

# Managing Ethics in the European Commission Services: from Rules to Values?

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## Abstract

This article adds to research on the regulation of standards of conduct in public administration. Specifically, it analyses attempts made during Siim Kallas' mandate (2004–2009), to change the European Commission's approach to managing ethics, from a focus on control (inherited from the Kinnock reforms) to a 'modern' style based on guidance and shared values. Findings suggest that administrative practice fell short of delivering the change suggested by official discourse. The case of the Commission illustrates the practical challenges of operating shifts in organizational ethics management, and draws attention to the influence of the historical and political context of the reforms. The article uses a qualitative methodology, combining document analysis and in-depth interviews with ethics experts in the European Commission.

## Key words

Ethics, European Commission, administrative reform, public service

# MANAGING ETHICS IN THE EUROPEAN COMMISSION SERVICES

## From rules to values?

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## INTRODUCTION

During the past two decades corruption has come to be regarded as one of the most devastating governance problems world-wide. International anti-corruption and ethics regimes have proliferated, while integrity-boosting reforms were introduced in both developed and developing countries. Part of this more general trend, regulation in the area of workplace ethics has grown immensely. Nowadays, it has become commonplace for public and private organizations to manage ethics 'in the same breath and manner in which we talk about managing budgets, policies or people' (Menzel, 2001: 355). In the EU (European Union) institutional system, the European Commission showcases these developments most visibly. Since 2000, the Commission has undergone substantial administrative reforms, where the concern for strengthening standards of conduct was high on the agenda.

Many commentators view these reforms as a response to the shameful resignation of the Santer Commission on 15 March 1999 (Cini, 2004, 2007a; Ellinas and Suleiman, 2008; Kassim, 2004, 2008). The resignation followed the scathing reports of the Committee of Independent Experts (CIE), which were commissioned by the European Parliament, and exposed consistent evidence of fraud, mismanagement and nepotism in the Commission (CIE, 1999a,b). They concluded rather dramatically that 'it is becoming difficult to find anyone [in the European Commission] who has even the slightest sense of responsibility.' (CIE, 1999a: 144). Predictably, the incoming Prodi Commission made it its business to clean up and modernize the organization. Commissioner Neil Kinnock was appointed to draft a reform program which was eventually fleshed out in 2000 as the *White Paper on Reforming the Commission* (also referred to as the White Paper, or the Kinnock reforms). His successor, Siim Kallas, continued the administrative reform agenda with the well-publicized *European Transparency Initiative* (ETI). The importance of these developments should not be underestimated – unethical conduct is tied not only to wasting public resources, but also (more importantly) to declining trust in public institutions. Ethics reforms in the European Commission are part and parcel of EU's prolonged bid to strengthen its democratic credentials and restore popular support for European integration.

This article borrows concepts from public administration scholarship to examine the most recent ethics interventions in the European Commission, which cover the mandate of Siim Kallas, Vice-President for Administrative Affairs, Audit and Anti-fraud between 2004 and 2009. In the framework of the ETI, Kallas launched the *Communication for Enhancing the Environment for Professional Ethics in the Commission* (the *Ethics Communication*), which was expressly designed to move away from the traditional hard controls to a more 'modern' ethics system based on guidance and shared values. As it was explained in the preparatory notes: 'only if we agree on common set of principles can we move from a rules based system to a trust based system in conformity with a modern management structure.' (Commission, 2007: 1)

This article evaluates whether and how the European Commission has achieved this proposed change from a rules-based to a trust-based ethics system, by focusing on the

administrative practice engendered by the *Ethics Communication*. Thus, the piece contributes to the small body of research on ethics policy at the Commission (see particularly Cini, 2007a; Dercks, 2001; Hine and McMahon, 2004), whose coverage is largely limited to the Kinnock mandate (but see Cini, 2008, for a notable exception). As the *Ethics Communication* suggests a major recalibration in the Commission's treatment of ethics, revisiting the conclusions of previous studies seems necessary.

This article also speaks to a more consistent literature dealing with the regulation of conduct in government-type settings. Despite the current popularity and pervasiveness of such interventions, there is a shortage of related empirical research (Lawton and Doig, 2005). Interestingly, some of the existing evidence challenges assumptions which have traditionally informed the design of ethics policy. For example, an analysis of the ethical framework for the local government in England finds that, contrary to received wisdom, 'formal and informal mechanisms for regulating conduct tend to fail and succeed together, rather than identifiable deficiencies with the former allowing recourse to the latter' (Cowell *et al.*, 2011: 453). In particular, shifts in systems of ethics management are rarely examined (but see Lawton and Macaulay, 2004, 2006 and Greasley *et al.*, 2006 for welcome contributions). The European Commission is a good case for exploring this theme because its experience with ethics reforms exemplifies a frequent pattern in national and international bureaucracies. Framed as a response to the legitimacy crisis ensuing after the events of March 1999, the origin of ethics reforms in the Commission is far from exceptional. As Dobel (1993: 173) suggests, 'ethics codes and legislation . . . are usually born in scandal and passed as much to reassure the public as to accomplish any good'. Moreover, the attempts made by Kallas to redefine ethics management as the promotion of an ethical culture at the workplace (rather than crude control) are in line with a common tendency in OECD countries to move towards softer, value-based approaches (OECD, 2000, 2009). These commonalities suggest that examining the implementation of the change agenda in the Commission can bring to light lessons for public bureaucracies engaged in similar transformations. The European Commission is, nonetheless, a unique public administration, operating at the core of a *sui generis* political and institutional system. Inferring general conclusions from this case study must be done with caution.

There are several limitations to the inquiry proposed here. First, I only consider how ethics is defined and managed *inside* the European Commission, leaving aside the broader checks-and-balances system outside the organization. Although practitioners advise that ethics policies should have in view the interlocking 'layers of integrity', which start from individual values, and move up to the national legal and political system (Bossart and Demmke, 2005), such an endeavour would exceed the limits of this article.

Moreover, the focus is on the administrative levels of the Commission (i.e. the services), leaving aside the policy framework applicable to the College of Commissioners. Although there is a close relation between integrity (or lack thereof) at the political and administrative levels of an organization, the ethics of politicians and

bureaucrats are substantively different, therefore requiring distinct management approaches (OECD, 2009). This is indeed true of the Commission, which has two parallel systems, for Commissioners and officials respectively (Cini, 2007b: 138). In this analysis I give preference to the administrative level because the majority of reforms have been in this area, but also – more importantly – because it is only here that a fundamental change of ethics policy was attempted.

Methodologically, I rely on document analysis and semi-structured interviews with Commission ethics experts. Broadly speaking, two classes of documents were analysed: (1) Commission legislative initiatives and their preparatory papers, retrieved through the Commission's on-line database of internal documents (<http://ec.europa.eu/dorie/home.do>) and (2) internal texts (such as notes, codes of conduct, administrative guides, training materials, various brochures and flyers), which were obtained in hardcopy during fieldwork in Brussels. I used the first category of documents to trace the content of ethics reforms in the European Commission, as well as their framing within the official discourse. The second category of documents offered an insight into the administrative practice these reforms had engendered, and the message which eventually reached the work-floor.

Additionally, twenty-five interviews were carried out at the European Commission, with officials who deal with public ethics as part of their regular job attributions – they are, so to speak, the 'ethics brigade' of the Commission. Most interviewees belonged to the administrative services; however, the sample also included a representative from the Commission's political tier. Some interviewees coordinate ethics policy throughout the Commission – this group is located in the Directorate General for Human Resources and Security (DG HR), the Investigation and Disciplinary Office (IDOC), the Secretariat General (SG), and the Kallas cabinet. The majority, however, have their attributions confined to a specific Directorate General (DG) – this is the group of the so-called 'ethics correspondents', an institutional role established by the *Ethics Communication*. For this category, a total of 17 DGs were surveyed.<sup>1</sup> Internal experts were chosen as they are the only informants with first-hand information on the development, implementation and context of ethics reforms in the Commission. Some of the veterans in coordinating positions had been involved with both the Kinnock and the Kallas packages, and thus could offer a comparative perspective. The ethics correspondents, on the other hand, explained the DG-level approaches, allowing the researcher an unprecedented opportunity to delve deep into the internal dynamics of the Commission, and grasp a fine-grained understanding of 'ethics-in-practice'. Internal experts, however, may well be 'ethics enthusiasts', prone to over-estimate the importance and impact of their work. Responding to this possible bias, the analysis relies predominantly on the factual information obtained during interviews, rather than the respondents' perceptions and opinions regarding changes in ethics management at the Commission.

Due to the sensitivity of the subject, all interviews were confidential, and therefore throughout this article names are replaced with randomly assigned numbers. The term

'ethics official' is used to denote the fact that the interviewees are experts in the area of ethics. The analysis is based on extensive reports prepared during fieldwork, soon after the interviews had been carried out. Subsequently, these were carefully read, and, with the aid of specialized software for qualitative data analysis (ATLAS.ti), the material was re-assembled and coded to offer an overview of recurrent topics and patterns in the data.

The article is structured as follows. The first part reviews briefly existing research on ethics at the European Commission, and puts forward an analytical framework inspired from the so-called 'ethics management' literature. Building on this, in the second part I map the evolution of ethics reforms in the European Commission, by succinctly outlining the contribution of the *White Paper*, and explaining in detail the objectives and measures contained in Kallas' *Ethics Communication*. Finally, the third part is devoted to assessing the implementation of the *Communication* throughout a period of approximately two years (2008–2010). It will be shown that, as it came into the straightjacket created by the Kinnock reforms, in practice the break with the past was less drastic than suggested by the change of discourse. Conclusions will follow.

## EXISTING RESEARCH ON ETHICS IN THE EUROPEAN COMMISSION

Despite its importance as a policy issue, public ethics has rarely been mainstreamed in academic research on the European Commission. For example, monographs of the European civil service treat questions of ethics rather marginally, typically by discussing the controversial practices associated with Member States' influence on staffing policy of the Commission: the informal system of 'national quotas'; the national 'flagging of posts'; the cabinets as national bastions; the circumvention of official recruitment procedures by way of *parachutage*, *piston*, etc. (Coombes, 1970; Page, 1997; Stevens and Stevens, 2001, Spence and Stevens, 2006). Likewise, anthropological research on the Commission (Abélès *et al.*, 1993; McDonald, 1997; Shore, 2000) discusses standards of behaviour only as they relate to the cultural aspects of life in the EU bureaucracy. Most commonly, analyses revolve around the role of diverging national traditions, and the Commission's culture of informality.

There are also authors who have focused particularly on public ethics in the European Commission, using a public management perspective. Michelle Cini's (2007a,b) investigation is centred around the concept of 'ethics infrastructure', i.e. an umbrella term coined by the OECD (1996), which designates the sum of institutional structures and procedures, that, taken together, act as incentives for good behaviour and disincentives for unethical conduct. She concludes that, following Kinnock's mandate, 'many of the elements of an ethics infrastructure are in place within the Commission' (Cini, 2007a: 210). However, the approach has tended to be reactive, which largely explains the absence of systematic thinking on the issue, and thus the 'Commission itself not having a clear notion of where its ethics framework began and ended' (Cini, 2007a:

213). Dercks (2001), and Hine and McMahon (2004) similarly find that, following the Santer resignation, rules have been put in place. However, concerns linger as to whether the reform would succeed in reaching the organizational culture and aligning it with the new standards.

## MANAGING ETHICS IN PUBLIC ORGANIZATIONS

This article contributes to this latter body of research, by analysing developments on the ethics front after Kinnock's 'once-in-a-generation' reforms (Kassim, 2008). I use an analytical framework developed in the rather practitioner-oriented ethics management literature. The starting point here is to consider ethics as a field of (organizational) management in its own right, supported by the assumption that 'ethical behaviour is learned behaviour, and managers can build organizational processes and strategies that contribute to this learning effort' (Menzel, 2007: 22). In this context, ethics refers exclusively to appropriate behaviour in public office. It should be understood in connection to the performance of public roles and duties, and, thus, as having a *situational* character, rather than relating to absolute, universal principles. Ethics can also be described as 'role morality', because it covers only a particular aspect (or role) in one's life (Rohr, 1998: 10).

Essentially, ethics management is not a new idea, but the rhetoric has gained prominence internationally as New Public Management (NPM) reforms boomed in the 1980s and 1990s throughout US, Western Europe and Commonwealth countries, prompting fears that ethical standards in the public sector were failing as a result of market-inspired practices. Rather than backtracking on the NPM agenda, ethics management advocates argue for the design of ethics measures that respond to the new challenges (Maesschalck, 2004: 468). Possibly the most prominent promoter of this discourse has been the Organization for Economic Cooperation and Development (OECD), which publicized the so-called 'compliance-integrity continuum' (also known as the distinction between rules-based and values-based systems, or between 'the low road' and 'the high road')<sup>2</sup> as an analytical device to classify approaches to ethics management. It has been consistently used to survey ethics measures in OECD member states (OECD, 1996, 2000), and has also been deployed for analysing ethics at the Commission (see particularly Cini, 2007a,b, 2010). The essential distinctions are the following:

The rules-based approach to integrity management emphasizes the importance of external controls on the behaviour of public servants. It prefers formal and detailed rules and procedures as means to reduce integrity violations and prevent corruption. The values-based approach focuses on guidance and 'internal' control, i.e.: control exercised by public servants on themselves. This approach aims to stimulate understanding and daily application of values and to improve ethical decision-making skills through interactive training sessions, workshops, ambitious codes of values, individual coaching etc. (OECD, 2009: 12)



The two opposing ends of the continuum reflect diverging strategic approaches – focusing on *what not to do* or on *what to do* (Pope, 2008) – which have concrete implications for policy design. Unsurprisingly, the OECD (1996: 59) suggests that the traditional, Weberian model of public administration (where the principles of legality and hierarchy form the core of bureaucratic control) fits with a compliance-based approach, while the integrity style is better suited to the NPM model (which cultivates use of discretion by public administrators, and a results-based control system).

It is evident that the discussion around compliance and integrity-based ethics management reflects broader theoretical debates on the determinants of human behaviour – more specifically, the time-honoured dispute between economics-inspired perspectives, which portray individuals as utility maximizers, and sociological explanations, which emphasize the centrality of values and group ties. To be clear, in the compliance approach the manipulation of incentive structures is seen as the principal means of obtaining the desired conduct from employees, while the integrity side emphasizes instead the internalization of values and norms by public employees (Cini, 2007a :19). Because most people, most of the time, are motivated by some combination of incentives and norms, the recommendation is that, in practice, the compliance and integrity approaches should be combined in a mutually reinforcing manner.<sup>3</sup>

This being said, the compliance model has often proved to be the more convenient solution to which reformers turn. As Roberts (2009) explains, organizations prefer it because it reduces organizational penalties for the illegal behaviour of their employees, and encourages internal conformity, while satisfying public demands that something be done about ethical standards. It is simply easier. The danger, however, is to end up with an overly complicated regulatory system, which is difficult to understand for employees and ultimately ineffective, because it will lack the flexibility necessary to respond to ethical dilemmas in practice. Against this alternative, practitioners often praise the merits of ‘high-road’ ethics, which ‘means giving up some control’ (OECD, 1996: 59), to focus on building an ethical culture within the organization, where the employees’ ethical competence is nurtured and they can be trusted to behave appropriately. As Jeremy Pope explains:

A compliance-based approach – ‘The Low Road’, looking for a precedent or a rule to govern every possible circumstance – is never going to get us there. Individuals need to be able to judge competently for themselves what is right, or the best of the available options, and likewise what is wrong, or unjustifiable – and to have the courage to act accordingly. (Pope, 2008: 80–81)

These arguments may be convincing, but how to harmonize an integrity-based style with the more hard-line instruments of ethics management is not a straightforward process – nor one which is much discussed in the specialized literature. As shown, the ‘high road’ and ‘low road’ ethics each represent fundamentally different notions about what ethics is, and how individuals get (and stay) ethical. They are dichotomous concepts which do not naturally sit with each other – although the idea of a policy

*continuum* suggests that they should. Indeed, the European Commission during Kallas' mandate illustrates very well the practical difficulties and inconsistencies generated by the transition to a value-based system.

## THE EVOLUTION OF ETHICS MANAGEMENT IN THE EUROPEAN COMMISSION

Drawing on the analytical framework presented above, I examine, in this section, the evolution of the ethics landscape of the European Commission. To explicate fully the transformation proposed by the *Ethics Communication*, contextualization is needed. Therefore, in what follows I offer a brief reflection on the Kinnock reforms, and their contribution to ethics management in the Commission.

### Kinnock's legacy: a rule-based ethics system

The fall of the Santer Commission was probably the most damaging public scandal the Commission has ever known. Following the events of March 1999, it found itself hard pressed to demonstrate credible commitment to securing high behavioural standards. Ethics runs like a red thread throughout the *White Paper*, although mostly implicitly. In terms of ethics management, the most important contribution of the Kinnock package was in fact in the human resources and financial control systems – both areas which were not flagged as dealing with ethics.

Regarding human resources management, some of the most important (i.e. ethics-relevant) revisions were: making recruitment more efficient, transparent, and geographically balanced, by creating a recruitment office common to all institutions (i.e. the European Personnel Selection Office); the introduction of a new staff appraisal system, the Career Development Review (CDR), which tied career advancement to performance, rather than length of service alone and the encouragement of mobility, especially for senior managers and 'sensitive' jobs. As for the financial management, the *White Paper* increased internal managerial responsibility by moving to a decentralized system, where expenditure authorization and control is done at DG level. Additionally, it separated the functions of internal control and internal audit, which meant an additional pair of eyes checking on money management. The changes brought about by the Kinnock reforms are considered to have created a strict and sophisticated control environment – perhaps excessively so, given the amount of time and people now committed to it (Ethics official #23).

The measures that did address ethical behaviour explicitly prove that reformers were largely favouring the compliance-based repertoire. For example, the revisions to Title 2 of the *Staff Regulations* (SR, Commission, 2004b), dealing with officials' rights and obligations, reflect a focus on defining the standards of expected behaviour, and particularly on tightening controls. Officials were forbidden to 'deal with a matter in which, directly or indirectly, they have any personal interest such as to impair their

independence and, in particular, family and financial interests' (Art. 11a). Declaring interests became mandatory, for officials and their spouses in gainful employment. Closely related were the post-employment restrictions, by which officials were required to inform the Appointing Authority (AA)<sup>4</sup> of any occupational activity undertaken within two years of leaving the service of the Communities. The AA could forbid such activity if it 'could lead to a conflict with the legitimate interests of the institution' (Art. 16). The AA approval was also required in case of engaging in work assignments outside the Communities, whether paid or not (Art. 12b), accepting payments, gifts, or honours of any kind (Art. 11), running for public office (Art. 15), or publishing any materials which refer to the work of the Communities (Art. 17a).

In the same spirit, the Kinnock package produced a boost of organizational capacities for monitoring and punishing transgressions. In 2002 the Commission's disciplinary office, IDOC, was established. Provisions on disciplinary action were significantly revised, and a policy framework for whistleblowers was introduced (SR, Art. 22a and 22b). Later on, measures were taken to 'review and consolidate information circuits between services and the political level of the one hand, and between central and operational services on the other hand' (Commission, 2004a: 14). Among others, the *Code of Conduct for Commissioners* was revised to clarify communication between the political and administrative sides. Also, a 'Public service ethics' unit was created in the SG in 2005, to serve as a liaison point between the Commission, the European Anti-Fraud Office (OLAF), and IDOC (Ethics official #21).

The *White Paper* installed the building blocks of the Commission's ethics management system, and in doing so it has engendered a compliance-based ethics regime, at least in what regards the administrative levels. Earlier assessments in the literature converge on this point. Thus, Hine and McMahon (2004: 2) concluded that the style of ethics management was 'congruent with the rule-based organizational culture of the Commission', while Cini (2007b: 129) notes that, despite the introduction of some integrity instruments, 'control is much more the norm when it comes to managing Commission ethics in this area'. Sources in the Commission also acknowledge that, until 2004/5, the ethics framework was heavily rules-based (Ethics officials #23, #24). This preference toward a hard-line approach is not surprising. The *White Paper* did come in response to a major legitimacy crisis, which it sought to address in a concrete and visible way, by limiting officials' discretionary power (Ellinas and Suleiman, 2008: 722). With important loopholes in the accountability and control architecture (as documented abundantly in the CIE reports), the Commission needed immediate structural fixes. Hence reformers could not afford the 'luxury' of treating ethics lightly, as a question of values.

### **Kallas' good intentions: moving to a trust-based ethics system**

The European Transparency Initiative, introduced by Kinnock's successor, Commissioner Siim Kallas, had three pillars: (a) anti-fraud and financial management

(i.e.: publishing information on the end beneficiaries of EU funds), (b) interest group activity (i.e. the creation of a lobby registration system inside the Commission, and adoption of a code of conduct for interest representatives) and, finally, (c) rules and ethical standards for EU officials. Part of this latter pillar, the *Ethics Communication* was adopted in 2008. Since its launch, it has been the anchor point for all ethics policy in the European Commission.

The *Ethics Communication* was presented as a reform package which broke away with the tradition of control characteristic of the Kinnock ethics regime. This is clear from its introductory remarks: ‘the main goal of the initiative . . . is to consolidate and promote an ethical culture within the Commission, . . . to support responsibility, and not to create tools which may be understood as new ways to control staff members’ (Commission, 2008: 3). The *Communication* was born in the aftermath of the ‘Ethics Day’ in 2006, a Commission large-scale internal event aimed at debating practical ethical cases. As the preparatory *Note to the College* reveals, the Ethics Day had thrown into sharp relief the staff’s need for simpler rules and better ethics guidance, which served to validate Kallas’ push for a change of optic in ethics management. A further argument was the necessity to conform to modern practice: ‘in public and private organizations alike there is a trend to discuss values and corporate identity and to create ethics offices. The Commission always thrives to be a model administration and cannot afford to lag behind best practice’ (Commission, 2007: 1). Finally, the lack of scandal threatening the Commission’s reputation was considered a cue that it was finally time to ‘talk’ about ethics in a pro-active way (Ethics official #23).

The *Ethics Communication* suggests that ethics policy is more than just preventing and punishing transgressions – it extends to the realization of values and behavioural standards in everyday practice. As some of the interviewees explained, the objective was to have people behave ethically not because they were afraid, but because they genuinely wanted to (Ethics officials #14, #16). The *Communication* sought to achieve a common understanding of ethical values, and more trust within the Commission, while avoiding the production of new rules. As Kallas explained in a speech delivered at the Staff Forum in 2007:

I believe that a lively discussion on professional ethics is crucial. . . . Common sense and values are often a more efficient guide than long rulebooks. So I hope that in our discussions on ethics we can reach agreement on key common ethical principles, which should help avoid scandals sending us into “regulatory overdrive”. (Kallas, 2007: 10)

However, this ‘more values, no more rules’ objective had to be achieved within the confines of an elaborate compliance regime. Consequently, the *Ethics Communication* binds together several truly innovative measures, with some others which are clearly a follow-up of the Kinnock mandate. Conceptually, the *Communication* is an even-handed mix of continuity and innovation in ethics policy.

The genuinely novel part is represented by initiatives meant to boost organizational communication and guidance to staff in the area of ethics. Thus, the adoption of a *Statement of Principles of Professional Ethics* was proposed, which ‘without prejudice to the Staff Regulations should reflect the standards and expectations that underpin the obligations incumbent on all officials’ (Commission, 2008: 3). Other measures were the creation of a single ‘Ethics website’ where all ethics-relevant information would be centralized, and the extension of ethics training programs beyond the induction stage (i.e. compulsory trainings for sensitive posts, and systemic training for managers). Finally, the *Communication* instructed that each DG would appoint a so-called ‘ethics correspondent’, i.e. a person who would serve as a point of contact for all ethics-related issues, with strictly advisory attributions.

The measures which related to the Kinnock package were meant to correct some of the negative consequences which appeared during its implementation. Thus, a one-stop shop electronic approval system was recommended, for all staff requests needing authorization from the Appointing Authority. This was considered to not only make the entire procedure more efficient and transparent, but also to bring harmonization of authorizing practices across DGs, rectifying the discrepancies which had been noticed (Ethics official #24). Along similar lines, the *Communication* mentioned the creation of a check-list that would help officials better identify conflicts of interest, and the revision (simplification) of existing regulations on favours, gifts and hospitality, on the one hand, and outside activities and assignments, on the other.

It is evident that, despite a discourse of radical change, content-wise the *Ethics Communication* represents a more toned-down effort to smooth the edges of the Kinnock legacy, and enrich it with elements of guidance and awareness-raising. The following section analyses administrative practice in the implementation of the *Communication* over the past two years, to ascertain whether this was enough to move the Commission from a rules-based to a trust-based system of ethics.

## THE ETHICS COMMUNICATION TRANSLATED IN ADMINISTRATIVE PRACTICE

In terms of concrete changes to the Commission’s ethics infrastructure, the most important achievement of the *Ethics Communication* was building up ethics guidance for staff. Although the Kinnock reforms left this front largely uncovered (Cini, 2007a), nowadays the Commission has much more to offer. Following the points outlined in the Kallas package, DG HR has made available a reader-friendly internal ‘Ethics Website’, which consolidates, explains and illustrates by hypothetical cases the relevant legislation. Moreover, specialized ethics trainings are offered regularly (i.e. the two-day course ‘Ethics and Integrity’, mandatory for newcomers, plus a program on ‘ethical leadership’ – still in pilot phase – which targets staff in management positions).

Finally, and most importantly, a structure for managing ethics inside the DGs was created with the appointment of local ethics correspondents. Organized in a network

coordinated by DG HR, the correspondents represent the ‘transmission belt’ between the central ethics structures of the Commission, and the staff on the work-floor. Thus, for the vast majority of officials, they were the ‘face’ of Kallas’ new policy – in this respect it is significant that, although sparse in outlining their job description, the *Ethics Communication* did emphasize the element of trust:

Every DG should therefore appoint an “ethics correspondent” to serve as the focal and first contact point for all ethics-related issues, both for the services and their staff. When dealing with queries from staff the ethics correspondents *act in confidence*. (Commission, 2008: 4, emphasis added)

Reflecting this concept, there was much local discretion in the appointment process, as DG HR did not transmit any specific criteria, but merely recommended that the person should already be knowledgeable of, or have some experience with, ethics issues (Ethics officials #1, #20, #24), and also have a positive reputation among staff in the DG (Ethics official #6). The ethics correspondents are located in either human resources or internal control units, and many of them are in managerial positions. The new attributions came as an addition to the regular (full) work schedule.

With the new post, concrete responsibility for ethics management was assigned, and, thus, in the past three years there has been an explosion of ethics initiatives within the DGs – basically filling up a vacuum, as there is little to suggest the presence of anything similar before. The repertoire of instruments is characteristic of the integrity management toolkit, with some commonly encountered examples being: an ethics-dedicated section on DG intranet; DG-specific ethics codes and guidelines; short ethics trainings, and one-off awareness-raising events (e.g. “Ethics Days”, ethics workshops, lunchtime debates, visits by the ethics correspondent to weekly unit meetings). Moreover, activities are quite similar across DGs, which is not surprising, since the network of ethics correspondents is an environment which stimulates sharing of best practices (Ethics officials #1, #9, #15).

As revealed in interviews with Commission ethics officials, general objective in this flurry of ethics activity was prevention: ensuring that staff members know the relevant rules – or know where to find them, so that lack of knowledge could not be a plausible defence against wrongdoing. The concern with communicating efficiently about ethics was commonplace within the Commission’s ethics bureaucracy. For example, ethics correspondents who have introduced codes of conduct in their DGs (or intend to do so) regularly invoke the need to have all essential information in one document, and contextualize it to the specific activity of the DG (Ethics officials #1, #17). Those who deliver ethics trainings say they regularly include discussions on concrete cases (hypothetical or based on real experience), to familiarize people with the kind of situations they could realistically face (Ethics officials #8, #9). Other interviewees declared that raising awareness on ethics is not a one-off endeavour, but rather a continuous effort (Ethics officials #14, #21).

Undoubtedly, this proves that the Commission has indeed made an effort to ‘talk’ about ethics on all levels. In and of itself, it is a major improvement, compared to the ‘old days’, when newcomers received a copy of the *Staff Regulations* and started working the next day (Ethics official #21). This being said, more communication does not necessarily mean more values and trust in the Commission’s system of ethics management. From this perspective, what basically matters is the *content* of the communication. And, overall, what the Commission communicates are the rules and their application. Qualitatively, there is a clear difference between actual practice, and what the *Ethics Communication* proposed, i.e. stimulating discussions on the common ethical principles and values *underpinning the rules*. Ethics still seems to be more of a constraint than a resource. It is just that now the constraints are probably better known.

This point is well illustrated by a brief analysis of the codes of conduct, or ethics guidelines which have been adopted at the DG level. When fieldwork was conducted, seven of the surveyed DGs had such a document. As a general trend, these are rather lengthy, detailed documents (on average 30 pages), and quite prescriptive. I take as an example here the *Code on Ethics and Integrity of DG COMP<sup>5</sup> Staff*, introduced in 2005 and revised twice since (in 2008 and 2010 respectively), which served as a model for the codes in DG Trade, and DG Justice, Freedom and Security. The declared aim is ‘providing guidance to DG COMP staff via a single document on the application of the different Commission’s ethical rules’ (Commission, 2010: 3). Out of 36 pages (excluding annexes), about two are dedicated to outlining general principles of staff conduct, while the rest contain detailed explanations of internal ethics regulations, practical advice, and hypothetical examples. The tone is heavily prescriptive, e.g. ‘you are advised to be particularly careful when gifts/favours/donations are offered in relation to your work at the Commission . . . it is recommended that you decline all such offers that have more than merely symbolic value’ (Commission, 2010: 17). What is more, the *Code* introduces several internal ethics forms, additionally to what is generally required for Commission officials. For example, there are three types of in-house CoI declarations: a general annual declaration, a case-specific declaration (completed by staff when they are assigned to a case), and an inspection CoI declaration (for participants in anti-trust and mergers inspections).

This approach may well be justified, given that DG COMP staff manipulates very sensitive commercial information on a daily basis, and that many competition cases have enormous financial stakes. Nevertheless, it is not difficult to find evidence that strictness and emphasis on procedures is a rather general characteristic of ethics guidance in the Commission – rather than adaptation to a peculiarly high-risk job. For example, the *Administrative guide on the conduct expected of Commission officials*, introduced in 2003, with Commission-wide applicability, reads much along the same lines.

The fate of the *Statement of Principles of Professional Ethics* is also extremely telling of the ethics regime of the Commission. The *Statement* was a one-page document included in the Kallas package, which enumerated succinctly the core values and principles of the EU administration, and thus resembled closely the brief, abstract, high-minded codes of

ethics specific of integrity management regimes.<sup>6</sup> Despite the internal inter-service consultation being completed by the summer of 2009 (Ethics official #20), it is not yet adopted at the political level. Justifying the delay, some ethics officials observed that the *Statement* actually served as a stimulus for an internal ethics discussion in the Commission (Ethics officials #17, #18, #20) – the implication being that it matters less whether it is actually adopted, as long as the objective of awareness-raising has been achieved. One official even expressed doubts on the utility of such a document, remarking that targeted guidance on concrete cases is much more useful (Ethics official #17).

Finally, the quality of the interaction between ethics correspondents and staff provides yet another confirmation that, in the Commission, ‘talking’ about ethics has meant talking about rules. As provided in the *Ethics Communication*, and amply confirmed through interviews, ethics correspondents are responsible for advising, in confidentiality, on any ethics-related inquiries coming from staff. The correspondents demonstrate ownership over this role, describing themselves as an internal point of contact on ethics issues (Ethics officials #3, #4, #9, #14, #19), somebody colleagues can turn to if they have a more delicate problem (Ethics official #3), or somebody who lends a friendly ear in confidentiality (Ethics official #6). When asked about the issues on which staff requests guidance most frequently, ethics correspondents rather unanimously pointed to: external activities (anything from teaching assignments to honorary membership in voluntary associations), publishing and public speeches, dealing with gifts and hospitality, and potential conflicts of interest. Essentially, all of these are subjects on which AA authorization, and/or the completion of specific forms is required. Indeed, since the objective was to ensure that ‘everybody knows the rules’, it is only natural that staff inquiries flock in areas where compliance is formalized in some way. The danger in this, however, is that ethics correspondents will not be perceived by staff as persons of trust, to which they could turn in a tight spot, but rather as pen pushers complicating work with yet another layer of bureaucracy.

## THE ETHICS COMMUNICATION AND THE DELIVERY OF CHANGE

So far, I have argued that the ethics awareness-raising actions stemming from the *Ethics Communication* were essentially an exercise in communicating the applicable rules and their correct interpretation. The *Communication*, however, hailed deeper changes in the Commission’s system of ethics management. In this section I explore the reasons why administrative practice fell short of delivering on the promises contained by official rhetoric.

This outcome should not be attributed to the ethics officials’ misunderstanding, or ignorance, over what integrity-based ethics management entails. In fact, many of them demonstrated familiarity with the high-road view. Some remarked that ethics should not be a burden, but a normal reaction for everyone, a reflex for identifying dangerous



situations and reacting appropriately (Ethics officials #3, #6). Others argued that being 'ethical' boils down to using one's own good judgment, and consulting when in doubt (Ethics officials #6, #7, #16, #19). There was a clear awareness that regulation becomes counter-productive after a certain point (Ethics officials #14, #19). Several interviewees even admitted that the internal capacities for monitoring employee conduct are limited, so it becomes necessary to rely on people's understanding of ethical principles, their 'good will' to behave correctly (Ethics officials #1, #6, #16). Despite all of this, the rule-heavy regime of the Kinnock reforms left ethics officials with little choice other than to explain to staff the rules and their application.

This brings us to the crux of the matter: the *Ethics Communication* failed to truly move the Commission towards a trust-based ethics system because there was no trimming down of regulation. Recalling the earlier arguments on the correspondence between general public management approaches and ethics policy, the aim of 'high-road' methods should be to support public servants in dealing with discretion, rather than seeking to limit it. It is about promoting, not stifling individuals' ethical agency. Reformers seem to have been aware of these aspects, since the *Ethics Communication* did propose the simplification of regulations on favours, gifts and hospitality, on the one hand, and outside activities and assignments, on the other. Although new draft legislation on these subjects was produced relatively shortly after the *Communication* was issued, it is currently stuck in the pipeline. The view was that, without a common framework of ethical standards across the European institutions, further regulation in the services may be counter-productive (Ethics official #23). While this point may well be justified, it leaves the Commission caught in the middle of making the transition to the 'modern' ethics system Kallas had proposed.

On a more general note, the character of ethics management in the Commission today is a direct consequence of ethics reforms being introduced in response to corruption scandals ten years ago. Thus, over and beyond the substance of the intervention, ethics in the Commission was (and still is) about public image and perception. Indeed, ethics officials are all too aware that the Commission is permanently watched, that the perception of wrongdoing is as damaging as wrongdoing itself (Ethics official #9), and that 'in communication, coping with fantasy is the most difficult thing to do' (Ethics official #8). Concretely, for Kallas this meant that rolling back controls risked sending the wrong message, i.e. that the Commission was relaxing on the ethics front. It was also not politically viable. As one interviewee explained, the European Parliament was very keen not to see this happen, and, with the power to refuse granting the annual budget discharge, it had the institutional muscle to enforce its viewpoint (Ethics official #23). At the same time, however, the Commission's ambitions of being a modern administration meant getting in line with international best practice, which pointed to the use of integrity-based ethics management. Navigating these conflicting demands, the *Ethics Communication* resulted in the blending of 'high road'-style policy instruments, with an organizational message that remained compliance-based. In other words, the Commission did the best with what it had at its disposal.

## CONCLUSION

Looking retrospectively at the packages introduced by Commissioners Neil Kinnock and Siim Kallas, it is evident that the European Commission has acquired a comprehensive system of ethics management. This system was built up incrementally: it started out as a less emphasized component of a large effort of administrative modernization, and only later, with the *Ethics Communication*, entered the policy agenda as an item with its own standing. The *Communication* signalled a switch from rigid controls to a system based on a common understanding of ethical values, and more trust within the organization, while avoiding the production of new rules. The purpose of this article was to assess whether and how this agenda of ‘more values, no more rules’ was realized in the European Commission.

Findings suggest that, during the past two years, there has been a dramatic increase in awareness-raising and guidance activities throughout the Commission. This has been done with policy instruments specific of value-based ethics systems (i.e. ethics trainings, regular organizational communication on ethics issues, ethics counselling), but the substance of the organizational message remains largely compliance-based. Thus, what was eventually achieved was a diversification of ethics management instruments – rather than a deeper transformation in the philosophy behind them. Furthermore, there are slim chances of moving ahead on this front, at least in the near future. By 2010 the new Commissioner for Inter-Institutional Relations and Administration, Maroš Šefčovič, had not yet signalled a clear policy direction regarding ethics in the services (Ethics officials #20, #24, #25). Instead, attention has shifted to regulating ethics for the political tier, and expanding the register of interest representatives to inter-institutional scale. While entirely necessary, this move suggests a sequential (rather than simultaneous) approach to regulating ethics – i.e. prioritizing action for the political realm and lobbyists, based on an understanding that enough was done for the services.

The fate of ethics reforms in the European Commission is a testimony to the importance of historical and political context. The Commission lacked neither the know-how, nor the organizational resources, nor the political leadership necessary to make the shift towards integrity-based management. The outcomes of the *Ethics Communication* are the result of path dependence. Because during Kinnock’s mandate ethics reforms came on the heels of public scandal and criticism, a relaxation of controls – even after the storm had passed – proved politically unfeasible. The high level of public scrutiny to which the Commission is subject nowadays, and the importance attached internally to public perceptions, also reinforced the status-quo. Under these circumstances, it is unsurprising that the planned discussion on values and ethical principles turned out to be an exercise of explaining the applicable regulation and its correct interpretation.

The Commission is far from unique in adopting a hard-line approach to ethics management in the aftermath of corruption scandals. For instance, Lawton and Macaulay (2009) and Roberts (2009) speak of similar patterns in the UK and US

respectively. But if its experience is anything to go by, there are serious doubts regarding the prospects of truly changing an ethics regime borne out of such circumstances. The initial framing of ethics as a cure for corruption, rather than a resource for staff seems to firmly set the tone for the future, by diminishing the political profitability of moving to a high-road style later on. On a more general note, the path-dependent character of ethics management (as illustrated by this case study) suggests the need for more sophisticated theoretical approaches in the field. Although not without its critics (see particularly Maesschalck, 2005), the compliance-integrity continuum is still the principal reference point, and as such it frames both theory and practice around the polarizing concepts of ‘low road’ and ‘high road’ ethics. Future research would gain from by-passing this perennial opposition to focus more on the influence of contextual factors, such as the history and the politics behind ethics reforms, as well as the accompanying public image games, which can prove hugely important for determining the character of ethics management systems.

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## NOTES

- 1 Out of the 17 DGs, 14 were ‘operational’ (i.e. active in policy making and implementation, in the areas of both internal market, and external relations), and 3 ‘administrative’ (i.e. with predominantly managerial tasks). Thus, the collected information can be considered representative for a wide range of activities and functions performed in the Commission.
- 2 This distinction, far from being originated by the OECD, is a fundamental one in the literature on ethics management (see for example Lewis, 1991; Paine, 1994; Rohr, 1978).
- 3 For example, point 9 in OECD’s *Recommendation on Principles for Managing Ethics in the Public Service* (1998: 4) states: ‘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’.
- 4 Basically, the Appointing Authority (AA) designates the employer. It exercises a wide range of attributions related to the officials’ career, rights and obligations, disciplinary action etc. It is up to each institution of the European Communities to decide which unit(s) within it will serve as AA. In the European Commission, DG HR serves as AA in some cases, but for most officials the AA is their Director General.
- 5 The Directorate General for Competition.
- 6 The specialized literature makes a conceptual distinction between ‘codes of ethics’ (which are relatively abstract, use aspirational language, and aim at encouraging exemplary behaviour), and ‘codes of conduct’ (which spell out more concretely behavioural expectations, and aim at maintaining lawful, acceptable behaviour). For a detailed discussion see Van Wart (2003).

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