations of Europe requires the elimination of the age-old opposition of France and the Federal Republic of Germany; the first concern in any action undertaken must be these two countries...

> [This] solidarity ... will make it plain that any war between France and the Federal Republic of Germany becomes, not merely unthinkable, but materially impossible...

Weiler (1998, p. 241) recalls that, in the early 1950s, the horrors of the war were still fresh in people's minds and the Schuman Declaration set in motion a process that gave the ideal of peace the very concrete shape of reconciliation, between the two enemy countries and across the European continent. Reconciliation between the French and German peoples required an 'act unheard of in the story of international relations' (Albert, Boissonnat and Camdessus 2002, p. 75): the victor held his hand out to the vanquished, and then they both took the unprecedented initiative of freely renouncing part of their sovereignty, deciding to jointly administer

the resources which had been used to fight the war and were the subject of contention.

The sense of the historical mission the protagonists of this process were aware of accomplishing is conveyed by the words of Chancellor Adenauer after the meeting with Jean Monnet of 23 May 1950, mentioned above. During the dinner in the French embassy that followed the meeting, Adenauer turned to a senior French official and said: 'Would you please tell Mr. Monnet that when he proposed his project to me, I thanked God.'[95] A few years later, Adenauer sent the following letter to Monnet: 'Mr Europe Jean Monnet. As a former sub-officer in the Prussian army, I prayed in 1916 in my hole as an infantry soldier in front of the Cathedral of Reims for the Saviour to reconcile our two peoples to end this terrible massacre. You have now accomplished that task and I thank you.'[96]

Prosperity

In the Schuman Declaration, peace and prosperity were closely linked to one another:

> The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development...

> The solidarity in production thus established ... will lay a true foundation for [the member countries'] economic unification.

> This production will be offered to the world as a whole without distinction or exception, with the aim of contributing to raising living standards and to promoting peaceful achievements. With increased resources Europe will be able to pursue the achievement of one of its essential tasks, namely, the development of the African continent.

Weiler notes that the economic reconstruction of the devastated continent was intimately connected with the notion of peace. One was the means for the other.

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[95] Quoted by Roussel 1996., p. 539.

[96] Quoted by Ferdinando Riccardi, *Bulletin quotidien Europe*, 13-14.5.2002, p. 4.

The idea of prosperity was also one founding element of the European Economic Community. Article 2 of the Treaty of Rome stipulates that

> The Community shall have as its task ... to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated rise of the standard of living ...

Weiler (1998, p. 245) points to the idealistic dimension of the notion of prosperity: when set against a backdrop of destruction and poverty, individual and social prosperity assumes the meaning of dignity, both personal and collective. The Community's quest for prosperity in its formative years took place in a period which inextricably linked it with widespread (re)construction and (re)generation.

Prosperity was, since the beginning, connected to a cooperative enterprise, to a collective responsibility in the reconstructive effort, and to the idea of solidarity among Member States. Moreover, the Schuman declaration extended this concept of economic solidarity to the international sphere, with reference to the African continent – the part of the developing world with which the European countries had closer geographical and historical ties[97].

Supranationalism

The supranational vision 'is about affirming the values of the liberal nation-state by policing the boundaries against abuse' (Weiler 1998, p. 250-251). This abuse consisted of an excessive focus on the interest of a single state to the detriment of the common interest:

> Supranationalism replaces the 'liberal' premise of international society with a community one. The classical model of international law is a replication at the international level of a liberal theory of the state. The state is implicitly treated as the analogue, on the international level, to the individual within a domestic situation. In this conception, international legal notions such as self-determination, sovereignty, independence, and consent have their obvious analogy

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[97] In the text of the Schuman Declaration published in the official site of the European Commission (http://europa.eu/abc/symbols/9-may/decl_en.htm), the sentence referring to the solidarity towards the African continent had initially been dropped and has only recently been reintroduced.

in theories of the individual within the state. In the supranational vision, the community as a transnational regime will not simply be a neutral arena in which states will seek to maximize their benefits but will create a tension between the State and the Community of States. Crucially, the community idea is not meant to eliminate the national state but to create a regime which seeks to tame the national interest with a new discipline (*ibid*.).

Weiler (1998, p. 246) defines supranationalism as 'want of a better world'. The world-wide dimension of the European supranational project, and Europe's responsibility towards the rest of the world were very clear in the minds of the founding fathers. 'Europe, observes Monnet, must bring a moral contribution to the world's development. If it succeeds in eliminating the reasons for war from within itself, Europe will provide the world the spiritual input which is able to overcome the rivalry amongst nationalisms.'[98]

Schuman and Monnet even thought of a world-wide organisation, to which European integration could contribute. Following the supranational pattern, the pooling of interests and sovereignty that took place in Europe could happen in other continents, and a possible organisation of tomorrow's world could be constituted of geopolitical continental entities[99], which in turn could delegate to a supranational world-wide body the areas of competence that can be more effectively addressed at a global level.

Schuman (1963, p. 38) considered: 'The united Europe prefigures the universal solidarity of the future', and Monnet wrote in his Memoirs (Monnet 1976, pp. 616-617):

> Have I said clearly enough that the Community we have created is not an end in itself? It is a process of change, continuing that process which, in an earlier period of history, produced our national forms of life. Like our provinces in the past, our nations today must learn to live together under common rules and institutions freely arrived at. The sovereign nations of the past can no longer solve the problems of the present; they cannot ensure their own progress or control their own future. And the Community itself is only a step on the way to the organised world of the future.

[98] Rapport sur l'entrevue, cit.

[99] Rieben (1996, pp. 22-23) refers to these continental entities as to '*centres de gravité*'.

Values in the EU project

The ideals of the founding fathers were progressively translated in an original institutional and political system, which developed to become the European Union of today.

A Mission, a vision, a 'community method'

Peace has progressively developed to become an EU mission vis-à-vis the rest of the world. Indeed, the EU aims not only at 'creating an ever closer union among the peoples of Europe…' (EU Treaty, preamble). Its ambition is also '[to reinforce] the European identity and its independence in order to promote peace, security and progress in Europe and in the world' (*ibidem*).

Prosperity is also present as an encompassing vision in the Preamble of the EU Treaty, where economic growth is coupled with social and environmental concerns and with an explicit attention to solidarity. The Preamble stipulates that the EU 'promote[s] economic and social progress for [its] peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion[100] and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields'.

Supranationalism has progressively adopted various features in the EU sphere (Fontaine 2000):

• The existence of *common institutions*. Since the beginning, the areas of pooled sovereignty amongst Member States were administered together through common, 'supra-national' institutions. Fontaine recalls that Jean Monnet often quoted the Swiss philosopher Amiel: 'Every man's experience is a new start. Only institutions become wiser: they amass the collective experience and thanks to this experience and this wisdom, the nature of men subordinated to the same rules will not change, but their behaviour gradually will.'

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[100] Economic and social cohesion was introduced as a new EC policy, translating the idea of solidarity among Member States, by the Single European Act in 1986.

- *The independence of the Community bodies*. The institution embodying the common interest of the Community (formerly the High Authority, today the Commission) is composed of personalities exercising their power collegially and who may not receive instructions from the Member States. This institution is responsible exclusively to the European Parliament (formerly, the Assembly). It is interesting to note that each European institution benefits from an autonomous 'vector of legitimacy'[101], which makes it possible to refer to a democratic political framework.

- *Cooperation between the institutions*. Within the European Union, the legislative and executive functions[102] are carried out by the three main institutions according to what has been described by the EU case-law as 'institutional balance'. This balance is founded on Article 7(1) EC Treaty, which provides that each institution acts within its remit and cannot exceed the powers conferred upon it by the Treaties. The institutions are bound to work with one another, as EU legislation and its implementation can only result from dialogue and cooperation between the intervening institutions (the Commission, the Council and the Parliament as concerns the making of legislation; the Council and the Commission, as for the implementation of the EU policies).

- *Equality between Member States*. The principle of equality among Member States is 'one of the legal and moral foundations which give the notion of Community its full meaning' (Fontaine 2000). Rieben (1996, p. 25) recalls that a certain parity among Member States was necessary to prevent the risk of hegemony by the stronger over the weaker in an ensemble of nations that were of different and of uneven economic weight (Rieben 1996, p. 25). The weighting of votes in the Council, whereby 'more votes are given to the large countries than to

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[101] The European Commission has both a democratic legitimacy (it is a political body whose powers are provided for by treaties), and a technocratic legitimacy (it is a body made of independent experts). The other principles, or vectors, of legitimacy applicable to the EU, each proper of one of its institutions and bodies, are: international legitimacy (the Council), parliamentary legitimacy (the European Parliament); legal legitimacy (the European Court of Justice), corporate legitimacy (Economic and Social Committee), sub-national representative legitimacy (Committee of the Regions). Technocratic legitimacy is also typical of the European Central Bank. Cf. Lord, Ch., and Magnette, P. (2002), 'Notes towards a general theory of legitimacy in the European Union', *ESRC 'One Europe or Several' Programmes* – Working Paper 39/02, http://www.one-europe.ac.uk/pdf/w39lord.pdf. In our view, the Court of Auditors, too, enjoys a legitimacy of a technocratic character.

[102] Within the EU, one refers usually to 'functions', rather than to 'powers' (typical of states). Cf. 'Penelope' Document (2002) 'Feasibility Study – Contribution to a Preliminary Draft Constitution of the European Union', http://europa.eu/constitution/futurum/documents/offtext/const051202_en.pdf.

the small ones, but this supplement is not in proportion to their respective size'[103], one Commissioner per Member State in the European Commission and, in the current system, the equal rotation of the Presidency are the main features of the principle of equality[104].

These features allow a peculiar decision-making procedure, known as the 'community method', which applies within the scope of the EC Treaty. This mode of governance is characterised by the Commission monopoly of the right of initiative; a widespread use of qualified majority voting in the Council; an active role for the European Parliament; and the uniform interpretation of Community law by the European Court of Justice (Schäfer 2004).

The community method is not applied, however, in certain areas of the EU Treaty (Title V – Provisions on a common foreign and security policy, and Title VI – Provisions on police and judicial cooperation in criminal matters). These areas are based on an intergovernmental logic of cooperation in which the Commission's right of initiative is shared with the Member States or limited to specific areas of activity; the Council generally acts unanimously; the European Parliament is confined to a purely consultative role; and the Court of Justice, if at all, plays only a minor role (Schäfer 2004).
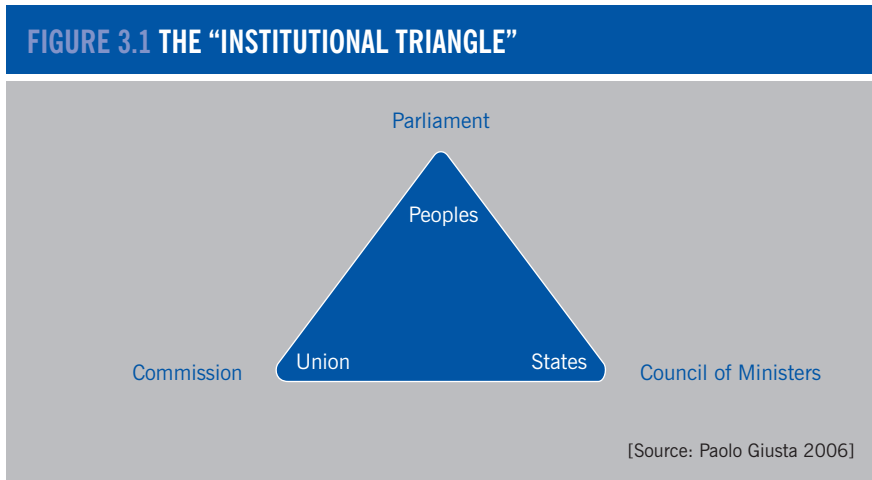
Insofar as the community method applies (which is the case for the majority of the EU competences), the functioning of the EU is, on the one hand, profoundly different from that of its Member States, whose separation of powers between the three organs of the State – the Legislature, the Executive and the Judiciary – bears little resemblance to the EU 'institutional balance'; on the other hand, it differs radically from the way classical international organisations operate, where decisions are traditionally taken by representatives of the Members States in the name of their own state, and where each participant has a right to veto the adoption of a decision.

The EU is a *sui generis* organisation, a *Union of peoples and states* – each of these components being represented by one of the three institutions

[103] De Schoutheete, Ph. (1997), *Une Europe pour tous* (Paris: Editions Odile Jacob), p. 22.

[104] On this point, see also Magnette, P. and Nicolaïdis, K. (2003), 'Large and Small Member States in the European Union: Reinventing the Balance', *Research and European Issues N°25,* May 2003, http://www.notre-europe.asso.fr/IMG/pdf/Etud25-en.pdf.

intervening in the decision-making process (Figure 3.1.) – which operates according to several governance methods characterised by a different mix of intergovernmentalism and supranationalism[105].

FIGURE 3.1 THE "INSTITUTIONAL TRIANGLE"

Parliament

Peoples

Commission — Union — States — Council of Ministers

[Source: Paolo Giusta 2006]

'United in diversity'[106]

The most peculiar feature of supranationalism is that, on the one hand, several sovereign national states exist, and are therefore not absorbed by the supranational entity, and, on the other hand, there is a single body, provided with common institutions and legal procedures. This feature is translated in the evocative EU motto 'united in diversity', which reflects the fact that the EU has a single global identity, while at the same time preserving the identity of each Member State[107]. The preamble of the UE Treaty indicates amongst other things that the solidarity between European peoples, one of the EU goals, is to be pursued 'respecting their history, their culture and their traditions'. Article 7(3)

[105] Schäfer (2004) identifies not less than six different levels of modes of governance, according to the degree of delegation of powers from the Member States to the EU: competition, cooperation, coordination without sanctions, coordination with political sanctions, coordination with delegated sanctions (Community Method), integration (complete delegation).

[106] 'United in diversity' is the motto of the European Union. It first came into use around the year 2000 and was for the first time officially mentioned in the Treaty establishing a Constitution for Europe, whose article I-8 ('The symbols of the Union') provides that 'The motto of the Union shall be: 'United in diversity'' – See http://europa.eu/abc/symbols/motto/index_en.htm.

[107] Toggenburg (2004) identifies two other meanings of *diversity* from the perspective of EU constitutional law: the diversity of (European) cultures and the diversity of (inner-EU) structures. He recognises, however, that 'Clearly the strongest form of diversity is the one aimed at maintaining the national identities of the Member States'.

of the same treaty obliges the Union to 'respect the national identities of its Member States'[108].

The two components, unity and diversity, can be seen as 'both equally prominent values' (Toggenburg 2004). He maintains that

> unity and diversity stand in a certain tension with each other. Nevertheless, the motto to be (ever more) united in (a nevertheless maintained) diversity is not a true paradox. Values and principles are not of a binary nature within a legal system, in the sense of being either valid or invalid. While contrasting norms are legal rules that must either be applied or not, values are applied in any event - even if they contradict other values. They are taken into consideration by evaluating their relative weight in concrete circumstances. The political unity/diversity debate does not evolve in a legal vacuum: the legal outcome of the debate in a particular case depends on the application of legal parameters such as the principle of proportionality or the principle of loyalty.

> But of course the outcome depends on the political circumstances and the 'diversity culture' of our future Europe. How much diversity Europe can afford in the future will also depend on how reliable its unity will be.

This permanent tension between unity and diversity is characterised, in our view, by two main features: *inclusiveness* and *fruitfulness*.

- *Inclusiveness*. Within the EU, unity and diversity coexist without excluding each other. This is experienced at the level of every European citizen: each of us has 'multiple identities'[109]. As the former British Secretary of State for Foreign Affairs Jack Straw pointed out, 'Europe simply provides a further layer of identity'[110].

[108] Other provisions in which the respect for Member States' diversity is mentioned are Article 151(1) EC Treaty ('*The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore*.') and Article 22 of the EU Charter of Fundamental Rights, which reads that *'[t]he Union shall respect cultural, religious and linguistic diversity'*. The Treaty Establishing a Constitution for Europe stipulates the '*respect [of] its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced'* as an objective of the Union.

[109] The expression comes from I. Pernice, 'Multilevel Constitutionalism in the European Union', 5 27. ELRev. (2002), p. 511: 'We – the citizens of the Member States of the European Union – have multiple identities: local, as a Londoner, regional, as an Englishman, national as a British and, in addition, European, as a citizen of the European Union.

[110] J. Straw, *A Europe for its Citizens*, Lecture at the Royal Institute of International Affairs, Chatham House, London, 27 July 2001 (http://europa.eu/constitution/futurum/documents/other/oth270701_

- *Fruitfulness*. The Swiss philosopher and writer Denis de Rougemont points out that the tension between unity and diversity is a 'creative tension'[111], from which the progress towards our plural living together stems. The concept of 'resilience', for the possibility for a person or a social system of developing itself and growing by going through the crises[112], indicates the positive effect of such a tension, which, in our view, may give rise to an upwardly spiralling pattern of social life where successive crises typical of a plural society produce consensual and successful solutions to the new problems faced. Until now, the various crises experienced in the history of European integration have produced outcomes consistent with the foundational idea underlying the European integration process, that of creating an 'ever closer union among the peoples of Europe' (EU Treaty, preamble).

Tension between unity and diversity is, in our view, not only one of the main driving forces of the EU process, but also the main component of the non-written *fundamental ethical charter* of the EU of today.

Looking for an EU ethical charter

An explicit charter of basic values of the European Union is provided by some of its founding texts:

> [The EU is attached] to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law ... to fundamental social rights ... solidarity ... (EU Treaty, preamble).

> ... [T]he Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

en.htm). Straw quotes Linda Colley's expression in her book *Britons*: 'Identities are not like hats. Human beings can and do put on several at a time', to 'challenge the false notion that we cannot be British and European at the same time'.

[111] *L'un et le divers*, La Baconnière, 1970, p. 23 (quoted by Danese 1995).

[112] This concept, developed in the field of psychology of small groups such as families, and applicable to the wider social life, implies that a crisis is first of all taken seriously, without however dramatising the consequences, and addressed by focussing on the positive teaching that the crisis situation may bring. Resilience means literally, from its origin in the Latin word *salire*, 'go, leap upwards': the possibility of leaping upwards again (Cf. Annemie Dillen, 'Tussen verheerlijking en afwijzing. Realistische hoop voor gezinnen', in *Rondom Gezin* 25 (2004) nr. Jubileumnummer, 58-70).

> The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment (European Convention 2000, Preamble).

Such value statements play a very important role. Indeed, 'making European values visible is crucial for the vitality and success of the European project, [which] implies building bridges between our values and our policies'[113].

However, an explicit statement of EU values may appear insufficient. 'A mere list of common European values is not enough to serve as the basis of European *unity*, even if the charter of basic rights included in the Union's constitutional treaty points in this direction. This is so because every attempt to codify 'European values' is inevitably confronted with a *variety* of diverging national, regional, ethnic, sectarian, and social understandings. This diversity of interpretation cannot be eliminated by a constitutional treaty, even if backed up by legislation and judicial interpretation' (Biedenkopf, Geremek, and Michalski 2004, emphasis added).[114]

Unity and diversity, plus their interaction, are the non-written values supporting those expressly proclaimed. It seems appropriate to explore now whether unity in diversity also acts as a founding value in EU functioning and in the EU policies.

The EU functioning: dialogue and compromise

Tension between unity and diversity can be seen as the driving force of the European Union's functioning at institutional level. Former ambassador Korthals Altes (1999, p.158) describes this tension as a 'permanent

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[113] J. P. Balkenende, Prime Minister of the Kingdom of the Netherlands, in Halman, L., Luijkx, R., and van Zundert, M. (2005), p. 7.

[114] The Treaty establishing a Constitution for Europe recognises this tension between common values, in the one hand, and pluralism, on the other hand: '*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail*' (Article I-2, The Union's values).

process of negotiation, enabling the Member States to achieve agreement... Gradually a habit developed of carefully listening to each other.'

In the *decision-making process*, agreement among the three institutions involved in the lawmaking process is, in most cases, needed for a legislative act to be adopted. The Council in most cases cannot decide without the agreement of the European Parliament. The Parliament and the Council cannot adopt a legislative act, unless the Commission previously makes a proposal. The Commission can propose, but is not vested with the power of adopting legislation, and has to rely on the two branches of the legislative authority. This requires dialogue and collaboration between these institutions, a process which is not painless and often requires one or all institutions to abandon positions initially expressed and to make concessions to reach a compromise.

In the *implementing phase* of EU policies, there exists a cooperation between the European Commission, which holds final responsibility for the implementation of the EU budget (Article 274 EC Treaty) and the Member States' authorities, which are delegated implementing tasks under 'shared management' for about 80% of EU expenditure. The trust inherent in this kind of cooperation is for example expressed by the 'contracts of confidence' proposed by the Commission for structural funds, which would allow the EU institution to rely with a higher degree of assurance on the controls carried out at national level.

Concerning *enforcement of EU law*, Inghelram points out that it is the dialogue between national courts and the EU judicature, through the preliminary ruling procedure (whereby the national courts, which are called upon to apply the EU law, ask the Court of Justice to rule on the interpretation of the Treaty or on the validity and interpretation of acts of secondary law– Article 234 EC Treaty) that contributed most to the shaping of EU law through case-law[115].

This necessary dialogue is, in our view, a very important and original feature of the EU. Officially (European Commission 2001, p. 34) and unofficially (Penelope 2002, p. IV), the European Commission suggested that the three EU functions should be clearly divided between the legislature (attributed to Council and European Parliament on equal footing) and the

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[115] Cf. Inghelram, J. H. F., 'Enkele kanttekeningen bij de vereenvoudigde procedure voor de beantwoording van prejudiciële vragen door het Hof van Justitie van de EG', Sociaal-Economische Wetgeving 2005, 87, pp. 452-459.

executive (where the Commission would assume full responsibility). This would lead to a simplification. However, such an arrangement would also result in the weakening of the 'tension' which now exists between the institutions. This tension, which derives from the fact that each institution represents a well identified interest and plays a precise, but limited role in the decision-making process, is a very positive element in our view. Even though it may result in positions difficult to reconcile, it translates perfectly the EU nature, of being 'united in diversity'.

The EU political project: liberty, equality, fraternity

There is, in our opinion, another kind of positive tension typical of the European project; that existing between the three principles contained in the famous slogan of the French revolution: *liberty*, *equality*, *fraternity*. Liberty and equality have originated political theories and systems putting emphasis on individual liberties, egalitarianism, and the right balance to be found between the two. Fraternity, a generally unspoken principle, is in my view to also be taken into account in the context of European integration, since the latter is originated by an 'act of fraternity', that of dealing with the former enemy as a partner (see above), of considering the different European peoples as members of the same family[116]. It is submitted here that these three principles can be considered as the founding political values of the EU legal and political system[117].

Donner (1982) builds on the analysis of the former Advocate General at the Court of Justice of the European Communities Pieter VerLoren van Themaat, who identified the three elements of the 'slogan' as the three constitutive principles of a legal order (and, therefore, also of the Community legal order). In particular, while liberty and equality give important indications on the content and the features of the legal order, they are not capable of providing the foundation and the final aim of this order: it is the third element, fraternity, which, being not only a matter of fact but a 'task', is the constitutive 'motive' of this legal order (Donner 1982, p. 54).

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[116] Schuman indicated that a reconciled Europe would teach again the young generation the Christian fraternity (Schuman 1963, p. 46). In the vision of De Gasperi, 'le rapport avec les autres nations est basé sur le principe de la fraternité' (Audisio and Chiara 2001, p. 204).

[117] Cf. allocution of the German Chancellor Gerhard Schröder to the French National Assembly on the occasion of the 40th anniversary of the treaty of Franco-German friendship, 22 January 2003: 'Les valeurs de la Révolution française – la liberté, l'égalité, la fraternité – ... constituent le fondement et le modèle de ce que nous avons réussi à construire ensemble au cours de ces dernières quarante années, et de ce que nous pouvons, devons et voulons mettre en œuvre ensemble à l'avenir sur notre continent'.

Also Mattei[118] deems that the strongest value in the 'triptych' is that of fraternity: the latter principle is seen as the condition which makes freedom and equality possible. Fraternity comes as the last one of the triad, recalling that the foundation of a society, and that of a legal order, is that we cannot live without each other (Donner 1982, p. 55). It makes it possible not only to treat equals in the same way (what the principle of equality already does), but also to deal with inequalities, setting up the institutions and rules to create the conditions for the 'unequal ones' to catch up.

In this respect, fraternity is also the foundation for solidarity (*ibidem*). Fraternity obliges us to re-think the social and human relations. It implies recognising that we are all, before any other thing, members of the same 'family', that of mankind[119], and at the same time requires an unconditional attention to each man and woman. Fraternal relations are by definition mutual (for example, I cannot affirm my freedom if at the same time I do not demand freedom of all other human beings)[120]. They are proper to the encompassing logic cherished by Jean Monnet and of the supranational ideal of the founding fathers.

The interrelation between liberty, equality and fraternity is characterised, in our view, by the same elements as that between unity and diversity.

- *Inclusiveness*. Freedom, equality and fraternity are complementary to each other. Each element carries something, which clarifies and completes the content of the other two (Donner 1982, p. 54). It seems to us that the three principles are even necessary to each other. For example, without the other two, liberty may signify freedom only for the strongest one; equality may produce a shapeless, dull society of equally grey subjects; fraternity may be a mere emotion without content, instead of being a call for action.

- *Fruitfulness*. Donner indicates that these three principles are useful instruments, not only as a key to analyse the Community legal system (1982, p. 57), but also 'either to live with conflicts and nevertheless to work together'. In this way, they lay the foundations of 'plural living together' (p. 60).

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[118] Bruno Mattei, 'La République n'est pas fraternelle', Le Monde, 21.5.2002.

[119] Mattei refers to the French philosopher Levinas, who pointed to the 'original fact of the fraternity'.

[120] *Ibid*.

Liberty, equality and fraternity contribute to the shaping of the EU and can be found as hidden components of most EU policies. These three values necessarily carry a multifaceted perspective in the policy choices. Finding, each time, the appropriate balance is, in our view, a key success factor in fulfilling the EU's main mission, which is to promote economic and social progress for the EU peoples through common policies, ensuring at the same time that development is sustainable (Cf. EU Treaty, Preamble).

There are policies which obviously contribute more directly to one of the three principles: the 'four liberties' at the core of the single market (free movement of goods, services, people and capital) refer to *liberty*[121]; *equality* is expressed amongst others by the idea of equality amongst citizens of the Member States – the principle of non discrimination already existed in the original text of the Treaty establishing the European Economic Community[122] – and by the EU multilateral approach in international relations, which favours the development of partnerships; *fraternity* can be seen as the main underlying element of economic and social cohesion, which is not so much an instrument of 'financial compensation between rich and less rich countries'[123] but is rather a pillar of the European project, which unites European states and peoples and makes us participants in each other's destiny[124].

[121] But also to *fraternity*, with reference to the establishment of the 'mutual trust between Member States' necessary for eliminating obstacles to the freedom of establishment and the free movement of services in the European Union by mutually recognising the national educational and legal systems (See Commission's original Proposal for a Directive of the European Parliament and of the Council on services in the internal market, COM(2004) 2, http://europa.eu/eur-lex/lex/LexUriServ/LexUriServ. do?uri=COM:2004:0002:FIN:EN:PDF, also known as the 'Bolkestein Directive', named after the internal market Commissioner in the Prodi Commission). This proposal, famously known for being one of the arguments in the French referendum campaign for voting against the Constitutional treaty on 29 May 2005 embodies the difficulty in finding a balance between unity and diversity.
Provisions referring to 'mutual trust in the administration of justice in the Member States' are contained in Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, Official Journal L 143, 30.4.2004, p. 15 (recital 18), Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, Official Journal L 338, 23.12.2003, p. 1 (recital 16), and Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Official Journal L 12, 16.1.2001, p. 1 (recital 16).
Mutual trust among Member States is referred to also in other acts, e.g. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), Official Journal L 178, 17.07.2000, p. 1 (recital 22), and Council Decision of 17 December 2001 establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the 'Pericles' programme) (2001/923/EC), Official Journal L 339, 21.12.2001, p. 50, Article 2(2)(b).

[122] Article 7 EEC Treaty: 'Any discrimination on grounds of nationality shall be prohibited'.

[123] Jacques Delors, *Address to the Conference European Statistical Institutes,* September 2004, quoted by Ferdinando Riccardi, *Bulletin quotidien Europe*, 25.9.2004, p. 3.

[124] 'To lay the foundations for institutions which will give direction to a destiny henceforward shared' was one of the objectives written in the preamble of the ECSC Treaty of 18 April 1951.

The three principles together are also constitutive, in a less obvious way, of most EU policies. How could, for instance, these principles help analyse one of the main common policies since the establishment of the former European Economic Community in 1958, and still today the biggest common policy in terms of budget spent, from an ethical perspective?

The *common agricultural policy* (CAP) aims, according to Article 33 EC Treaty, at increasing agricultural productivity, stabilising markets and assuring the availability of supplies at reasonable prices for consumers, as well as at ensuring a fair standard of living for the agricultural community, in particular, by increasing the individual earnings of persons engaged in agriculture.

These original aims, still valid today, evolved to adapt the CAP to different concerns that had appeared over time (see Figure 3.2.).

FIGURE 3.2 MAIN CONCERNS DRIVING THE CAP EVOLUTION

The early years	The 70's and 80's crisis	The 1992 reform[125]	Agenda 2000[126]	The 2003 reform[127]
Self-sufficiency	Overproduction	Surplus reduction	Competitiveness	Market-oriented reform
Better productivity	Expenditure explosion	Environment protection	Rural development	Consumer protection
Markets stabilisation	International tensions	Income stabilisation	Multi-functionality (social concerns, environment protection, food security…)	Rural development
Support to farmers' income	Socio-structural measures	Expenditure stabilisation		Sustainable development

[Source: Frédérique Lorenzi 2006, adapted]

[125] Commission of the European Communities, Communication 'The development and future of the CAP: reflections paper of the Commission' (COM (91)100, February 1991). The 1992 reform recognised amongst others that *'Sufficient numbers of farmers must be kept on the land. There is no other way to preserve the natural environment, traditional landscapes and the model of agriculture based on the family farm as favoured by society generally. (...) It implies a recognition that the farmer fulfils, or at least could and should fulfil, two functions, namely those of producing and of protecting the environment in the context of rural development (...) Concern for the environment means that we should support the farmer also as an environment manager through use of less intensive techniques and the implementation of environmentally friendly measures.'*

[126] Commission of the European Communities, Communication 'Agenda 2000 – For a stronger and wider Union' (COM(97)2000, July 1997).

[127] Proposal for seven Council Regulations presented by the Commission, accompanied by the Memorandum 'A long-term policy perspective for sustainable agriculture' (COM(2003)23, January 2003).

Some of the these aims and concerns can be seen as referring to *liberty* (productivity, competitiveness, market stabilisation) and *equality* (support to farmers' income, reflecting the objective of aligning the wage and standard of living across the different production sectors, while at the same time ensuring fair prices for the consumers).

The idea, evolving progressively through the concept of multifunctionality[128] and then of sustainable rural development[129], that agriculture encompasses various functions − economic, social and territorial/environmental − evokes, in our view, the *fraternity* principle, which requires considering the whole and each of its components at the same time. If agriculture serves to preserve the landscape and to guarantee not only social but also territorial balance, it has to do so EU-wide[130], and not only in these more prosperous States which could afford an expensive agricultural policy.

Moreover, the most recent reform of the CAP, which completed the shift from price support to direct support to farmers, strengthens solidarity also outside the EU, since the support is no longer linked to production and therefore avoids distortive effects on international trade detrimental, in particular, to developing countries. Even more along the same line, agricultural products from the least developed countries are allowed in without customs duties or quantitative restrictions under the 'Everything but Arms' initiative[131].

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[128] See Isabelle Garzon, 'Multifunctionality of agriculture in the European Union: Is there substance behind the discourse's smoke?', University of California at Berkeley, Center for Institutions and Governance, Working Papers Series, http://igov.berkeley.edu/workingpapers/index.html.

[129] FAO (*Guidelines for the Integration of Sustainable Agriculture and Rural Development into Agricultural Policies*, 1997) defines sustainable agriculture and rural development (SARD) as:
... the management and conservation of the natural resource base, and the orientation of technological and institutional change in such a manner as to ensure the attainment and continued satisfaction of human needs for present and future generations.
Such sustainable development (in the agriculture, forestry and fisheries sectors) conserves land, water, plant and animal genetic resources, is environmentally non-degrading, technically appropriate, economically viable and socially acceptable.

[130] Cf. Communication 'Agenda 2000': '*It is essential that multifunctional agriculture be spread over the whole European territory, including regions with specific problems*'. Cf. also the conclusions of the Berlin European Council of March 1999, Berlin: '*[The CAP] reform will ensure that agriculture is multifunctional, sustainable, competitive and spread throughout Europe, including regions with specific problems....*'

[131] Council Regulation (EC) No 416/2001 of 28 February 2001 amending Regulation (EC) No 2820/98 applying a multiannual scheme of generalised tariff preferences for the period 1 July 1999 to 31 December 2001 so as to extend duty-free access without any quantitative restrictions to products originating in the least developed countries, Official Journal, L 60, 1.3.2001, p. 43. For the origins of this initiative see Pascal Lamy (European Commissioner for foreign trade 1999-2004), *L'Europe en première ligne*, Paris: Seuil, 2002, pp. 69 and seq.

The CAP, as many other EU policies, is not only multifunctional, but multifaceted from an ethical perspective. Indeed, some can legitimately put the emphasis on liberty, and therefore consider that social and territorial benefits of the CAP do not justify the huge cost of a policy that directly affects, after all, a small percentage of the EU population. From an equality perspective, one can deem, all the same legitimately, that this little share of population deserves as much as anyone else to enjoy an economic standard comparable to the rest of the EU workers, hence the justified intervention of the EU budget. From a fraternity perspective, one would tend to consider the encompassing logic of EU society, which benefits as a whole from the work of the farmers, without forgetting third countries.

Ethically speaking, all these positions – or, most probably, a combination of some of them – are sound. Living together within the EU means coming from ethical principles to one political choice: it is at this sensitive stage that the EU's unique balance between common good and particular interest, the capacity to have a dialogue and find a compromise fully plays its role.

Taking seriously the differences, and yet being able to find a common ground for a single, agreed choice is also the pattern we suggest for decision making in ethical dilemma situations, which will be examined in Chapter 5.

The ethical responsibility of the EU officials

The building of the European Union continues to be an 'ethical challenge'[132]. In this 'community of values'[133] shaped by their daily actions, EU civil servants can find a source of inspiration in the founding fathers' approach[134] and in the ethical fundamental charter we have tried to outline above. The tension between unity and diversity generates an equilibrium that is, by definition, unstable and calls for a new, possibly higher

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[132] Cf. footnote 63.

[133] Cf. Declaration of Athens, 16.4.2003, on the occasion of signing of the accession treaty to the EU by the new Member States.

[134] Gérard Bossuat considers that 'the [Schuman] Declaration is a moral act. It gives a meaning to the life of those who will devote their existence to put in practice this living reality… It is an everlasting enterprise where the genetic reserves indispensable for the Europe-makers can be found' (Bossuat, G., 'Les trois visages de Monnet', in Smets 2001, p. 27-54). The English translation is ours.

balance. It is this intrinsic fragility that calls for ethical responsibility of those responsible for the running of EU affairs (Danese 1995, p. 95).

In the everyday choices of those who work at the service of the European Union, we consider that the ideas and the personalities of the EU founding fathers constitute an everlasting source of inspiration. This may possibly have been more evident in the pioneering phase of the European integration[135], but continues, in our view, to be true for today's and tomorrow's officials.

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[135] 'Service in the Community administration, in its earlier period, was ... conceived as living the Community ideals. [...] The Community official ... was ... occupying the high moral ground: a true public servant' (Weiler 1998, p. 254).

4 DIRECTION NEEDED

STAFF REGULATIONS AND CODES OF ETHICS

Each time an EU official takes a decision on the most appropriate course of action to be followed in a specific circumstance, the framework of professional rules set by his/her employer (the EU, his/her institution or body) is a point of reference of primary importance within the ethical system referred to in Chapter 2.

Based on the concepts defined in Chapter 2, we would call all these rules, be they derived from Staff Regulations provisions or from the content of the various codes of ethics, 'ethical/deontological rules'. It is not ethics strictly speaking, but it has much to do with ethics.

One of the main characteristics of these rules is that they contain *aspirational values* (e.g. integrity, independence...), i.e. the formally stated values of the EU institutions, which describe how the staff, or the institution itself, should ideally act. Some of the provisions containing these rules, in particular the codes of ethics, often translate these aspirational values into *operational values*. This is important when we come to the decision-making stage, where the questions are not: 'Should I act with integrity?', but rather: 'Am I going to participate in this procedure where my interests may be involved?'

These values and rules, coming from outside, act as spotlights for our *personal values*, which are dictated by our own conscience.[136] They also contribute to the decision-making process, which we will examine in Chapter 5.

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[136] 'The best ethical guides do not tell people what they should do; rather, they show people how to discover the best course of action for themselves' (Brown 1990, p. xi).

Staff Regulations

The Staff Regulations (hereinafter: SR)[137] is the prime source of ethical/deontological rules. Their content is legal provisions, binding for staff and any other relevant actor[138]. Yet, these provisions identify a series of reference values, which orientate the civil servants' actions.

Behavioural values

Title II, 'Rights and Obligations of Officials', encompassing Articles 11 to 26a SR, rules the behaviour expected from EU civil servants. Dignity, confidentiality, loyalty and cooperation, independence... can be seen as values from the perspective of ethical action, whereas they are also enforceable duties from the legal perspective. Their enforceable character gave rise to abundant case law, which helps to better focus their content and scope.

Independence, impartiality, integrity

Article 11 stipulates that 'an official shall carry out his duties and conduct himself solely with the interest of the Communities in mind.' He/she shall not take instructions from outside, and shall carry out his/her duties '*objectively, impartially* and in keeping with his *duty of loyalty* to the Communities' (emphasis added). Article 11a requires the official who, in the performance of his/her duties, deals with a matter 'in which, directly or indirectly, he has any personal interest such as to impair his independence and, in particular, family and financial interests', to *inform* immediately the appointing authority by which he/she is employed[139]. The latter may decide to relieve the official from responsibility in this matter.

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[137] 'Staff Regulations of Officials of the European Communities − conditions of employment of other servants of the European Communities' (http://europa.eu/comm/dgs/personnel_administration/statut/tocen100.pdf).

[138] The Staff regulation is an EU legal act, a Council regulation − Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968, Official Journal, L 56, 4.3.1968, Special Edition 1968, 1 December 1972), amended several times and in particular by Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004, referred to in Chapter 1 − and applies therefore *erga omnes*.

[139] We will refer to the 'appointing authority', so called by reference to the fact that this member of the top management, generally the Director-general for a Commission service, is empowered with signing the decision to appoint, and take any other measures concerning the official in question, simply as 'top management'.

EU case-law states that 'the provisions of Article 11 (1) [and 11a] impose on the civil servant a general *duty of independence and probity* vis-à-vis his institution' (emphasis added). It specifies that these provisions 'constitute ... one of the pillars of the deontology of the Community public service' and underlines the 'capital importance' of guaranteeing *independence and integrity* for the benefit of both the internal functioning and the external image of the Community institutions. The rule of behaviour laid down in Article 11 should be understood as requiring that 'the official's conduct be guided, in all circumstances, solely by the interest of the Community. It therefore prohibits, in general terms, any conduct..., which ... shows that the official concerned intended to further a particular interest to the detriment of the general interest of the Community'[140].

The second subparagraph of Article 11 states that 'an official shall not without the permission of the appointing authority accept ... from any other source outside the institution to which he belongs any honour, decoration, favour, gift or payment of any kind whatever...' The general rule is: *no gift without permission* from top management. No case law has intervened to date to interpret this quite general provision, which makes no reference to the importance of the gift, nor to the circumstances in which, subject to the due authorisation, it is appropriate to decline the offer of a gift. This leaves room for ethics in the strict sense, the area where no binding rules exist (in this case the framework is, however, set by the guidelines given by each institution: see example below). The issue of gifts is particularly sensitive. Indeed, even in case accepting the gift does not influence the decisions to be taken by the official, this act may be perceived by people outside the institution as impairing his/her impartial judgement.

The obligations provided for in Articles 11, [11a] and 12 SR are general and objective in their application. The finding of a breach to those obligations is not made subject to the condition that the official concerned must have benefited from that breach or that the breach in question must have harmed the institution[141].

Similarly to Article 11a, Article 13 SR imposes on the official the *obligation to inform* the top management of any *gainful employment engaged by his/her spouse*, to ascertain that this activity is not of such a nature to

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[140] Case T-21/01 *Zavvos v Commission* [2002] ECR-SC I-A-101 and II-483, paragraph 38.

[141] Case T-24/98 and T-241/99 *E v Commission* [2001] ECR-SC I-A-149 and II-681, paragraph 76.

be incompatible with that of the official. The case-law made it clear that it is a matter of information, not of obtaining an authorisation. However, this obligation to inform applies irrespective of the nature, duration or extent of the gainful employment of the official's spouse[142].

According to Article 12b SR, 'an official wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside the Communities, shall first obtain the permission of the appointing authority'[143]. This *obligation to seek permission for outside activities* 'applies without exception and makes no distinction of the nature or importance of the activities or assignment concerned. It is therefore solely for the appointing authority ... to evaluate the characteristics of the activity or assignment when considering the request for permission'[144].

Dignity, loyalty and cooperation

'An official shall refrain from any action or behaviour which might reflect adversely upon his position' (Article 12 SR). This provision 'is intended to ensure that Community officials, in their conduct, present a *dignified image* which is in line with the particularly correct and respectable behaviour one is entitled to expect from members of an international civil service'[145] (emphasis added). The duty to refrain from any form of psychological or sexual harassment (Article 12a) can be considered as an expression of the dignified and correct behaviour above, in this case vis-à-vis the colleagues.

The case law usually ties together Article 12 and Article 21 SR[146]. Article 21 provides that 'an official, whatever his rank, shall assist and tender advice to his superiors; he shall be responsible for the performance of the duties assigned to him. An official in charge of any branch of the service shall be responsible to his superiors in respect of the authority conferred on him and for the carrying out of instructions given by him. The responsibility of his subordinates shall in no way release him from his own responsibility.'

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[142] Case T-89/01 *Willeme v Commission* [2002] ECR-SC I-A-153 and II-803, paragraph 34.

[143] The obligation is on the contrary to *inform* the institution if, within two years of leaving the service, the official intends to engage in an occupational activity, whether gainful or not (Article 16 SR).

[144] Case T-74/96 *Tzoanos v Commission* [1998] ECR-SC I-A-129 and II-343, paragraph 66.

[145] Case T-146/94 *Williams v* Court of Auditors [1996] ECR-SC I-A-103 and II-329, paragraph 65. See also Case T-273/94 *N v Commission* [1997] ECR-SC I-A-97 and II-289, paragraph 127.

[146] This link was reinforced by the fact that Article 12, before 1 May 2004, explicitly mentioned, amongst the behaviours which might reflect adversely upon the official's position, 'public expression of opinion'.

The case law interpreted this article in the sense that observance of the duty to assist and tender advice to one's superiors laid down in article 21 extends, over and above the particular obligations arising from it in connection with the performance of specific tasks entrusted to an official, to the whole relationship between the official and the institution[147].

Article 21, therefore, establishes a general *duty of loyalty and cooperation* of the civil servant, based on which the latter must refrain from any behaviour harmful to the dignity and to the respect due to the institution and its authorities[148]. 'That duty of loyalty and cooperation entails not only positive obligations but also, a fortiori, a negative obligation, in general terms, to refrain from conduct likely to prejudice the dignity and respect due to the institution and its authorities'[149]. Activities falling within the realm of corruption unquestionably constitute a failure to comply with that general duty of loyalty[150].

Articles 12, 11 (first subparagraph) and 21 (1) SR, read together, show that an official owes a duty of loyalty to the institution to which he/she belongs and consequently he/she must, and all the more so if he/she is in a high grade, conduct him/herself in a manner that is beyond suspicion, so that the *relationship of trust* between that institution and him/herself may at all times be maintained[151]. According to Hernu (2002, p. 686), there is a fundamental question of trust, which the institution must be able to place in the staff it recruits.

The only case when an official can – at least in a first phase – disregard orders received from the hierarchy is when he/she considers them 'to be irregular or likely to give rise to serious difficulties.' In this case, he/she 'shall inform his immediate superior, who shall, if the information is given in writing, reply in writing.' Upon this written reply confirming the order, the official should act, unless 'the official believes that such confirmation does not constitute a reasonable response to the grounds of his concern.' In this case, 'the official shall refer the question in writing to the hierar-

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[147] See Case T-183/96 *E v Economic and Social Committee* [1998] ECR-SC I-A-67 and II-159, paragraph 40.

[148] Case 3/66 *Alfieri v Parliament* [1966] ECR 437, paragraph 448, and Case T-146/89 *Williams v Court of Auditors* [1991] ECR II-1293, paragraph 72.

[149] See Case T-146/89 *Williams v Court of Auditors*, paragraph 72, Case T-259/97 *Teixeira Neves v Court of Justice* [2000] ECR-SC I-A-169 and II-773, paragraphs 44 to 47, and Case T-197/00 *Onidi v Commission* [2002] ECR-SC IA-69 and II-325, paragraph 73.

[150] See Case 197/00 *Onidi v Commission* [2002] ECR-SC 1-A-69 and II-325, paragraph 73.

[151] Case T-273/94 *N v Commission* [1997] ECR-SC I-A-97 and II-289, paragraph 129.

chical authority immediately above. If the latter confirms the orders in writing, the official shall carry them out unless they are manifestly illegal or constitute a breach of the relevant safety standards' (Article 21a (1) SR). Moreover, 'if the immediate superior considers that the orders must be executed *promptly*, the official shall carry them out unless they are manifestly illegal or constitute a breach of the relevant safety standards.' In this case, the official's judgement on whether the order contravenes laws or safety standards comes before the written confirmation. 'At the request of the official, the immediate superior shall be obliged to give such orders in writing' (Article 21a (2) SR). Interestingly, the SR does not specify what the obligations upon this written confirmation are. Once again, the realm of ethics, in the strict sense, opens to the official's value judgments.

The case-law stressed that if, on the one hand, a particular mission had been entrusted to an administrative unit and, on the other hand, this mission was not correctly carried out for whatever reason, the shortcomings identified are, according to Article 21 SR, the responsibility of the official in charge of the unit in question, unless the latter demonstrates that he/she did everything possible to execute the mission, but he/she had been hindered in a decisive manner by his/her hierarchy. In this case, by analogy to the principle laid down in Article [21a] SR he/she must keep the written evidence of his/her will to accomplish the mission entrusted to his/her unit and of the insurmountable obstacle he/she was confronted with because of a decision stemming from his/her hierarchy[152].

Confidentiality

'An official shall refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public.' This obligation continues to be binding for him even after leaving the service (Article 17 SR).

Article 19 SR specifies that 'an official shall not, without permission from the appointing authority, disclose on any grounds whatever', including legal proceedings, 'information of which he has knowledge by reason of his duties.' The official continues to be bound by this *confidentiality obligation* after leaving the service.

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[152] Cf. Case T-74/96 *Tzoanos v Commission*, paragraph 202 (the English translation of this paragraph, not provided in the ECR, is ours).

Whereas Article 19 requires a formal *permission* to disclose information, Article 17a(2) SR, in the current wording resulting from the Commission administrative reform[153], lays down a *duty to* merely *inform* the top management *before publishing* 'any matter dealing with the work of the Communities.' This is the result of a balance between the right to freedom of expression and the 'respect of the principles of loyalty and impartiality', as Article 17a(1) SR puts it.

Enforcement

It may sound odd to talk about enforcement after defining ethics as 'obedience to the unenforceable' (Chapter 2). However, we are here examining the legal provisions laying down reference values for the EU officials' conduct, legal provisions that are naturally accompanied by enforcement measures.

Remedies 'from the bottom'[154]

Each official is obliged to inform the hierarchy or the European Anti-Fraud Office (OLAF)[155] of 'facts which give rise to a presumption of the existence of possible illegal activity, including fraud or corruption, detrimental to the interests of the Communities, or of *conduct* relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the Communities', of which he/she becomes aware 'in the course of or in connection with the performance of his duties' (Article 22a SR, emphasis added).

The official also enjoys the right to seek assistance from his/her institution, 'in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances, or any attack to person or

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[153] It used to be an obligation to seek *permission* before the new provisions entered into force on 1 May 2004.

[154] We thank Jean-Pierre Grillo for putting forward the distinction between top-down and bottom-up approaches to ethics with respect to EU civil servants.

[155] Article 22b SR provides that the official can also inform the President of the Commission or of the Court of Auditors or of the Council or of the European Parliament, or the European Ombudsman. In this case, the official 'shall not suffer any prejudicial effects on the part of the institution to which he belongs provided that both of the following conditions are met: (a) the official honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and (b) the official has previously disclosed the same information to OLAF or to his own institution and has allowed OLAF or that institution the period of time set by the Office or the institution, given the complexity of the case, to take appropriate action.'

property to which he or a member of his family is subjected by reason of his position or duties' (Article 24 SR). This also covers instances of harassment perpetrated by colleagues[156].

Remedies 'from the top'

A 'soft' way of ensuring that Staff Regulations' provisions on the officials' conduct are complied with is the fact that *conduct* in the service, together with ability and efficiency, constitutes one of the main elements based on which each official's performance is regularly assessed (Article 43 SR). This appraisal, which takes place 'at least once every two years' (in many institutions it is every year) is one of the main elements taken into account by the appointing authority when deciding on promotions 'after consideration of the comparative merits of the officials eligible for promotion' (Article 45 SR).

In case this appraisal indicates for several consecutive periods that the official 'proves incompetent in the performance of his duties' (including, we assume, conduct, since this aspect is one of those covered by the periodical report), the official in question may be dismissed, downgraded or classified in a lower function group[157] at the same grade or a lower grade (Article 51 SR).

Disciplinary measures may be applied to officials (or former officials) if they fail to comply with their obligations under the Staff Regulations, 'whether intentionally or through negligence on [their] part' (Article 86(1) SR). As soon as the Appointing Authority or OLAF become aware of evidence of such a failure, they may launch administrative investigations to verify whether such failure has occurred. Established cases of misconduct can give rise to one of the disciplinary penalties laid down in the Staff Regulation[158].

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[156] Cf. Case T-136/98 *Campogrande v Commission* [2000] ECR-SC 1-A-267 and II-1225.

[157] Article 5 SR establishes two 'function groups' in which the posts covered by the Staff Regulations are classified, according to the nature and importance of the duties to which they relate: an administrators' function group ('AD', comprising twelve grades) and an assistants' function group ('AST', comprising eleven grades).

[158] These penalties are '(a) a written warning; (b) a reprimand; (c) deferment of advancement to a higher step for a period of between one and 23 months; (d) relegation in step; (e) temporary downgrading for a period of between 15 days and one year; (f) downgrading in the same function group; (g) classification in a lower function group, with or without downgrading; (h) removal from post and, where appropriate, reduction pro tempore of a pension or withholding, for a fixed period, of an amount from an invalidity allowance' (Annex IX, Article 9 SR).

OLAF investigations can reveal the personal involvement of an official in a fraud or another criminal offence. In this case, a criminal sanction can be pronounced by the competent national courts.

Article 22 SR provides for pecuniary liability: an official may be required to make good, in whole or in part, any damage suffered by the Communities as a result of serious misconduct on his part in the course of or in connection with the performance of his duties.

Specific provisions preside over the liability of financial actors. The Financial Regulation stipulates that specific sanctions apply, on top of the disciplinary and financial compensation measures laid down in the Staff Regulations and applicable to all officials, for the cases of misconduct specifically identified[159]: authorising officers by delegation and subdelegation may at any time have their delegation or subdelegation withdrawn temporarily or definitively; the accounting officer and imprest administrators may at any time be suspended temporarily or definitively from their duties (Article 64 FR).

In cases not involving fraud, in order to provide the appointing authority with the necessary expertise, each institution will set up a specialised financial irregularities panel which will determine whether or not an irregularity has occurred which could make a financial actor liable and

[159] The Financial Regulation identifies cases of misconduct whereby *accounting officers* ((a) he/she loses or damages monies, assets and documents in his/her keeping; (b) he/she wrongly alters bank accounts or postal giro accounts; (c) he/she recovers or pays amounts which are not in conformity with the corresponding recovery or payment orders; (d) he/she fails to collect revenue due – Article 67 FR) and *imprest administrators* ((a) he/she loses or damages monies, assets and documents in his/her keeping; (b) he/she cannot provide proper supporting documents for the payments he/she has made; (c) he/she makes payments to persons other than those entitled; (d) he/she fails to collect revenue due- Article 68 FR) render themselves liable. Moreover, the Financial Regulation lays down examples of 'serious misconduct' with respect of *authorising officers by delegation and subdelegation* (if he/she determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Financial Regulation and its implementing rules; if, through serious misconduct, he/she omits to draw up a document establishing a debt or if he/she neglects to issue a recovery order or is, without justification, late in issuing it, as the issuing of a payment order may involve third-party liability of the institution – Article 66 (1) FR).
The Financial Regulation also stipulates, similarly to Article 21a SR, that an authorising officer by delegation or subdelegation, who considers that a decision which it is his/her responsibility to take is irregular or contrary to the principles of sound financial management, shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the authorising officer by delegation or subdelegation to take the decision in question, the authorising officer may not be held liable. A similar provision is laid down in Article 60(6) FR for any member of staff involved in the financial management and control of transactions. If the latter consider that a decision he/she is required by his/her superior to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules he/she is required to observe shall inform the authorising officer by delegation in writing and, if the latter fails to take action, the financial irregularities panel referred to in Article 66(4).

show what the possible consequences could be. On the basis of the opinion of this panel, the institution will decide whether to initiate proceedings entailing liability to disciplinary action or to payment of compensation (Recital 20 FR and Article 66(4) FR).

In the event of illegal activity, fraud or corruption which may harm the interests of the European Community, the matter should be referred to OLAF and the financial actors may incur criminal-law liability (Cf. Recital 20 FR and Article 65 (1) and (2) FR).

Staff Regulations: to sum up

Provisions of Title II SR aim at indicating the correct behaviour of the EU official when on duty. They lay down a series of reference values that cover some areas amongst those we identified in Chapter 2 as being those affected by one's ethical choices (in this case, the official's behaviour, or conduct under the SR terms): (1) one's personal life; (2) the team; (3) the organisation; and (4) the customers.

Independence, impartiality, integrity, confidentiality relate to professional standards and personal integrity, thus sphere No 1.

Dignity, loyalty and cooperation concern the official relations to the organisation (sphere No 3), including his/her immediate superior (sphere No 2, the team).

Refraining from harassment pertains to the good working environment in the team (No 2) and in the organisation as a whole (No 3).

Therefore, we have much regulation in sphere 1 and in sphere 3, a little in sphere 2 and none in sphere 4.

Our diagram will accordingly look like in Figure 4.1.

Other sources of ethical/deontological rules are, therefore, needed to cover the areas left aside by the Staff Regulation. Those other sources have much less binding a force than those stemming from the SR, but this is not such a big problem from the ethics perspective (both binding and non binding rules are taken as sources for the ethical judgement).

CUSTOMERS

ORGANISATION

TEAM

PERSONAL

[Source: Paolo Giusta 2006]
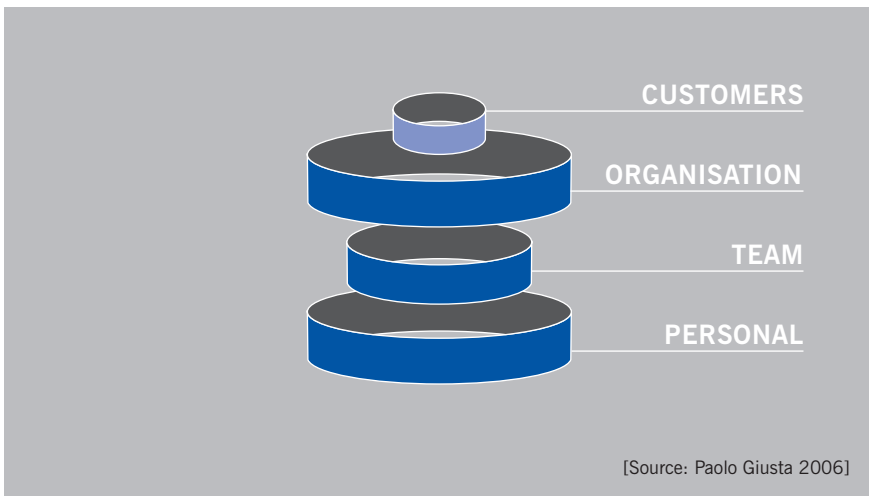
Amongst these sources, the Intranet web sites on the EU institutions play an ever extending role. For example, in some Commission Directorates-General, the Intranet homepage, visited daily by virtually all officials, recalls at least once a year the ethics framework applicable, in particular those elements stemming from Internal Control Standard number 1 (see Chapter 1 above).

At the European Commission, a large number of web pages, accessible by all Commission officials, give practical guidance on matters such as independence, avoiding conflict of interests, corruption...

This guidance, even though not formalised in enforceable provisions, plays an important role in '*operationalising*' the organisation's *aspirational values*.

For instance, an intranet web page is devoted by the European Commission to gifts. Here, the Commission specifies the factors that the appointing authority has to take into consideration when deciding upon a request of obtaining permission to accept a gift (See Article 11 SR above):

> In deciding on such matters, the appointing authority will take the following factors into consideration:
>
> • the motive for offering the gift, favour or donation;

- the possible consequences of the situation for the interests of your institution;

- the value of the gift, favour or donation:

  - if €250 or less, you may be authorised to keep it;

  - if more than €250, the authority may decide either to keep the gift as the property of the Commission, or put it up for sale, with the proceeds going to charity;

- the number of gifts, favours or donations given by the same source, or the number you receive altogether during the year.

Gifts in kind, in particular trips or excursions organised by third parties, which require you to be absent from work or to travel, will be approved by the authority only if they can be clearly demonstrated to be in the interests of the Commission.

However, you will be allowed to keep gifts/favours/donations worth €50 or less, providing their total value does not exceed €50 in any given year.

You are, nevertheless, advised to be particularly careful about accepting gifts/favours/donations offered in relation to your work at the Commission. As a general rule of thumb, we would recommend that you decline all such offers that have more than merely symbolic value (such as diaries, calendars, small desk items, etc.).

Note that these rules also apply to former staff if the gift/favour/donation has any link with their work at the Commission.

Codes of Ethics

Amongst the guidance instruments, the most widely spread for raising ethical awareness and laying down an ethics reference framework are the Codes of Ethics, or Codes of Conduct[160] [161].

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[160] See examples of codes of conducts in various areas of activities at http://www.codesofconduct.org/.

[161] Codes of conduct exist not only to give guidance to a person's conduct, but sometimes to serve as a

Codes of ethics within public administrations were historically born 'as a means of controlling administrative conduct'[162]. This conception – happily enough! – evolved and such codes were afterwards seen as serving a threefold purpose[163]:

- Maintaining high ethical standards in government service;

- Increasing public confidence in the integrity of public officials and employees;

- Assisting officials and employers in determining the proper course of action when they are uncertain about the propriety of a contemplated action.

Furthermore, rather than only focusing on controlling the officials and preventing improprieties, the codes of conduct were considered important tools in fostering an appropriate culture within administrative organisations[164]. We have already seen (Chapter 1) how the cultural climate, more than mere compliance, is crucial for establishing a sound ethical climate in an organisation.

Being a cultural and, therefore, evolving instrument, each code of conduct needs to constitute an active and 'living' tool that is fully integrated in a necessarily open, transparent, and honest organisational culture[165].

EU institutions' and bodies' Codes of Ethics

Within the EU institutions there does not yet exist a general code of conduct, encompassing the standards and values of importance for the EU

reference point for collective bodies. This is often the case of undertakings on the private sector. An example in the public sector is the *Euro-Mediterranean Code of Conduct on Countering Terrorism*, adopted by the countries of the Euro-Mediterranean partnership EU Member States and other Mediterranean countries at the Euromed Tenth Anniversary Summit on 28 November 2005 (See http://www.fco. gov.uk/Files/kfile/Euromed_CodeConduct.pdf).

[162] Cf. Monypenny Ph. (1953), 'A Code of Ethics as a Means of Controlling Administrative Conduct', in *Public Administration Review* (Bruce 2001, pp. 213-219).

[163] Cf. Zimmerman J. (1983), 'Ethics in the Public Service', in *State and Local Government Review* (Bruce 2001, pp. 220-237). Cf. also Chapter 2.

[164] Krekel, P., 'Ethics and Integrity in the Public Sector', EUPAN Article (http://www.eupan.org/cms/ repository/document/integrity_Ethics%20and%20Integrity%20in%20the%20Public%20Sector%20eupa n%20site.doc).

[165] Krekel, *ibid.*.

officials in carrying out their tasks. However, several codified principles exist, which guide the EU civil servants in their everyday actions.

The most famous code of ethics among the EU institutions – and for most institutions the only code actually adopted with respect to staff conduct – is the one for the relations with the public, resolutely recommended by the European Ombudsman in 1999 (see Chapter 1). This code is intended to serve 'as a useful guide and a resource for civil servants, encouraging the highest standards of administration'[166].

This code has been adapted, and adopted, by the different institutions. Some of them put a link to their code in their Internet site[167].

The Code proposed by the Ombudsman contains the following principles:

Lawfulness (Article 4),

Absence of discrimination (Article 5),

Proportionality (Article 6)

Absence of abuse of power (Article 7)

Impartiality and independence (Article 8)
Objectivity (Article 9)

Legitimate expectations, consistency and advice (Article 10)

Fairness (Article 11)

Courtesy (Article 12)

Reply to letters in the language of the citizen (Article 13)

Acknowledgement of receipt and indication of the competent official (Article 14)

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[166] Foreword by the Ombudsman Nikiforos Diamandouros, cit.

[167] The Court of Auditors' ('At your service', http://www.eca.europa.eu/services/code/service_code_index_en.htm) and the Committee of Regions' (http://www.cor.europa.eu/en/documents/code.htm) codes are available from their homepages. The Commission's code is also easily findable in the site of this institution (http://europa.eu/comm/secretariat_general/code/index_en.htm).

Obligation to transfer to the competent service of the Institution (Article 15)

Right to be heard and to make statements (Article 16)

Reasonable time-limit for taking decisions (Article 17)

Duty to state the grounds of decisions (Article 18)

Indication of the possibilities of appeal (Article 19)

Notification of the decision (Article 20)

Data protection (Article 21)

Requests for information (Article 22)

Requests for public access to documents (Article 23)

Keeping of adequate records (Article 24)

Publicity for the Code (Article 25)

Right to complain to the European Ombudsman (Article 26)

The *Commission* has structured its own Code of good administrative behaviour in six parts. The six parts are topped by the encompassing idea of 'quality service': 'The Commission and its staff have a duty to serve the Community interest and, in so doing, the public interest. The public legitimately expects quality service and an administration that is open, accessible and properly run. Quality service calls for the Commission and its staff to be courteous, objective and impartial.'

These six parts are:

1. **General principles of good administration**: Lawfulness, Non-discrimination and equal treatment, Proportionality, Consistency;

2. **Guidelines for good administrative behaviour**: Objectivity and impartiality, Information on administrative procedures;

3. **Information on rights of the different parties**: Listening to all parties with a direct interest, Duty to justify decisions, Duty to state arrangements for appeals;

4. **Dealing with enquiries**: Requests for documents, Correspondence (reply in the language of the initial letter, provided that it was written in one of the official languages of the European Union; as a general rule reply to a letter addressed to the Commission to be sent within fifteen working days from the date of receipt of the letter...), Telephone communication, Electronic mail, Requests from the media (the general rule is that only the Press and Communication Service is responsible for contacts with the media. However, when requests for information concern technical subjects falling within their specific areas of responsibility, staff may answer them);

5. **Protection of personal data and confidential information** (the Commission and its staff commit to respect rules on the protection of personal privacy and personal data, the obligations related to the protection of professional secrecy...);

6. **Complaints** (to the European Commission and to the European Ombudsman).

The *Court of Auditors*' Code of good administrative conduct, adopted in 2000, consists of two parts:

• **Basic Values** (loyalty, impartiality, objectivity, effectiveness, professional confidentiality, transparency; absolute standard of honesty and integrity; avoidance of any form of unlawful discrimination; staff actions should not compromise the independence of the Court; at the service of the Community interest and of that of its citizens 'who expect quality audit services and an open, accessible administration'; commitment, ability, courtesy and helpfulness, to provide 'quality service');

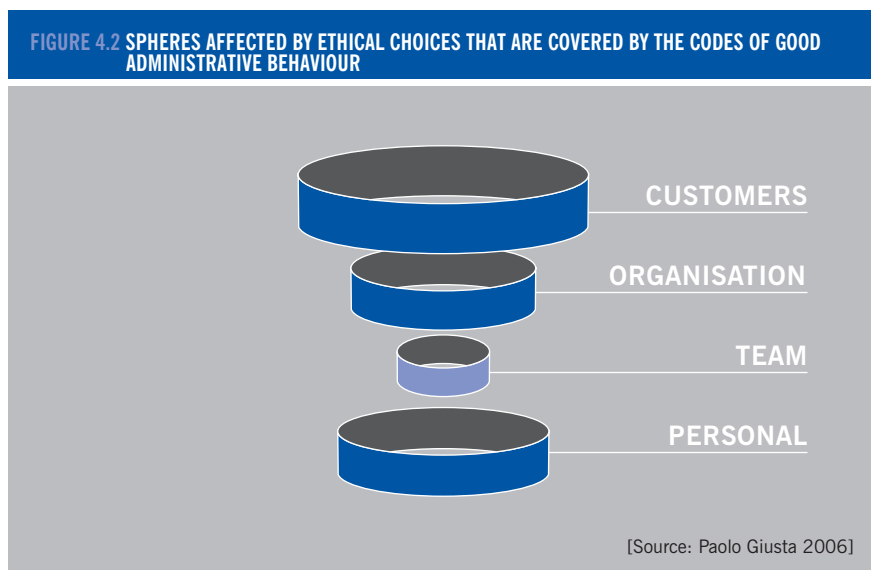The Code specifies that these fundamental values apply to all actions by the staff:

– within the Institutions;

– in an administrative context (notably in relation to employment of staff and the awarding of contracts for goods and services); and

– in the context of the Court's audits.

- **At the public's service** (here most of the principles laid down by the Ombudsman are taken on board).

Some of the EU regulatory agencies have also adopted codes of good administrative conduct based on the model recommended by the Ombudsman[168].

The Ombudsman's standard code and those actually adopted by the EU institutions and bodies remedy the lack of regulation concerning the sphere 'Customers' we had detected with respect to the Staff Regulations. Indeed, some of these Codes' principles pertain to sphere 1 (professional standards and personal integrity – e.g. lawfulness, absence of discrimination, proportionality, absence of abuse of power, impartiality and independence, objectivity), but the large majority of these principles govern the sphere of the relationships of the civil servants with the large public, the citizens, relationships that we called sphere 4 in our diagram in Chapter 2.

Figure 4.2. shows how the principles laid down in the Codes of conduct are structured according to the four spheres affected by ethical choices. Together with the image stemming from the Staff Regulation rules, they set out a rather balanced reference framework for the EU civil servant's action.

FIGURE 4.2 SPHERES AFFECTED BY ETHICAL CHOICES THAT ARE COVERED BY THE CODES OF GOOD ADMINISTRATIVE BEHAVIOUR

CUSTOMERS

ORGANISATION

TEAM

PERSONAL

[Source: Paolo Giusta 2006]

[168] See for instance the Code of good administrative behaviour adopted by the Office for Harmonization in the Internal Market (http://oami.europa.eu/EN/office/aspects/decisions/adm-00-37.htm). For the complete list of all these offices, see http://europa.eu/agencies/index_en.htm.

Departmental Codes of ethics

Some Commission departments have also adopted their own Code of ethics, in some cases after involving the staff at various levels (for example, by setting up a drafting committee).

A good example of a balanced departmental code of ethics is the 'Core Values Statement' set up by the Joint Research Centre (JRC), one of the Commission Directorates-General. The balanced character of this code is conveyed, in our opinion, via its very structure:

- **Four basic values** 'each staff member is committed to display' (integrity, respect, responsibility, openness);

- Each value is accompanied by **practical guidance**, covering in particular spheres 1 to 3 from those we identified as being possibly affected by ethical choices.

Figure 4.3. shows in detail the content of the JRC Core Values Statement.

Notable in our view is the fact that JRC does not only require that staff properly follow the rules set, but also aims at unleashing staff creativity and potential (sphere 1) by explicitly encouraging them to suggest and welcome changes and ideas and to 'think outside the box.'

Focus on the officials' individual responsibility is given by references such as 'alerting the appropriate instances on weakness in control systems and irregularities', 'recognising the merits of others', 'acknowledging mistakes and learning from them.'

Also, most practical indications given under 'Responsibility' and some of those under the other headings concern interpersonal relations at work, the team spirit, the good atmosphere of the working environment (Sphere 2), a domain not covered by the Staff Regulations and, most often, neglected by the formal codes of ethics, too (See Figure 4.2. above).

Home-made codes of ethics

During the ethics courses given at the European Court of Auditors (ECA), one of the exercises consists in asking the participants to draft, after dis-

FIGURE 4.3 THE JRC CORE VALUES STATEMENT

Integrity

- by being honest and trustworthy, truthful and accurate
- by never knowingly being party to an activity which could discredit the organisation
- by avoiding that personal interest would prevail over the interests of the organisation
- by alerting the appropriate instances on weaknesses in control systems and irregularities
- by not making deliberately false or deceptive claims on one's own or other people's work
- by setting a good example

Respect

- by being courteous and treating others with dignity
- by avoiding every form of discrimination and intimidation
- by welcoming ideas from all levels and treating them seriously
- by empowering colleagues, giving them the means to accomplish their work and motivating them to achieve their targets
- by helping colleagues in their professional development
- by recognising the merits of others, by acknowledging their achievements and making them feel proud of their work
- by avoiding criticism of colleagues in communications with customers, partners or with other colleagues
- by identifying and correcting under-performance in a fair manner, and by encouraging high performance

Responsibility

- by taking responsible risks and managing them
- by being accountable for one's actions
- by honouring agreements and assigned responsibilities
- by being committed to contribute our best
- by acquiring and improving our professional competence and skills
- by actively protecting the organisation's assets
- by using and protecting information prudently
- by taking adequate measures to discourage, prevent, expose and correct the unethical conduct of colleagues
- by safeguarding health and safety and protecting the environment

Openness

- by envisioning new possibilities and a positive attitude to change
- by encouraging thinking 'outside the box'
- by fostering discussion rather than emphasising disagreements
- by adopting an open and timely communication, by actively informing colleagues of ongoing issues and by explaining reasons for change
- by building on good practices
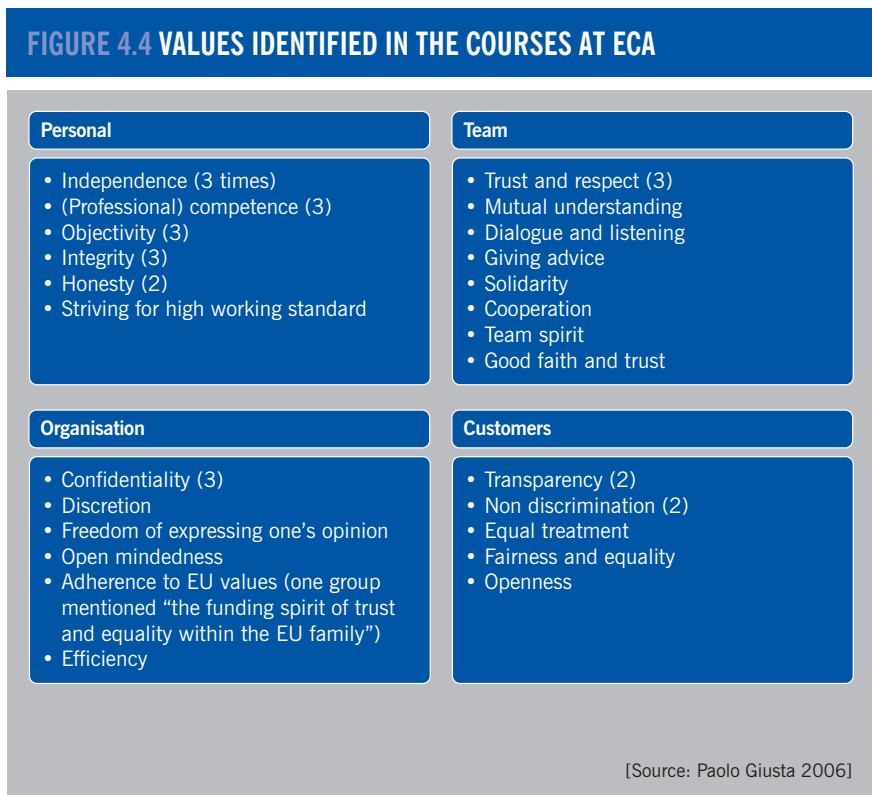- by acknowledging mistakes and learning from them

[Source: European Commission, DG JRC © 2000-2004]

cussing in groups, one of the following parts of a threefold code of ethics for their organisation:

- A set of values;

- Reasons explaining to staff why such a code is important;

- Implementing measures of the values set.

Interestingly, the codes of ethics so produced jointly by newly recruited officials, experienced auditors and staff involved in administration and financial management, with different backgrounds and experiences, tend rather naturally to cover the different spheres of impact of ethical actions.

Figure 4.4. elaborates on the values suggested by five groups for the first part of the code of ethics, according to these four spheres.

FIGURE 4.4 VALUES IDENTIFIED IN THE COURSES AT ECA

Personal

- Independence (3 times)
- (Professional) competence (3)
- Objectivity (3)
- Integrity (3)
- Honesty (2)
- Striving for high working standard

Team

- Trust and respect (3)
- Mutual understanding
- Dialogue and listening
- Giving advice
- Solidarity
- Cooperation
- Team spirit
- Good faith and trust

Organisation

- Confidentiality (3)
- Discretion
- Freedom of expressing one's opinion
- Open mindedness
- Adherence to EU values (one group mentioned "the funding spirit of trust and equality within the EU family")
- Efficiency

Customers

- Transparency (2)
- Non discrimination (2)
- Equal treatment
- Fairness and equality
- Openness

[Source: Paolo Giusta 2006]

If general trends can be detected from such a small-scale analysis, we could conclude that civil servants would spontaneously tend to draw up codes of ethics covering in a balanced way the different dimensions of the ethical behaviour.

Other codes for specific situations

In certain periods, a need may arise for more specific ethics rules in specific areas. We will mention two situations where this has been or could have been the case.

Conflict of interest

Article 52 of the Financial Regulation entered into force on 1 January 2003 acts as a code of conduct with respect to *conflict of interest*, at least for financial actors, who are the kind of agents taken into consideration by this set of rules. It stipulates that:

> 1. All financial actors shall be prohibited from taking any measures of budgetary implementation which may bring their own interests into conflict with those of the Communities. Should such a case arise, the actor in question must refrain from such measures and refer the matter to the competent authority.

> 2. There is a conflict of interests where the impartial and objective exercise of the functions of a player in the implementation of the budget or an internal auditor is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.

More specific provisions, even though not directly applicable to the EU institutions, are those recommended by the OECD in this area.

In June 2003, the OECD Council recommended the adoption of *Guidelines for Managing Conflict of Interest in the Public Service* to its members[169]. The European Commission is not a member of the OECD, but takes part in the work of this international organisation.

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[169] OECD, Recommendation of the Council on *Guidelines for Managing Conflict of Interest in the Public Service*, June 2003, http://www.oecd.org/dataoecd/13/22/2957360.pdf.

The recommendation gives the following definition of an (actual) conflict of interest:

> *A '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.*

More broadly, 'an *apparent* conflict of interest can be said to exist where it *appears* that a public official's private interests could improperly influence the performance of their duties *but this is not in fact the case*. A *potential* conflict arises when a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future.'

The OECD identifies four core principles for managing conflict of interest:

- **Serving the public interest** (officials should be 'disinterested', to preserve the integrity of official decision making);

- **Supporting transparency and scrutiny** (Public officials and public organisations are expected to act in a manner that will bear the closest public scrutiny. This obligation is not fully discharged simply by acting to the letter of the law; it also entails respecting broader public service values such as disinterestedness, impartiality and integrity);

- **Promoting individual responsibility and personal example** (Public officials are expected to act at all times so that their integrity serves as an example to other public officials and the public);

- **Engendering an organisational culture which is intolerant of conflicts of interest** (Public organisations should provide and implement adequate management policies, processes, and practices in the working environment to encourage the effective control and management of conflict of interest situations).

The Guidelines recommend the development of a general 'policy framework' to deal with conflicts of interest, containing the following meas-

ures, which 'are intended to reinforce each other to provide a coherent and consistent approach to managing conflict of interest situations':

- **Definition** of the general features of conflict of interest situations which can potentially put organisational and individual integrity at risk;

- **Identification** of specific occurrences of unacceptable conflict of interest situations;

- **Leadership and commitment** to implementation of the Conflict of Interest policy;

- **Awareness** that assists compliance, and **anticipation** of at-risk areas for prevention;

- **Appropriate disclosure** of adequate information, and **effective management** of conflicts;

- **Partnerships** with other stakeholders, including contractors, clients, sponsors and the community;

- **Assessment and evaluation** of a Conflict of Interest policy in the light of experience;

- **Redevelopment and adjustment** of policy and procedures as necessary to meet evolving situations.

Finally, the OECD recommends that prevention measures (in partnership with employees, to raise awareness and anticipate conflict of interest situations) and enforcement measures (including clear resolution options: from divestment or liquidation of the interest by the public official, to preventing the public official from involvement in an affected decision-making process, to resignation of the public official from their public office...) be coordinated and integrated into this coherent institutional framework.

It is possible that, in the relatively near future, guidance on conflict of interest will be formalised in a code of conduct for EU financial actors.

In fact, on 17 January 2006, the European Commission adopted a Communication on an Action Plan towards an Integrated Control Framework (COM(2006)9). To reach the objective of an effective and efficient inte-

grated internal control framework, including all actors charged with tasks related to the implementation of the EU budget, the Commission proposes various measures. Amongst these measures proposed, is the introduction of the 'principle of effective and efficient internal control' in the Financial Regulation.

One of the elements suggested in achieving 'effective control' is 'the promotion of ethical and moral behaviour avoiding also conflicts of interest, accompanied by a formal code of conduct' (see the proposed draft outline of Principle of effective and efficient Internal Control – Article 30a FR in COM(2006)9)

The time, and the agreement of the European Parliament and the Council on this proposal, will say whether the ethical framework for financial actors involved in the implementation of the EU budget will be completed by such a code.

Audit

When the Court of Auditors decided to provide itself with a Code of good administrative conduct, the services entrusted with drafting a first project of such a code deemed it appropriate to introduce provisions concerning the behaviour recommended to auditors when on mission.

Such provisions were not kept in the final version of the code as adopted by the Court. The reflection undertaken led to the following guidelines[170], which are hereby copied for illustration purpose.

> Audited entities do not exist solely for auditors to visit them. A visit from the auditors is, at best, an inconvenience and may cause severe disruption to the normal business of the entity. Furthermore, it is always worth remembering that for some auditees – and in particular for junior staff employed in an audited entity – a visit from the auditors can be a mysterious, threatening or even terrifying experience. Very often, auditors can make their work considerably easier by helping auditees to understand better the purpose of the audit visit and by creating a suitable environment in which to carry out that work.

[170] The author is Gerhard Ross, at the time member of ADAR (Audit Development and Reports) Department of the Court of Auditors.

At the beginning of a visit to an auditee, auditors should introduce themselves, explain to the auditee the nature of the work to be undertaken, its context and the way in which the results will be used. This explanation should be made clearly, avoiding technical language. Where necessary, the auditors should briefly explain the role of the Court and its situation in the European institutional structure. They should be ready to answer any questions that the auditee wishes to pose. Auditors should consider using the brochures and other materials produced by the Court's external relations department as an aid to explaining the Court's role and working methods.

Throughout the course of a visit, auditors should maintain an open, constructive and courteous manner, regardless of the attitude of the auditee. If any difficulties are encountered (such as a hesitation on the part of the auditee to meet any reasonable request from the auditors to provide information), the auditors should be politely insistent. Often, hesitation arises because of a misunderstanding by the auditee of the auditors' role or purpose, so the auditors should consider providing the auditee with further explanations.

At the end of a visit, the auditors should hold an informal debriefing or 'wash-up' meeting with the auditee. The auditee should be reminded of the nature of the work that was undertaken and be informed of the facts and findings revealed by the audit procedures undertaken[171]. Auditors should avoid expressing any judgements about the auditee or the audited entity. The auditors should inform the auditee of the way in which the facts and findings will be used. The debriefing meeting should include discussion of and agreement on any outstanding matters (such as additional information to be sent to the auditors), the way in which these are to be resolved and the timetable for doing so. The auditors should always finish a visit by thanking the auditee for the assistance and cooperation received.

Concluding remarks

The review of the bulk of rules applicable to the EU civil servants could lead one to think that the best ethical attitude is to plainly and simply

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[171] Except when the audit reveals a case of suspected fraud, corruption or any other illegal act liable to damage the Community financial interest.

apply the rules. This may be the case, but we are not then in the field of ethics. Applying the rules and obeying authority is certainly part of professional behaviour. Ethics starts when the civil servant, the 'moral agent', has to exercise his/her judgement to make a choice. Even though most exercises of discretion and professional autonomy of public administrators are cases of 'bounded judgement' (Jennings 1991, p. 83) – they do not make up entirely new rules –, applying rules is not a passive and impersonal exercise; rather, it is a matter of 'actively using them, fitting them to the messy human particularity' (*ibidem*).

Here, the non written organisational rules, and in particular, examples coming from the top and from colleagues, play a decisive role in orientating the civil servant to face the alternatives of a given complex situation. Indeed, more than rules set in stone, the perceived daily behaviour within an organisation is the best interpreter of the values which are shared within the department, the institution, or even the broader context (the European Union as such, see Chapter 2).

5 AND IF VALUES CONFLICT?

ETHICAL DILEMMAS AND GUIDANCE FOR DECISION MAKING

When it comes to making actual choices on the appropriate course of action to be undertaken in a given situation – which is precisely the essence of ethics (see Chapter 2) – the civil servant has to assess the values at stake, each one possibly suggesting a different action, and deciding which one deserves to prevail over other values in the circumstances of the particular case. The different elements of the surrounding ethical system (see Chapters 3 and 4) may give indications and provide guidance.

In most cases, the ethical choice will be between good and good rather than between good and evil. How does one establish whether we are faced with a right-versus-right 'ethical dilemma' or with a right-versus-wrong 'moral temptation'[172]? Lewis and Gilman (2005, p. 93) suggest the following four standards against which soundness of ethical decisions and personal integrity may be tested:

- The **mirror test** for integrity asks,
  'What kind of person do I admire and want to be?'

- The **publicity test** for accountability asks,
  'Am I willing to read about this in the newspaper? Tell my family?'

- The **visceral test** for implementation and authenticity asks,
  'Am I willing and likely to follow through? Can I live with this?'

- The **signature test** symbolises personal responsibility and asks,
  'Do I take public responsibility for this recommendation, analysis, or decision?'

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[172] This is what Kidder (2003, p. 17) calls the two different choice situations.

This chapter will deal with right-versus-right choices, i.e. 'ethical dilemmas', where two values, which are in principle equally desirable conflict, and a single option must be taken, and one value, although positive, must be sacrificed.

On which basis can such a difficult choice be made? How to be sure that we make the right choice, that we give preference to the correct value? This chapter attempts to provide some elements for ethical decision making.

Values and how to assess them

Situations where a choice should be made between two values equally desirable may arise in the professional life of EU civil servants. In many cases, these values are explicitly recognised by the applicable rules, and the choice to make is less on the value that should take precedence than on the correct implementation of the legal provisions. So doing would normally allow finding the appropriate solution, whereby in some cases both values can be taken into account.

A typical case is the apparent dilemma between *transparency* and *personal data protection*, two values which may be conflicting on several occasions.

Transparency values could suggest that the names of recipients of Community grants be made public, at least in some areas[173]. On the other hand, the EC Treaty provides that the EU institutions are to observe the rules on the protection of individuals with regard to the processing of personal data (Article 286 EC Treaty). Such provisions stipulate that, as a general rule, 'personal data may be processed only if … the data subject [the identified or identifiable *natural person*] has unambiguously given his or her consent'[174]. Both approaches respond to a valuable concern:

[173] A similar commitment was formulated by the European Commission in its Communication launching the European Transparency Initiative (SEC(2005)1300 of 9 November 2005), where the institution decided amongst other things to 'create a central web portal, acting as a single entry point, which will establish links to information on end beneficiaries of funds under centralised management available at the level of the Directorates-General'. See also European Commission (2006), Chapter IV 'Disclosure of beneficiaries of Community funds'.

[174] Article 5 of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, Official Journal, L 8, 12.1.2001, p. 1.

increasing accountability towards the EU taxpayer, on the one hand, and protecting the privacy of the recipients of EU funds, on the other hand. In such a case, it seems possible to apply the legal provisions in a way allowing safeguarding both the value of transparency and the value of data protection. Indeed, the EU institution could require all beneficiaries of EU grants to express their consent to the processing of their personal data. This requirement could be included as a standard clause in the grant agreement[175] ahead of the actual disbursement of EU funds. It may, however, be considered that this would add an excessive burden on the grant procedure. Here a third element, the cost-effectiveness[176] of the administrative action, could act as the determining factor of the final solution.

A slightly different hypothesis is that which combines the demand for *wrongdoings to be made public*, and protection of the *defence rights* of the wrongdoers. Once again, two legitimate concerns are present: protecting the EU financial interests by 'naming and shaming' those responsible for misconduct and possibly dissuade future potential offenders, on the one hand, and respecting the principle of the right to a hearing, which is a general principle of Community law, on the other hand[177]. The European Court of Auditors once found itself in such a situation[178]. The solution found, allowing publicity to coexist with defence rights, was to enable those concerned to comment on the Court's observations which refer to them by name before the report containing such observations is made public[179].

The cases above can be solved by applying the relevant legal and administrative provisions. In other cases of conflicting values, it appears that no binding rule exists to indicate the course of action to follow. If it is the case, we find ourselves in the area of ethics in the strict meaning, charac-

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[175] This clause would act like the already existing one that foresees that each grant agreement provides expressly for the Commission and the Court of Auditors to exercise their powers of control, on documents and on the premises, over all contractors and subcontractors who have received Community funds (Article 120 Financial Regulation).

[176] This is the content of the *principle of efficiency*. See in this respect Article 27 Financial Regulation: 'The principle of efficiency is concerned with the best relationship between resources employed and results achieved'.

[177] See judgment in Case 17/74 *Transocean Marine Paint v Commission* [1974] ECR 1063, paragraph 15.

[178] The case was brought in courts and made the object of the Case C-315/99 P *Ismeri Europa v Court of Auditors* [2001] ECR I-5281.

[179] See Court of Auditors, 'Lignes directrices de la Cour des comptes relatives à l'identification, dans les rapport de la Cour, des entités et des tiers contrôlés dans le cadre d'un audit', Recueil des décisions C3.3.2.

terised by the absence of legal or other binding provisions. Here ethical reasoning fully plays its role, with the disclaimer, however, that in the legal order in which the civil servants operate, the action undertaken may have consequences (decisions, damaging acts) that may be challenged before the EU courts.

It is for this grey – and rule-free – zone where values conflict that indications for decision making are given in the following pages.

Dilemma paradigms

Kidder (2003, p. 22) declares that, after years of listening to and analysing hundreds of right-versus-right ethical dilemmas, he came to the conclusion that they generally fit one or more of four paradigms, each composed of a pair of competing values, out of which, in a given situation, only one can be pursued. These four dilemma paradigms are (Kidder 2003, p. 113):

- **Truth versus loyalty**. This paradigm can be seen as honesty or integrity versus commitment, responsibility, or promise-keeping;

- **Individual versus community**. This paradigm can be restated as us versus them, self versus others, or the smaller versus the larger group.

- **Short-term versus long-term**, or now versus then, reflects the difficulties arising when immediate needs or desires run counter to future goals or prospects.

- **Justice versus mercy.** The point behind the justice-versus-mercy paradigm is that fairness, equity, and even-handed application of the law often conflict with compassion, empathy, and love.

Kidder[180] has recently analysed the stance of U.S. Vice President Dick Cheney in favour of using torture to combat terrorism in the light of the four dilemma paradigms.

By way of introduction, Kidder refers to the antithetical position of Senator John McCain, who survived torture as a prisoner of war in Vietnam and

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[180] Kidder, R. M., *Can Torture be Justified?* in *Ethics Newsline*, 31 October 2005.

argues that torture is in any case wrong. By contrast, Cheney and a part of the U.S. public consider that torture is the lesser of two evils (submitting captured foreign nationals to extremes of deprivation and pain to elicit information and risking thousands of civilian deaths), a situation which is to be dealt with in a similar way to that of right versus right dilemmas.

Kidder weighs up the moral case for each side by applying the four paradigms for right-versus-right decision making:

- **Individual versus community.** The McCain side seeks to honour the individual by respecting everyone's dignity and human values, friend and foe alike. The Cheney side, favouring the community, puts public safety and national security paramount.

- **Truth versus loyalty.** Here McCain might argue for the truth that torture is unreliable and too often elicits erroneous, dated, or self-serving information. Cheney, however, might cite a loyalty to practices of interrogation that at times have prevented attacks and saved lives.

- **Short term versus long term.** For McCain, the overriding interest lies in protecting the long-term standards of democracy, despite our immediate problems. For Cheney, information gained now rather than later can make the difference between a major catastrophe and a nearly invisible series of arrests.

- **Justice versus mercy.** Mercy, for McCain, cries out against torture. But justice, for Cheney, demands retribution for the mayhem wrought by the terrorists.

Both sides have strong arguments, but only one choice can be made. No compromise between the two extreme solutions is possible. How to make a choice? And which is the best one? To find a solution, analysing the dilemmas from the perspectives of the paradigms of competing values is not enough. An ethical reasoning is needed to find a suitable way around the problem and to direct the decision making.

Once the competing values in presence have been identified, Kidder suggests identifying the criterion according to which these values are to be weighed to determine which one should prevail.

Ethical resolution principles

Kidder (2003, p. 154) indicates three **principles for decision making**, based on which one can 'choose which side is the nearest right for the circumstances':

- Do whatever produces the greatest good for the greatest number of people (which is referred to as *ends-based, utilitarian thinking*);

- Follow your highest sense of principle, by asking yourself: 'If everyone in the world followed the rule of action I am following, would that create the greatest good?' (or *rule-based, deontological* thinking);

- Do to others what you would like them to do to you (or *care-based* thinking).

The first two resolution principles are the most obvious: we follow what we consider to be our duty, unless the consequences seem unacceptable to us. Debra W. Stewart[181] observes that most managers are neither pure deontologists (rule-based in Kidder's terminology), nor pure utilitarians (end-based), but rather operate according to a kind of ethical pluralism.

> Guided by this synthesis of moral systems, managers typically might conclude that the moral reason for or against some action resides in its consequences, while the rationale for or against other actions stems from their being of a kind required or prohibited by duty. When acting out of ethical pluralism, managers need to develop a capacity for sensitive moral judgment, for often one must apply both sorts of moral reasoning for the same actions. It might be that the consequences of some action would be so bad that it should not be undertaken even though one has *prima facie* obligation to do it.

The third, care-based principle is typical for what the U.S. literature calls *character ethics*, also known as *virtue ethics*. Covey (1999, p. 32) explains that the character ethics is based on the fundamental idea that there are *principles*, natural and unchanging laws related to the human condition,

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[181] Stewart, D. W. (1984), 'Managing Competing Claims: An Ethical Framework for Human Resource Decision Making', in Bruce 2001 p. 141.

that govern human effectiveness[182]. Principles are guidelines for human conduct that are proven to have enduring, permanent value (p. 35). Covey refers to the principles of *fairness*, *integrity* and *honesty* (the foundations for trust), *human dignity*, *service* (the idea of making a contribution), *quality* or *excellence*, the principle of *potential*, and that of *growth* (the process of releasing potential and developing talents), the principles of *patience*, *nurturance* and *encouragement* (Covey 1999, p. 34)[183].

According to the character-based theories, the morality of an action is determined by the character trait that the act exhibits. Character-based theories argue that the person, rather than the action, is the object of the moral evaluation (Garofalo and Geuras 1999, p. 84)[184].

How do these resolution principles shed light on the choice to make in instances of ethical dilemmas? Let us come back to the example of the two opposite approaches to torture in preventing terrorist attacks, referred to above. Kidder applies the three resolution principles in the following way.

- Those, like Cheney, who follow an **ends-based, utilitarian** principle will argue that doing the greatest good for the greatest number does not rule out creating a small amount of bad for a few. Under this reasoning, if a few must be tortured for the good of the many, so be it.

- By contrast, those, like McCain, following a **rule-based, Kantian**[185] principle will seek to build an invariable standard by which to act. To

[182] In the framework of Covey's Character Ethics, *effectiveness* designates internalised principles, guiding the person's behaviour from within toward personal and interpersonal growth and happiness/satisfaction.

[183] According to Covey, the principles are neither *practices* (they will change according to the circumstances, whereas principles don't) nor *values* (principles are the 'objective reality' of the territory itself, whereas values are the maps that describe the territory). In the present paper, we use however principles and values as synonyms (see Chapters 2 and 4).

[184] The authors also recall that one of the goals of virtue ethics literature in public administration is the identification and definition of the characteristics or qualities of the virtuous administrator. According to these theories, the three essential moral qualities of the ethical public administrator are *optimism*, *courage*, and *fairness* tempered by *charity* (p. 85). These last two virtues join Kidder's justice-versus-mercy paradigm. Other exponents of character ethics consider that the moral core of public administration consists of *honour* (understood as magnanimity or greatmindedness), *benevolence* (which require not just doing good but also a driving motivation to do good *for the sake of others*), and *justice* (which signifies fairness and regard for the rights of others) (Denhardt, quoted by Garofalo and Geuras 1999, p. 90).

[185] Kant's categorical imperative can be formulated under three general statements: Always act according to a maxim that you could will to be a universal law; treat all rational beings as ends in themselves and not as means; respect the autonomy of rational beings to produce a 'kingdom of ends' (i.e., ethical world) (Fundamental Principles of the Metaphysics of Morals, as interpreted by Garofalo and Geuras 1999, p. 102). The authors underline that Kant's intent was that of promoting consistency and rationality in behaviour (p. 103).

do so, they'll seek to elevate a maxim or precept – like 'never torture others' or 'always avoid cruelty' – to the status of a universal law that everyone should always follow;

- Finally, those who adhere to the **care-based, Golden Rule** principle – doing to others only what you would have them do to you – may define 'others' as the ones most vulnerable to torture. Would you want to be tortured if the tables were turned? Then don't torture others – a point that McCain, given his history, would find easy to argue. But Cheney, perhaps identifying the 'others' as citizens of the United States vulnerable to terrorist attack, might ask what they would want from you if you were their leader? If they say, 'Security above all,' then you need all the intelligence you can get, right now.

But, Kidder points out, there is another 'other' in the care-based resolution: the military and intelligence communities. Would I myself want to *be* the torturer? Would I want to live with my conscience after committing such acts? Would I even want to be a U.S. soldier – taught by my superiors and by the investigations at Iraq's Abu Ghraib prison that cruel and inhumane treatment of prisoners is categorically wrong – who now sees his or her own government condoning torture in certain cases?

The outcome of the application of the resolution principles shows the difficulty of reconciling opposite ethical concerns[186]. In addition, more far-reaching steps of the moral reasoning are needed.

Ethical reasoning: taking advantage of our diversities

Addressing opposing views through dialogue and compromise

Some authors propose reasoning patterns that try to combine Kidder's three ethical resolution principles. We consider, however, that it is not enough to reconcile conflicting views stemming from the different weight that intervening people assign to the various principles.

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[186] The ethical position finally sustained by Kidder is the one standing against torture. Indeed, he argues, 'if to sustain the values of democracy in principle we must violate those values in practice, we risk creating the very kind of culture we're fighting'. This was also the solution opted for by the U.S. Congress when adopting the 2006 budget in December 2005 (The U.S. House of Representatives followed the arguments brought by Sen. McCain and adopted a legislation to ban torture of detainees in U.S. custody – See REUTERS, 19.12.2005).

Garofalo and Geuras (1999, pp. 149-50) suggest a framework 'from which practitioners can approach decisions and actions with a coherent moral point of view'. This framework consists of asking four questions: (1) What principles are at stake in this situation? (2) What purposes should I try to achieve, and what are their likely consequences? (3) What are the connections of these principles and purposes to my character? (4) How do I feel about it? The authors maintain that, if a public administrator asks these questions in good faith and attempts to be consistent, the foundations are laid for taking a publicly justifiable position. Yet, they recognise that asking these questions will not guarantee moral consensus. 'Indeed, it is likely that differing assumptions, perceptions, priorities, and pressures will play on the participants in any decisions'.

The breakthrough is only made when a method is found to take into account opposing views as an enabler, rather than as an obstacle, for group choices. In this respect, Brown (2000, pp. 30-54) proposes an encompassing reasoning based on the 'five resources for making decisions'.

The first four resources – *proposals observations*, *value judgements*, and *basic assumptions* – are brought forth by the following questions of ethical reflection:

Question	*Resource*
What should we do?	People's policy proposals
What do we know?	Their observations
What does it mean?	Their value judgments
Why does it mean that?	Their basic assumptions

The fifth resource, *opposing views*, allows the appropriate selection and use of the first four resources.

To analyse the steps in using the resources for making decisions, Brown place them on a decision-making diamond, as shown in Figure 5.1. (Brown 2000, p. 32).

The starting point (Home plate) is when a *policy proposal* is put forward. If everyone agrees with the proposed course of action, the decision is taken accordingly – a home run. If someone does not, explains Brown, we have to find the disagreement. To do so, we move to the first base –

FIGURE 5.1 DECISION-MAKING DIAMOND

FIGURE 5.1 DECISION-MAKING DIAMOND

Proposals

H

Observations   1   3   Assumptions

2

Value Judgments
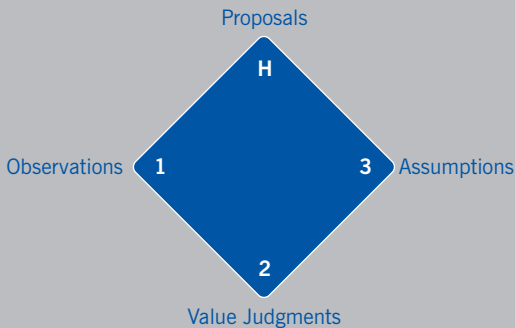
[Source: Brown 2000]

observation. There, we may discover that instead of disagreeing, we simply had different information. Sharing these differences only increases our understanding of the total situation (p. 32).

If we can agree on the relevant observations for answering our question, then we can move to the second base – *value judgments*. It is in this phase that our different appreciations and weightings of the values at stake, according to the resolution principles above, play a role. Brown observes that these different value judgements cans also enrich the discussion. Disagreements on value judgements can help group members to understand the strengths and the weaknesses of their positions.

As the members begin to question each other's values, they move to third base – *assumptions*. Assumptions, according to Brown, are those beliefs that people take for granted – for instance, some may argue that people only become strong if they are left alone, while others may believe that we all belong to the same family (p. 33). Disagreement about assumptions may be the most difficult to resolve, because it signals different orientations toward the self, others, and the world.

Brown maintains that *opposing views* increase the available resource for decision making. Even though agreement is never guaranteed in ethical reflection, finding out why people disagree can help develop a better course of action. The loyal opposition gives us occasions to find innovative solutions, instead of simply relying on what has been done in the past (pp. 37-38).

Differences met in the various stages of the process may 'stop the run', but they can change the participants' minds and generate better policy proposals as well. Since the resources are usually used together and therefore is easy to confuse them, it is essential, in Brown's view, to identify them and evaluate them separately, to prevent forms of confusing or dysfunctional communication caused by participants speaking to each other about different resources (while some make observations, other may evaluate them or even state a policy).

To evaluate and coordinate the different resources for decision making, Brown suggests an inclusive *logic of ethical reflection* connecting the facts known and the various policy options, making explicit the implied value judgements in the different arguments, and considering assumptions backing value judgements and opposing views. All the elements combine result in a comprehensive argumentative model as shown in Figure 5.2.[187]

FIGURE 5.2 LOGIC OF ETHICAL REFLECTION

[Source: Brown 2000]
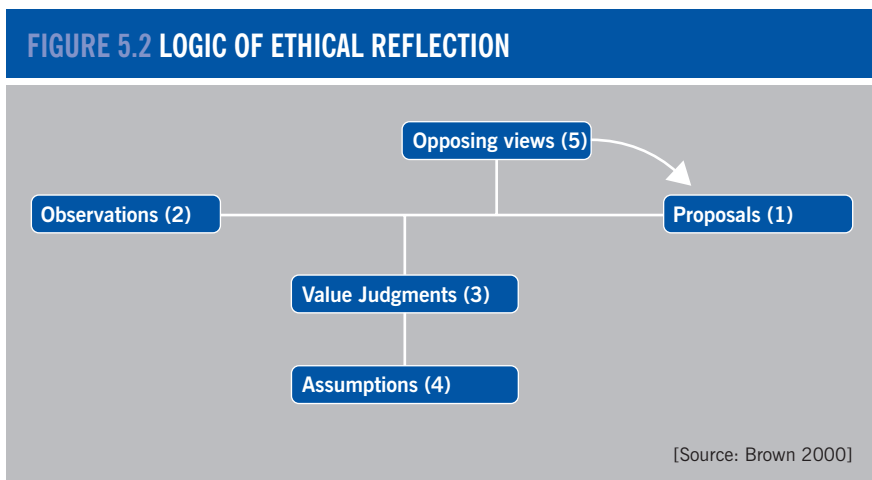
Ethical reflection usually encompasses the three first stages only: when we are asked why we support a proposal (1 in Figure 5.2.), we answer more often by referring either to what is happening (2) or to specific value judgements (3). The relationship of observations and value judgements parallels the relationship of the minor and major

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[187] We add an arrow from 'Opposing view' to 'Proposals', not included in the original Brown's scheme, to emphasise that opposing views relaunch the ethical reflection process, possibly allowing to find out a better solution after each round.

premises to the conclusion in the traditional syllogism (Brown 1990, p. 44):

Major premise	Value judgment
Minor premise	Observation
Conclusion	Policy

Including assumptions (4) and opposing views (5) in the reasoning allows, on the one hand, deepening the analysis by identifying what supports the value judgments and, on the other hand, encompassing the drawbacks of the proposal made, including the value judgements and backing assumptions underlying the positions pointing at the weaknesses of the original proposal (p. 48).

The typical discussion about a policy proposal would looks like Figure 5.3., beginning with number 1 and moving to 5[188]. The outcome of the discussion will be a policy proposal, either the original one, or a modified one, or a completely new, in all cases enriched by the opposing view loyally brought forward. Indeed, it is against the opposing views and their underlying assumptions that the strengths, or the flaws, of the original assumptions can be checked (p. 49).

FIGURE 5.3 **PROCESS OF ETHICAL REFLECTION**

[Source: Brown 2000]

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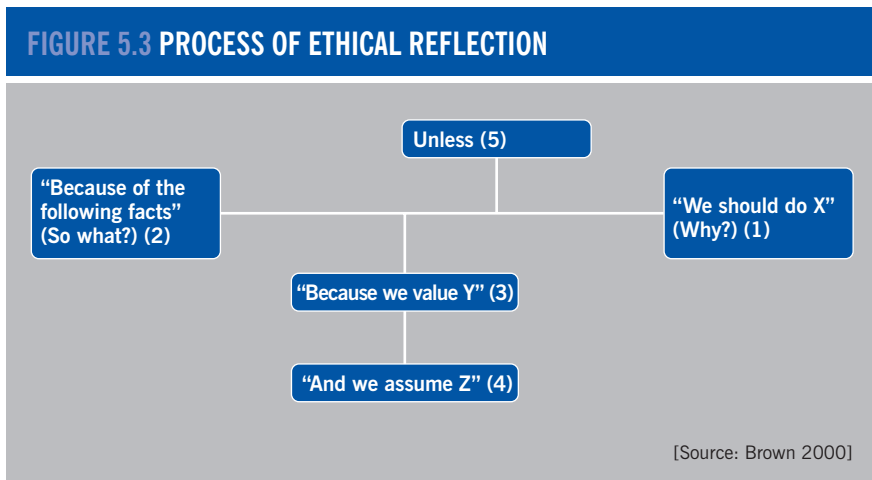
[188] In the reasoning we propose – see below – we actually invert the order of Step 1 and Step 2. Indeed, I seems to us that observation precedes the resolution proposal *in the reasoning*, even though the proposal may come first when one explains the reasoning to others.

Value judgements underlying policy choices are grounded not only in the basic assumptions proper to those intervening in the discussion, but also in ethical standards like those laid down by the ethical/deontological rules (we examined in Chapter 4 some of those applicable to EU civil servants).

Indeed, some of those standards may facilitate the discussion process, as some of the core values of the Joint Reseach Center (welcoming ideas from all levels and treating them seriously, envisioning new possibilities and a positive attitude to change, encouraging thinking 'outside the box', fostering discussion rather than emphasising disagreements) and some of the OECD principles for managing conflicts of interest (appropriate disclosure of adequate information). Hence the importance for an organisation to dispose of standards for making decisions, on top of the standards for proper behaviour.

Once again, as explained in Chapter 2, ethics and ethical reasoning are a matter of proceeding from the various options that freedom might theoretically offer to a choice, in a dynamic tension between me, the others and the legal and institutional system in which I operate. Brown explains how this interaction works in the ethical decision-making process.

Graham[189] identifies a set of 'rules of the game' for persons in the public sector, concerning the questions of the input that the individual official can make to decisions, the limits of compromise in the discussion process, and the action phase of implementing decisions or carrying out programmes. He suggests the following guidelines.

> The administrator's role in a democratic society … requires him to:
>
> 1. Inform others participating in the decision-making process (supervisors, peers, subordinates) of significant information which is properly relevant to their role in the decision. [This guideline corresponds to 'observation' in Brown's scheme]
>
> 2. Interpret the data, explain the meaning, and argue the case for their impact on policy as he sees it, while making sure he has no personal conflict of interest, and at the same time revealing the

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[189] Graham, G. A. (1974), 'Ethical Guidelines for Public Administrators: Observations on Rules of the Game', *Public Administration Review*, in Bruce 2001, p. 99-100.

value base from which he approaches the issue. [This is value judgment plus assumption, completed by ascertaining that no situation of conflict of interest occur, which is a major element impairing an official's judgment]

3. Be guided in the extent and intensity of its advocacy by the importance of the issue, his position in the hierarchy, and the extent to which the issue falls within his cognition and his competence. [In supporting a position within the conflicting views dialogue, these are issues proper to the civil service to be considered]

4. Accept decisions made within the 'rules of the game' even though he deems them unwise (i.e., the decisions have been made rationally by informed persons, acting within their authority, and attempting to be fair and reasonable) [Here we come to the implementation. Indeed, after taking a given decision, each part may still believe that its policy is the right one. Brown (2000, p. 61) suggest that, from a corporate perspective, opposing views still existing after the decision is taken can be used to monitor policy implementation, and could help to correct a policy mistake, as it becomes apparent. However, from a personal perspective, the official should, in principle, carry out the decision]

   … Assuming that a decision or plan of action is final and that its legality is not in doubt, an administrator is obliged if it falls within his sphere of responsibility to carry out the action to the best of his ability, in good faith, whether or not he agrees with the merits of the decision.

5. Recognise that he may be required to defend a decision which he personally rejects, if it has been made according to the rules of the game, if it falls properly within his official role and cognition, without volunteering his contrary views; but that he is not required under any circumstances to testify falsely as to the facts or as to his personal judgment.

If the decision is not finalised, Graham indicates that the dissenting official may challenge it.

   … The rules of the game permit [the public administrator] to contest a decision made by his own organisation, but not final, by going

over his superior's head, or by going to other organisations within the government only when he can honestly assure himself (1) that a mistake is being made on an issue of major public importance, (2) that his judgment is unbiased by personal or partisan, as opposed to public interest, considerations, (3) that the risk he runs of being forced out of the government is justified by the importance of the issue, and (4) that what will be lost by the decisions outweighs the value of his probable future usefulness to the government if he continues in the government.

[The public administrator must] resign if he cannot accept valid interpretations of the law by higher administrative authorities which should control his action [which is in this context the highest form of conscience objection].

The complete reasoning

Taking into account all the contributions mentioned above, we suggest the following reasoning for decision making in instances of ethical dilemmas, which largely builds on Cattorini (2001, p. 19-25):

Step 1 IDENTIFY AND DEFINE THE MORAL PROBLEM

- Discern between application of rules and real ethical dilemmas;

- Sum up the facts you know and those you need to know;

- Identify the paradigm(s) of conflicting values in the present situation.

Step 2 GIVE YOUR IMMEDIATE EVALUATION

- Express your preference for a given course of action.

Step 3 GIVE REASONS FOR YOUR PREFERENCE

- Express the arguments underpinning your position by reference to principles in the ethical framework, and your value judgement supported by the underlying assumption(s).

Step 4 COMPARE YOUR POSITION WITH OTHERS'

- Engage in a process of dialogue, loyally recognising the existence of different views;

- Explore the arguments (principles, value judgements and assumptions) supporting these different positions;

- Identify the strengths and weaknesses of these different views;

- Identify the strengths and weaknesses of your original position in the light cast by these different views.

Step 5 LAY DOWN AND IMPLEMENT A SOLUTION TO THE GIVEN ETHICAL PROBLEM

- Adopt a course of action for the given situation (individual or collective decision);

- Implement the decision taken;

- Indicate how to address opposite views subsisting after the decision is taken.

Step 6 EVALUATE THE SOLUTION GIVEN AND RECOMMEND A STRATEGY FOR THE FUTURE

- Assess the discussion process leading to the final decision;

- Analyse the consequences of the decision taken.

Some further comments on the different stages of the reasoning follow.

Step 1

First of all, we need to identify the moral problem, by recognising that there is a moral issue, and not simply a legal or technical one[190].

Sometimes we consider ethical dilemma situations that could be addressed by applying straightforward legal rules (see some examples at the begin-

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[190] Kidder (2003, p. 183) also invites to determine the actor: 'If this is a moral issue, whose is it? ... The question is not whether I am *involved*, but whether I am *responsible* – whether I am morally obligated and empowered to do anything in the face of the moral issue raised.'

ning of this chapter), organisation's principles or technical standards related to a given profession. If this is the case, the situation is relatively easy to solve: one has to follow the rules. An ethical problem may however arise if one estimates that the rules are contrary to one's conscience, and that in this given situation a different decision should be taken.

Examples of issues that can be solved already at this first, preliminary step are, in our view, the following:

- **Conference in the UK**[191]. One of your collaborators has been invited by one of your major service providers to attend an interesting and important conference in the UK. The conference is considered of utmost relevance for the work of your unit, but there is no mission budget available. The offer includes airfare, free stay in a 5 star hotel and conference passes. There is a call for tender going out in 3 months and no one knows if this provider will answer the call for tender or not. Should you allow your collaborator to accept the invitation or not?

   This is a case of possible conflict of interest, in particular that of an *apparent* conflict of interest (see Chapter 4). According to Article 52 FR, in cases of conflicting interest, the financial actors should be prohibited from taking any measure of budgetary implementation. Also, the OECD guidelines suggest prevention and enforcement measures such as preventing the public official from involvement in an affected decision-making process (see Chapter 4). In the case at stake, it seems to us perfectly possible for the staff member in question to participate in the conference, provided it will not – and the service provider is informed that he will not – play any role in the subsequent selection process. Indeed, taking this safety measure should avoid even the suspicion of a possible conflict of interest.

- **The audit finding**. During a mission in a Member State, an official of the Court of Auditors discovers a serious irregularity made by a large beneficiary of EU funds. Once back at the Court in Luxembourg, he prepares a mission report containing this finding. This mission report, which constitutes the basis for a report to be established and finally adopted by the Court, is made available to all levels of his hierarchy. Days after the submission of the mission report, the auditor is invited by his

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[191] We express our acknowledgments to Conrado Tromp for this example, which is used in Ethics training sessions at the European Commission.

director for a discussion. The director explains that some members of the Court are not happy with the outcome of his mission: the findings presented could put the Court in a difficult situation, given the political climate in this Member State. The director eventually warmly recommends the auditor not to mention this irregularity in the preliminary report he is supposed to draft. The auditor understands the political concerns, but feels at the same time that, since the irregularity exists, it should be disclosed in a Court's report. How should he proceed?

This can be considered as a case of *self* (the Member States' political concerns) versus *community* (the general EU interest that irregularities are pointed at and remedied) and of *justice* (the Court should report on any case of irregularities, this is expressly provided for in Article 248(2) EC Treaty) versus *mercy* (the Court cannot overlook the sensitive political situation in a Member State) dilemma. Indeed, it should be considered that way when it comes to taking the final decision of adopting and publishing a report containing this audit observation. At this point, however, the moral actor is no longer the auditor, but the Court itself.

As far as the auditor is concerned, the questions asked are more limited: should the auditor, after signalling the irregularity in the mission report, also put it into the draft he is to prepare, knowing that this draft will pass through many decisional intermediate stages before reaching its final shape and content? Here, the auditor would face a *loyalty* (the auditor has a good relation with his hierarchy: should he keep loyal to this relation and accede to the request?) versus *truth* (he did discover an irregularity; he cannot deny its existence).

In the courses at the Court of Auditors where this case was submitted, the participants indicated that an auditor is bound by a professional duty to report, which includes reporting in a complete way on his findings in the first draft of the report, which is under his responsibility. It will then be up to the following instances (Audit Group, Court) to address the dilemma – see above – and to draw conclusions. In these circumstances, the case under examination is no longer a dilemma, but a question of applying professional standards.

Step 1, in instances of ethical dilemmas, is also where Brown's *observation* of the factual situation has to be carried out. It is possible that this analysis leads us to conclude that we do not dispose of enough informa-

tion, and that more elements are needed to decide correctly. Moreover, it is under Step 1, too, that one should consider whether a right-versus-wrong paradigm apply and, if not, examine the situation through one or more of Kidder's *dilemma paradigms*.

Step 2

Honestly expressing the immediate, intuitive preference for a given course of actions after examining the facts and the values at stake allows the pre-comprehension, which guide a moral agent in addressing a situation, to emerge. This step corresponds to the *policy proposal* in Brown's model: 'Let us do this'. Only by explicitly stating a personal view on what should be done, can the dialogue process be set in motion. This preference statement allows (the agent itself or other intervening persons) to ask: '*Why*, in presence of the facts we observe, should we do this?', and opens the way for moving 'from a subjective certainty to a well-grounded truth' (Cattorini 2001, p. 21).

Step 3

Following Brown's line of reasoning, the concerned moral agent(s) should, at this point, express their *value judgements* and the underlying *assumption*. In fact, both motivate the course of action intuitively favoured. It is also at this point that the different *resolution principles* indicated by Kidder play a role in guiding the person involved when weighting the different values at stake.

Step 4

At this point, the *opposing views* pointed out by Brown as an essential resource for decision making come into play. In our view, comparing a personal position with conflicting ones is useful as it casts light on the strengths and weaknesses of the different positions. It is the very essence of ethical reasoning. Indeed, as we have seen trying to define integrity in Chapter 2, (1) we have to consider points of view different from ours (*integrity as consistency*), (2) our identity requires a relational awareness, a consciousness of the relations in which one participates (*integrity as relational awareness*), (3) integrity requires readiness to listen to different voices and to overcome disagreements (*integrity as inclusion*), and (4) it is integrity in the relational meaning of 1 to 3 above that provides a guideline for right action.

In particular for EU officials, operating in institutions characterised by several forms of pluralism (see Chapter 1) and in a framework whose main inspiring values are unity and diversity (see Chapter 3), it is essential in our view to share the different positions, not only when collective, political choices are at stake, but also in determining one's own positions in ethical dilemmas. Indeed, the abundance of resources stemming from the variety of origins, cultural and religious backgrounds and opinions can dramatically improve the quality of decisions taken after a loyal and thorough discussion. In the same way, as the three institutions can only deliberate on EU policies after a dialogue process leading to a compromise between the different positions, a similar decision making could be applied in the world of the EU official's daily decisions.

For some, morality could mean uncompromising adherence to a principle, trying in a Kantian way to consider one's own principle as a universal law. In an ethically multifaceted world like that of the European institutions, this approach risks, however, creating divides between the principles' holder and those standing for other principles. What we suggest is to complement the Kantian individual deliberation with an interactive collective deliberation process based on mutual trust and openness, as a point of principle, to the other's reasons. The resulting ethical compromise will not be a compromise of principles (the official deeming that the resulting choice is contrary to a principle that applies to one's conscience as an imperative can still exercise conscience objection, as Graham points out – see above). As Willbern indicates, 'compromises can be viewed as a highly moral act. ... If sincere people hold to differing values, there must be institutional arrangements which legitimise courses of action which certainly do not satisfy all and may not fully satisfy any, and there is a moral obligation for both citizens and officials, but particularly officials, to participate in and support such arrangements. ... Complete reconciliation, or social integration, will always be elusive, but social cohesion, loyalty to and participation in a group, and in larger communities, is a moral goal of the highest order'[192].

Step 5

The following step consists of determining a course of action and implementing the decision actually taken. In some cases, the participants

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[192] Willbern, Y. (1984), 'Types and Levels of Public Morality', *Public Administration Review*, in Bruce 2001, pp. 126-7.

might not be able to compose their positions and diverging views might subsist during and after the decision making. Arrangement of differing views can take different forms according to the circumstances: majority voting, involvement of higher authorities or of independent commissions (such as an ethics committee), the statement of one or more participants of their unavailability for conscience reason... 'In any case, a frank and as serene as possible discussion is preferable both to the childish conceal-ment of the conflict, and to the blind passing on of the decision-making responsibility to the higher authority' (Cattorini 2001, p. 24).

Step 6

The course of action chosen and the way the decision was taken may be a source of lessons for future cases. If the discussion process has been successful, it can be used again. Did it increase trust and openness among the components of the group? Were the different positions respected as a point of principle? Was there a sincere effort to understand them, coming from those holding different views? What did we learn from this experience for overcoming opposing views in the future? Evaluating the consequences of the decision taking is equally important. As noted above, subsisting opposing views can be used to monitor the appropriateness of the course of action agreed upon and to correct it if necessary.

CONCLUSION

The aim of this paper was to provide guidance to EU civil servants in their everyday decision making, including decisions on the most appropriate conduct to be followed in professional life. We have tried to outline the basic elements of the ethical system in which they operate and to propose an inclusive and interactive decision-making model. Little is said about which behaviour, or decision, is ethical, or more ethical than another one. This is because we consider that ethics *is* the process[193]. We maintain that dialogue is the substance of ethics, not the form.

Ethics is, in our view, more than a lonely process of determining a course of action, considering every human being as an end and never as a means, as Kant underlines. If all human beings have a unique value and dignity, then I have to let myself be challenged by the different values that each of them brings forward. Like politics, ethics is grounded in the human plurality: they both deal with reciprocity of different beings; they are a matter of inter-relation between men and women[194].

This is particularly true for those working at the service of the European Union, which is in itself unity and diversity, identity and relationship.

Practising relational ethics can not only increase the ethical climate of an organisation (intended less in the meaning of complying with ethical rules than of unleashing the potential for innovative ideas and actions). Ethics could also serve to motivate civil servants, to make it possible to find common lines of actions across departments and other cleavages. It can help staff to see their institution as a pleasant and rewarding place to work in; ethics may increase effectiveness in the functioning of EU institutions and, in the end, help to identify supplementary resources to deliver a good service to EU citizens.

[193] Cf. Kidder 2003, p. 176: 'Little wonder … that as we practice resolving dilemmas we find ethics to be less a goal than a pathway, less a destination than a trip.'

[194] Annah Arendt, *Was ist Politik?*, Quoted by Ferrara 2002, p. 281.

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