

# It's ethics, stupid! - or why legal is not enough

## 1<sup>st</sup> Prize on Integrity in Public Management awarded to EUROSAI Task Force on Audit & Ethics

By Luis Alvarez Arderius, Canary island Regional Audit Institution, and Julio García Muñoz, University of Castilla-La Mancha



Source: University of Castilla-La Mancha/World Compliance Organisation

Helena Abreu Lopes (left), Member of the Court of Auditors of Portugal, receives the 1<sup>st</sup> Prize on Integrity in Public Management, on behalf EUROSAI Task Force on Audit & Ethics, handed over by María José de La Fuente, Secretary General of EUROSAI and President of the Court of Audit of Spain.

To highlight the meaning of ethics as a control tool in the public sector, the University of Castilla and the World Compliance Organisation have awarded the Task Force on Audit & Ethics of the European Organisation of Supreme Audit Institutions (EUROSAI) the first prize as the most distinguished initiative with a positive impact in the promotion of ethics and integrity in the public sector. Luis Alvarez Arderius, Technical Auditor of the Canary Island Regional [Audit Institute](#), and Julio García Muñoz, Internal Control Executive Director of the [University of Castilla-La Mancha](#), explain why public bodies must acknowledge and embrace ethical behavior as a key tool and why the EUROSAI Task Force received this 1st Prize on Integrity in Public Management.

### **Ethics – more than legislation**

Around the globe public sector arrangements show an abundance of legislation. Administrative law is considered a guarantee of making things right in public sector. Every policy, every single decision needs to go through a legal or administrative procedure before it enters into force. The rule of (hard) law adage seems to be that 'if you follow the rules, decisions and policies will be made up within the legal framework, avoiding private or personal interest interfering with the general one.'

However, no matter how tough your technical or legal framework is built, in the end -and sometimes not even that far towards the end - each and every system show control bugs and loopholes. Holes where procedures do not apply, moments in the process where a person can and sometimes must intervene, have a choice, can choose a direction to an end. There, that right moment when the human factor appears, is where ethics appears, the ethical dilemma pops up.

### **Public procurement – a key example where the ethical dilemma arises**

Raphael is the CEO of a Small and Medium Enterprise (SME) of 15 employees. In the past years, his company has made a tremendous effort to learn and comprehend the new EU Directive on Public Procurement and its national derivative act. A new expert employee hired, a good amount of money spent on training, hours of administrative time preparing bids. Despite all that, results are not coming. He is especially frustrated with the last tender procedure in the Industry and Commerce Chamber, a regional public body. Last month, he found out that his enterprise got zero points in a bid. He knows his business sector perfectly, he knows his competitors and he is sure his bid was by far the best value for money offer on the market. Then, his frustration turns into anger when, during a national business fair, he meets some professional colleagues and finds out - in an informal context - that a person inside the selection committee had private interests at stake. That committee member used a not specifically defined legal provision (in Raphael's view not clearly defined in legal terms) to assign a top score to one bid and not a single point to Raphael's one. The terms were perhaps not directly illegal, but he feels that from the beginning, they were intentionally *cooked* from the inside in order to remain with the traditional provider. And what is more, no one else in the selection committee raised his/her voice because the decision seemed to match the legal basis.

Sadly, Raphael's case is not a single issue. Small and Medium Enterprises (SMEs) constitute 90% of Europe's pie chart, the core of EU employment and its productivity. Jointly, in terms of public procurement, over 250 000 public authorities in the Union spend around 14 % of GDP, or nearly €2 000 billion, each year on the purchase of services, works and supplies. Citizens deserve public services delivered in an ethical manner, with transparency and integrity, and in the most efficient way.

Public procurement, grants and personnel selection/promotion are major examples where the ethical dilemma arises. The other one, the big one, is the policy making process. No single political system is free of private interference. So the headline is crystal clear: public governance and management must be aligned with ethical principles. It's not only a matter of values. Jobs, growth, efficiency and justice are at stake.

### **How to restore integrity**

Spotting unethical behavior was and remains a risk activity. Whistleblowers face retaliations in a vast array of costs, from economic or working conditions to even physical damages. Integrity has a high price, and surely, something needs to be done to restore it as a core public value. Realising this objective in the EU was greatly bolstered by the European Commission's adoption of the EU Directive on the protection of persons reporting on breaches of Union law (Directive Protection of Whistleblowers).

But we also find best practices at national level. In Spain, March 2019, the University of Castilla-La Mancha and the [World Compliance Organisation](#) have arranged the *1<sup>st</sup> Prize on Integrity in Public Management* within the *II Compliance in Public Sector Congress*. Aware of the meaning of Ethics as a control tool in public sector, both institutions reached a conclusion: all the effort done, all the risks taken in becoming a model to inspire others, should be recognized.

In its first edition, the Prize held two different categories. A personal category addressed to public servants awarded [Antonio Arias Rodriguez](#) (Asturias Regional Audit Institution) with the first prize and Carlos Balmisa García Serrano with a distinction, or so-called *accessit* ([Spanish National Commission on Markets & Competition](#)). Secondly, the institutional category awarded the 'Task Force on Audit & Ethics' of the European Organisation of Supreme Audit Institutions (hereinafter, TFA & E), as the most distinguished initiative with a positive impact in promotion of ethics and integrity in public sector. The Spanish Local Entities Federation was also conceded an acknowledgement by becoming second.



Source: University of Castilla-La Mancha/World Compliance Organisation

All the awarded candidates: (from left to right) Concepción Campos Acuña and Judit Florez Paredes, representing the Spanish Local Entities Federation, Antonio Aras Rodriguez, Helena Abreu Lopes, representing the TFA & E and Carlos Balmisa Garcia Serrano

The jury of the Awards in Public Management Integrity highlighted the initiatives of TFA & E within EUROSAl, its institutional leadership in public audit and its work addressing ethical conduct and integrity promotion in the deliverance of public value to the Supreme Audit Institutions (SAIs) around Europe, as well as the citizens (see **Box**). The members of the jury have also valued the pedagogical and cooperative approach, as well as 'the ongoing efforts of the working group to promote inter-institutional and inter-professional cooperation in Europe.'

**Box: EUROSAI Task Force delivering good public governance**

Being conscious of the high ethical demands public auditors always need to meet, EUROSAI established, in 2011, the TFA & E. Aim was to create an instrument to strengthen ethical conduct and integrity at the core of Supreme Audit Institutions' mission (hereinafter, SAIs), as well as to promoting them in the rest of public organizations in Europe.



Source: EUROSAI Task Force on Audit & Ethics

Besides SAIs, other public sector entities have also profited from the methodological approach supported by the technical papers published by the TFA & E. Since its foundation the TFA & E has encouraged an unremitting inter-professional cooperation all along Europe's public sector. The guidelines the TFA & E drafted to implement International Standard of Supreme Audit Institutions 30 (ISSAI 30) *Code of Ethics for Public Sector Auditors* is a clear result which is supporting SAIs to enhance their ethical infrastructure.

The TFA & E has collaborated with public and private organisations across Europe, giving weight to the compliance with values, principles and ethical standards in any field of public management activity. All this effort has reached a substantial improvement for SAIs and, therefore, the public sector in a significant number of countries. Specifically in Spain, TFA & E has proactively attended several congresses, conferences and meetings promoting ethics and integrity as key elements in public sector, both in control institutions and in other public entities.

Helena Abreu Lopes, Member of the Court of Auditors of Portugal and representing its President, Vítor Caldeira, as Chair of the TFA & E, collected the prize on behalf of all the Members of the Task Force. María José de La Fuente, Secretary General of EUROSAI and President of the Court of Audit of Spain, was in charge handing over the award. Helena Abreu Lopes commented: 'This prize is a significant recognition of all the work done by the TFA & E and by its members, promoting an ethical culture in public sector organizations and a solid indicator of its impact.'

**Auditors and deliverance of good public governance**

Summing up: auditors have always had a special say in the deliverance of good public governance. Nowadays, this meaningful work stands out even more due to phenomena that undermine public sector effectiveness. On the one hand, we can identify big systemic cancers such as fraud and corruption, sometimes to be at or close to the very heart of democracies. But we also must firmly face and call out the policy making process or legal bugs leading to unethical behavior, weakening trust in public institutions or unduly affecting the position and competitiveness of businesses such as Raphael's SME, whose experience is, unfortunately, not that atypical.

In all these situations, we should not consider ethics as a side element. Ethics set the tone and have direct impact. Auditors are playing their part to make this clear and apparent. Because citizens deserve better.