

ADVOCATE-GENERAL'S
Basic Principles for Governance



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Advocate-General



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BASIC PRINCIPLES FOR GOVERNANCE

§ I. Transparency

Section 1.01 Availability of information

Provider is responsible for disclosing all relevant information in a manner that makes such information readily available. The formats and methods of communication should match what can be deemed appropriate under the circumstances.

Section 1.02 Stated objectives, none hidden

Provider should clearly state and explain any and all of its objectives. Any persons being directly affected have, and the general public may have, a legitimate interest in obtaining such knowledge, which is a prerequisite for a fair and accurate assessment of the fairness and reasonableness of: (i) such objectives; (ii) the correlation between the measures in question and their underlying objectives.

Section 1.03 *Overstatement of certain elements*

Provider's presentations of its stated objectives for the measures should be balanced, and overstatement or unwarranted emphasis upon certain elements is to be avoided.

Section 1.04 *Behavior indicative of corruption*

Under no circumstances should the outcome of a decision, application, or the like be conditional upon rendering of payment, performance of any act, or any omission that are not clearly displayed.

Section 1.05 *Who is responsible*

Provider should clearly state the name of at least one person who is responsible for implementation of the measures.

Section 1.06 *What are the implications*

It is to be expected that measures are introduced as a result of careful deliberation taking into consideration the full consequences. Provider should clearly state all the implications, whether positive or negative, associated with the measure.

Section 1.07 *Review mechanisms*

In many cases, ensuring compliance with subjective and objective standards for good governance cannot be left entirely to the person or persons responsible for their implementation. Structural separation may be required to ensure fairness. Provider should clearly explain whether it has in place any review mechanisms such as compliance officers or review boards, and should provide contact information relating thereto.

Section 1.08 *Remedies*

Provider should clearly state any remedies available to Client, such as the right to file a complaint, seek redress or monetary compensation. Furthermore, a sufficient amount of guidance should be offered so as to allow Client to exercise such remedies freely, including – but not limited to – eligibility requirements. Complaints or claims should be handled professionally, in a timely manner, and free of charge.

Section 1.09 *Free from error*

To be reliable and useful as a legal instrument, measures should be free from errors such as spelling and typing errors, inaccurate cross-references, translations of poor quality and dubious validity, or grammatical errors.

Section 1.10 *Free from ambiguity*

To be reliable and useful as a legal instrument, the measures should be written clearly and articulately so as to avoid any ambiguity about their proper meaning. Where the outcome depends, wholly or in part, on personal judgment or other elements of a discretionary nature, Provider should furnish an amount of information sufficient to enable Client to ascertain whether such decisions are reasonable, consistent, not arbitrary, and not open-ended.

Section 1.11 *Up-to-date*

To be reliable and useful as a legal instrument, measures should be up-to-date so as to avoid any misunderstandings or misleading information. To ensure this, Provider should diligently ascertain whether the measures adequately reflect any changes made elsewhere within its organization.

Section 1.12 *Comprehensible*

To be reliable and useful as a legal instrument, measures should be reasonably easy to understand so as to avoid any misunderstandings, confusion, or misleading information.

Section 1.13 *Adequacy of references*

To be reliable and useful as a legal instrument, measures should be accompanied by references to any laws, administrative measures, internal policies, and other materials of direct relevance.

Section 1.14 *Adequacy of information*

Provider should furnish an amount of information adequate to enable Client to understand its rights and obligations, including – but not limited to – written records and/or oral presentations pertaining to all key elements involved. Whenever possible, such presentations should be made in Client’s language-of-choice. Whenever warranted, Provider should encourage Client to seek independent professional advice prior to making any commitments. Misrepresentations – whether oral or written, explicit or implied – are to be avoided under all circumstances.

§ II. Non-discrimination

Section 2.01 Conflicts of interest

Persons or institutions with a conflict of interest are generally unable to render sound judgment or make decisions that meet basic requirements for good governance. Conflicts of interest, whether apparent or evident, are therefore to be avoided. A person or institution must disclose any real or potential conflict of interest in a timely manner.

Section 2.02 Preferential treatment

Provider has an obligation and a responsibility to apply its measures in an equitable fashion. Undisclosed preferential treatment, as well as preferential treatment based upon criteria that are non-transparent, constitutes discrimination and is to be avoided under all circumstances.

Preferential treatment may be justified in a narrow set of circumstances, provided that: (i) the criteria for differentiating are clearly and comprehensively explained; (ii) preferential treatment is applied diligently to ensure that it does not go further than what is required and warranted to fulfill the stated criteria; (iii) such preferential treatment does not violate basic norms of fairness and decency.

§ III. Consistency

Section 3.01 Subjective consistency

Provider should exercise due diligence to ensure consistency between its measures and its own stated policy and other internal regulations, prior as well as current. Any derogation should be clearly identified and explained.

Section 3.02 Objective consistency

Provider should exercise due diligence to avoid adopting measures that are inconsistent with broadly accepted policy objectives and regulatory standards. Any derogation should be clearly identified and explained.

Section 3.03 *Consistent administration*

Provider should adopt administrative procedures to ensure that all like situations are handled equally as far as time, cost, quality etc.. Where this is not possible due to foreseeable or unforeseeable circumstances of an exceptional nature, Provider should clearly state the nature of the problem as well as its plans for solving it.

§ IV. *Proportionality*

Section 4.01 *Subjective proportionality*

Provider must clearly state its reasons for imposing any obligations or restrictions upon Client. Provider must also ensure that any restrictive measures are no more burdensome than what is required to meet its stated objectives. Furthermore, Provider must ensure that any restrictive measures fulfill only their stated objectives.

Section 4.02 *Objective proportionality*

Provider should exercise due diligence to ensure that the obligations or restrictions imposed on Client are no more burdensome than broadly accepted policy objectives and regulatory standards would permit. Any derogation should be clearly identified and explained.

Section 4.03 *Compensation or other relief*

With respect to restrictive measures, Provider should make available to Client adequate compensation and/or other forms of relief to offset any burden. Where relief is warranted, Provider should take reasonable steps to ensure that the remedies are made readily available to Client, that no undue burdens are imposed upon Client to seek such remedies, and that Client receives in a timely manner a sufficient amount of information concerning all important aspects including – but not limited to – eligibility requirements, deadlines, and monetary limitations.

Section 4.04 *Application of restrictive measures*

Whenever possible, restrictive measures should be preceded by fair notice and be implemented gradually during a reasonable introduction period.

Section 4.05 *Disproportionate or undisclosed side effects*

Provider should exercise due diligence to avoid any undisclosed side effects. Where side effects are unavoidable, these should be clearly identified and explained, and every reasonable effort should be made to minimize them.

Section 4.06 *Warnings, notices, disclaimers*

Provider must clearly display warnings, notices, and disclaimers as appropriate. Provider should not, however, use such measures indiscriminately. Such measures should be used conservatively, not to unduly limit Provider's responsibilities and obligations towards Client or to impose undue burdens upon Client.

§ V. Efficiency and effectiveness

Section 5.01 *Suitability and adequacy (subjective)*

Provider should adopt only measures that are suited and adequate to fulfill their stated objectives. Such measures should be implemented with a view to efficiency and effectiveness.

Section 5.02 *Suitability and adequacy (objective)*

Provider should design its measures to comply with and be compatible with broadly accepted policy objectives and regulatory standards. Any derogation should be clearly identified and explained.

Section 5.03 *Not unenforceable, ambiguous, or open-ended*

Provider should carefully design its measures to ensure their enforceability. Conversely, Provider should avoid adopting any measures that are legally unenforceable, ambiguous, or open-ended.

§ VI. Miscellaneous

Section 6.01 *Best practices*

Provider should consistently fulfill its obligations and responsibilities in a timely and courteous manner, and comply with any applicable codes of conduct. If meeting its obligations becomes impossible due to exceptional circumstances, Provider should clearly state so and offer compensation or other remedies, as may be appropriate.

Section 6.02 *Mitigating circumstances*

Provider may be excused from non-fulfillment of certain requirements and from non-compliance with certain standards where this is a direct consequence of unavoidable circumstances or obligations imposed upon Provider by others, notably an official act of government.

Section 6.03 *Aggravating factors*

Certain forms of conduct may be considered an aggravating factor, such as: (i) repeated non-fulfillment of obligations and responsibilities; (ii) evasive behavior such as failure to respond or prolonged response time; (iii) willful concealment or misrepresentation of material facts; (iv) unethical conduct.

Section 6.04 *Benefits of compliance*

Compliance with these guidelines seek to prevent public and private service providers from: (i) imposing any undue burden upon their clients, (ii) engaging in manipulation, willful concealment, deception, or activity indicative of corruption; (iii) being viewed as inconsistent, sloppy, unprepared, not resourceful, or unprofessional; (iv) being viewed as engaging in willful deprivation of their Clients' rights, bias, or other forms of discrimination; (v) being viewed as behaving antisocially.

Compliance with these guidelines may thus protect a service provider's public image as a reputable organization, preserve a healthy relationship with its clients, and reduce its exposure to lawsuits and other formal complaints.

No opinion by the Advocate-General is final, as we may at any time revisit an issue and amend or update our prior findings. ■