



## **Risks prevention in the exercise of public authority during COVID-19 crisis**

Reminders, recommendations and resources  
to promote Integrity



The COVID-19 pandemic has brought an exceptional situation. The Spanish government together with regional and local governments have adopted extraordinary measures not only to contain the spread of the disease, but also to guarantee the health system's ability to adequately respond to the crisis. Measures have included social distancing, confinement of the population and restrictions on mobility and in many areas of economic activity (tourism, leisure, sports and so forth). Unfortunately, these measures have also entailed the standstill of public-facing businesses, an economic downturn, the sudden increase of unemployment and, consequently, the deterioration of the ability of families to meet basic expenses, particularly among the most vulnerable groups.

This situation has caused a considerable increase of society's needs. In order to meet its demands, the public sector has adjusted by rapidly purchasing supplies, services and works. The vast amount of public resources already put in place plus any other sum eventually allocated to recover from this crisis **compel authorities and institutions to maximize the ethical standards for managing those extraordinary funds**, bearing in mind that rights of individuals are at stake —particularly those of the most disadvantaged— and must be protected.

The Anti-Fraud Office of Catalonia is aware of the complexity of managing public health, economic and social crises; of the difficulty of fast decision-making in a state of uncertainty that might entail serious consequences for citizens. Even so, the Anti-Fraud Office is also an institution specifically entrusted with preserving transparency and integrity of administrations and of the personnel in the service of the public sector, as well as preventing the use or the illegal allocation of public funds or any other irregular appropriation arising from acts that involve conflicts of interests

or the use for private benefit of the position or public office. That is why the Anti-Fraud Office publishes this document addressed to all public authorities entrusted to manage the COVID-19 crisis in Catalonia.

The following pages compile **reminders** (first section), **recommendations** (second section) and **resources** (third section) to preserve integrity in public management, with the aim of guiding and raising awareness in a constructive manner.

## **1. Why does the current situation increase risks of corruption, fraud and waste of public resources?**

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Risks of corruption, fraud and other irregularities in the public sector do not fade during crisis such as the one we are currently undergoing. On the contrary, inherent vulnerabilities to the exercise of public power and authority accentuate due to several **factors** that create new or strengthened incentives or opportunities for integrity risks in public action and decision making.

1. **The substantial volume of public resources** allocated to contain the COVID-19 spread and to alleviate the social and economic crises. The large amount of mobilized funds<sup>1</sup> can generate **incentives** for individuals or organisations who may take advantage of an exceptional situation of crisis to make private gains.
2. **The urgency to take action and obtain results.** For the sake of efficiency, public organisations are allowed to activate exceptional mechanisms<sup>2</sup> and administrative proceedings (emergency). These increase **opportunities** for corruption, fraud and mismanagement because they entail:
  - a **weakening of ordinary oversight and control systems** of public action.
  - a **decrease of transparency in administrative procedures** (ex-ante opacity but also throughout them).
  - a **deferment** of the adequate degree of **accountability** for decisions and actions adopted.
  - a **relaxation of rules for formalising** public decision making. In public procurement, for instance, oral agreements are allowed but must be documented afterwards.

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<sup>1</sup> At the end of march 2020, the Spanish government announced the mobilisation of 200 billion euro to tackle this crisis and the Catalan government, 1.800 million euro. This figures might increase with additional funding from municipalities and the European Union.

<sup>2</sup> In regulatory processes, public procurement, allocation of funds, personnel recruitment, tax collection and so on.



3. **An increase of the global demand of supplies and services** required by all countries affected by COVID-19 pandemic. The scarcity of some goods while their demand grows, plus restrictions imposed to ordinary activity in several economic areas create **incentives** for commercial abuse or anti-competitive practices in the markets. Therefore, risks related to inefficiencies in the provision of supplies, services and works increase as well.
4. **The pre-existing gaps in lobbying regulation.** These weaknesses exacerbate **opportunities** for undue influence in public decisions, particularly those regarding new regulations issued during the state of alarm or related to the allocation of limited public resources.
5. **An uneven capacity of society's most disadvantaged groups or others most affected** by this crisis to reach agreements on shared demands and convey them to public authorities. This creates **opportunities** for socially questionable prioritisation in public action that might put at risk the rights most intimately related to the essence of individuals: **human rights**. Preserving life, preventing and alleviating suffering and protecting human dignity ought to be the values and motors for public action in times of pandemic.

Therefore, the increase of incentives and opportunities for integrity risks in public decisions and actions in crisis situations such as the current one is unquestionable. And global precedents show us relevant examples such as conflicts of interests and bribery linked to the United Nations Oil-for-Food Programme or the misappropriation of cooperation funds for Haiti's reconstruction after Gordon's Hurricane.

**Loss of public resources is always detrimental** to both governments and society. But at times like these, "it can mean the difference between life and death, food on the table or hunger, a roof over one's head or homelessness"<sup>3</sup>.

## **2. Recommendations of the Anti-Fraud Office of Catalonia to public authorities in times of pandemic**

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Compared experience shows that, in countries with high levels of trust in government, tough decisions made by public authorities receive greater understanding and support. Thus, citizens' willingness to follow their recommendations facilitates success of public policies and increases the legitimacy of the democratic system.

In exceptional circumstances as the current one, when procedural requirements for public decision-making are less demanding, transparency and readiness for accountability can act as balancing agents. Therefore,

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<sup>3</sup> Excerpt from the letter of Transparency International to the International Monetary Fund Executive Board requesting transparency and accountability on COVID-19 funds.



these principles serve the following recommendations both for immediate times and the future.

## Immediate recommendations

### 1. Reinforce ethics and public sector values

The Anti-Fraud Office of Catalonia encourages leaders of public sector organisations to:

- **Remind** public servants **how current circumstances increase** risks of **irregularities, fraud and corruption** in their field of public action and to emphasize the ethical standards that must be upheld and the red-lines that cannot be crossed.
- Ensure that elected officials and senior public managers' behaviour is coherent with the ethical standards above mentioned. **Leading by example** is essential to guarantee an ethical tone at the top.
- **Adjust ordinary ethical standards** (codes, protocols, recommendations, guides) **to the specific circumstances of this crisis**. The unpredictability of the pandemic and its evolution request a continuous effort to adapt while making decisions. Thus, it is convenient to assess how ethical guidance tools respond to the current situation. This might require the addition of new criteria or principles that now turn out to be relevant or the reconsideration of their priority.
- **Designate an ethics committee or officer** to lead and advise the organisation and its public servants when facing ethical issues. Ethics committees and officers have proven effective as guiding tools to sound and ethical decision making. In Catalonia, there are ethics committees in specific professional areas, for example, in the health sector (Bioethics Committee of Catalonia) or in care services (Ethical Committee of Social services of Catalonia). Hence, the convenience to spread this tool to all public sector.<sup>4</sup>
- **Set up secure internal channels** to report misconduct and foster an adequate use and good faith disclosure.

### 2. Create specific COVID-19 sections in transparency portals understandable for any individual

The Anti-Fraud Office recommends all public organisations to create a specific COVID-19 section within their transparency portals in order to facilitate a simple access and an overall vision of information related to the response to this crisis.

This section ought to include not only health data already available or a mere list of approved regulations but also information related to COVID-19 response: amount, origin and management of public funds allocated to the

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<sup>4</sup> A list of ethical committees is available at [Committee networks of Catalonia](#)



crisis, procurement data and so on and so forth. A fair amount of advisable contents for this COVID-19 section is actually suggested in the following recommendations.

**The organisation and display of information and data should be designed to facilitate accountability** to citizens, as well as civil society and media **scrutiny**. Full access to that information will not be possible unless it is provided in an intuitive and comprehensible manner, no matter the education level or capabilities of citizenry.

3. Maximise the reasoning and transparency of approved regulations during the state of alarm and guarantee its traceability

Emergency regulation involves a concentration of powers in hands of the Executive Branch, as the Group of States against corruption of the Council of Europe has recently reminded us. In this situation, it is of paramount importance that democratic checks and balances, the oversight and control institutions, the media and civil society be ready to fulfil their roles.

The Anti-Fraud Office advises the Catalan government (*Govern de la Generalitat*) and local government entities exercising their regulatory powers to:

- **Justify all content in new regulations in a clear and sufficient manner.** The lack of explicit reasoning may arise doubts on the necessity of some measures that limit rights and freedoms —particularly those far from immediate needs—, as well as on the objectivity or impartiality of provisions that favour or discriminate certain groups. In these cases, the shadow of potentially undue influence in public decisions can fade with an adequate reasoning and transparency of the objective data or the preceding documents that have led to the chosen option.
- **Publish previous reports** issued by the technically responsible departments for each subject, as well as bodies or departments in charge of legal counsel and financial audit. In case of ignoring the indications or the objections manifested by these bodies or departments, it is essential to explain the reasons that have led regulators to maintain the initial dispositions.
- **Guarantee the traceability** of the regulatory process. Document the decision-making process and record every natural or legal person that participates, as well as the channels used, to ensure adequate accountability once the state of alarm is over.

4. Watch over the transparent and efficient allocation of public funds

The current regulations already establish the obligation to publish any action involving the allocation of public funds to tackle COVID-19 and its impact, including public sector internal needs to manage the crisis. Additionally, the Anti-Fraud Office advises public sector organisations responsible for deciding, designing and implementing these actions to:



- **Publish**, in COVID-19 section of transparency portals, the **information on all actions or programmes allocating funds** to tackle the crisis: subsidies, grants and allowances of any nature, transfers and so on. Information and data must be easily accessible and understandable for potential beneficiaries. It should also include all documents justifying the decision-making process.
- **Ensure that eligibility criteria** to become a beneficiary or recipient of public funds are **clear, objective and transparent**. As social demands rise and resources are limited, potential beneficiaries of public funds must be able to fully comprehend the set criteria and be certain about which needs can be covered with those funds and for which period of time. In addition, the accurate **reasoning** of each criterion prevents suspicions of arbitrariness or lack of objectivity and impartiality.
- **Guarantee the visibility of the funds origin**, no matter if they are public or if they come from citizens' contributions; for instance, popular fundraising initiatives for funding COVID-19 research or supporting health centres deserve the utmost transparency and accountability. In addition, ensure transparency and accountability for budget lines affected by reallocations.
- **Ensure the coordination and efficient use of public funds**. Given the current distribution of competences, the response to the crisis demands public action from several levels of government and public sector organisations. To avoid jeopardising the efficient use of limited funds, institutions ought to weight the totality of public interests involved. They should ensure that their actions are coherent with those of other public organisations with competences in the same area. Furthermore, they should attempt to share resources when possible.

5. Guarantee that speediness does not decrease transparency and appropriateness in public procurement

Regardless of legally established publicity obligations in public procurement, the Anti-Fraud Office advises all public organisations which need to acquire supplies, services or works due to the health, social or economic crises to:

- **Ensure that emergency procedures during the state of alarm are not used to provide supplies, services and works unrelated to the crisis, with less transparency, equality and open competition.**
- **Include**, in COVID-19 section of transparency portals, **an access to all contracts awarded using emergency procedures**, detailing at least the description and type of procurement, the time-frame for delivery or provision, the successful tender and the value for the contract award. This information should be provided expeditiously to ensure that individuals, civil society and the media can scrutinise it and hold public authorities accountable.



- **Include**, in COVID-19 section of transparency portals, an **access to the complete list of contracts awarded without prior publication**, detailing at least the description and type of procurement, the time-frame for delivery or provision, the type of award procedure, number of tenders received, the successful tender and the value for the contract award. Once again, this information should be provided diligently to ensure that individuals, civil society and the media can scrutinise it and hold public authorities accountable.
- In case that emergency procurement is carried out orally, **the award and formalisation of the contract must be documented** and it must comply with publicity and transparency requirements.

## 6. Lead by example with the utmost transparency and accountability in human resources management during the crisis

In a context of extraordinarily tough measures enacted to tackle this crisis, legal compliance is not enough. Public sector organisations must aim to comply with the highest ethical standards and lead by example regarding human resources management and labour risks prevention. Thus, citizens can recognise that social distancing, homeworking and other measures related to workplace safety are also required and applied to the public sector.

Therefore, the Anti-Fraud Office recommends to all public sector organisations the:

- **Publication**, in COVID-19 section of transparency portals, of **approved contingency plans**, detailing information on staffing, safe systems of work established during the crisis (homeworking, on-site work and any other available) and, where appropriate, personnel appointed as interim civil servants or temporary contracted to cover employees on sick leave or to reinforce public services.
- **Publication**, in COVID-19 section of transparency portals, of **implemented labour risks prevention measures** to reduce the possibility of infection among on-site workers, detect **positive COVID-19 cases** and respond expeditiously.

## 7. Reinforce internal audit bodies

Given the substantial amount of funds required to tackle this crisis, the Anti-Fraud Office advises public authorities to:

- **Convey their support for the auditing role**, emphasising that emergency should not be detrimental to proper internal control of the expenditure and disbursement of public funds.
- **Ensure that information on how public funds are being allocated and disbursed is swiftly and fully available** to the internal audit bodies.



- **Guarantee sufficient material and human resources** to internal audit bodies. The speediness to implement measures to tackle this crisis requires exceptional mechanisms and emergency procedures that rely on trust in the veracity of the information provided by potential beneficiaries of public funds or awardees of public contracts. This will have an important impact on internal audit bodies workload and lack of resources may undermine their effectiveness.

8. Set up a coordination mechanism of entities with supervisory responsibilities on the use of public funds during the COVID-19 crisis

Experience in emergency situations due to pandemics or catastrophes shows the convenience of setting up additional oversight mechanisms. Transparency International recommends **real time audit of resources destined to tackle the crisis**, as a guarantee that those funds are used to effectively cover the needs that justified their allocation and, therefore, that the rights of individuals are not breached. Italy's experience during 2016 earthquakes set a similar precedent when the National Anticorruption Authority (ANAC) reached an agreement to supervise reconstruction works in real time.

Therefore, the Anti-Fraud Office recommends to The Parliament:

- **The creation of a mechanism or *ad hoc* structure to monitor and control public expenditure** related to the COVID-19 crisis. An oversight mechanism of collegiate nature might include the General Intervention body of the Catalan Government, the professional association of Local Government Secretaries, Comptrollers and Treasurers, the Catalan Court of Auditors, the Catalan Competition Authority and the Anti-Fraud Office of Catalonia. This composition would allow to gather the expertise of internal and external control bodies, as well as of the independent bodies in charge of preserving transparency, integrity and competition. The scope of its activity should start from the beginning of the state of alarm and it should encompass also its effects beyond the ending of the above mentioned state of alarm.
- That this mechanism starts functioning **as soon as possible**.
- That **reports of its supervisory tasks be published** in real time in the recommended COVID-19 section of its transparency portal.

## Future recommendations

9. Assess the effectiveness and efficiency of public policies implemented during this crisis

Once the most critical phase of the health crisis is overcome, when the urgency of the most immediate decisions has diminished, the Anti-Fraud Office encourages the Catalan government to:



- Undertake **an exhaustive, objective and impartial assessment of the public policies adopted to manage this crisis**: objectives; actions; material, economic and human resources allocated (inputs), as well as the distribution and prioritisation criteria; results (output); impact on public health, labour market, disadvantaged groups, etc. (outcomes), and improvement recommendations.
- **Publish the assessment report** and offer timely accountability.

10. Ensure a broad and complete external auditing of the funds allocated to manage the COVID-19 crisis

The Anti-Fraud Office advises the Parliament of Catalonia to request the Catalan Court of Auditors (*Sindicatura de Comptes*) to carry out a specific and comprehensive audit of all funds allocated to respond to the sanitary, social and economic crisis, prioritising critical areas such as health, public procurement, subsidies and infrastructures.

11. Develop an efficient regulatory framework to protect whistle-blowers

In times of crisis, when public administrations make all funds, resources and capabilities available to revert its effects, any case of fraud or corruption is even more unbearable due to the lack of solidarity that it involves.

Individuals holding indicia of wrongdoing, that otherwise would never be disclosed, should be able to safely report them to authorities. Thus, whistle-blowers deserve to be granted protection from reprisals when acting in defence of the general interest.

Moreover, when public health is at risk, whistleblowing reporting systems have proved especially useful as detection instruments. Therefore, it is especially necessary to transpose into domestic law the European Directive on the protection of persons who report breaches of Union law (2019/1937) —as minimum standards— and to develop an efficient regulatory framework to guarantee safe alternatives to silence.

12. Strengthen political control over the COVID-19 crisis management

Responsible and constructive political control strengthens trust in public institutions and also in democracy at large. Therefore, the Anti-Fraud Office advises:

- **The Parliament of Catalonia** to set up a specific parliamentary commission to study the Catalan government political management of the COVID-19 outbreak, with the assistance of experts on the topics subject to public action. Reports of this commission enquiries should include proposals to improve future political management and communication during crisis. Their remittal to Catalan government should also guarantee that public bodies responsible for reviewing and improving pandemic prevention and contingency plans can study those



reports and prevent the repetition of detected flaws in political management and communication.

- **The plenary sessions of local governments** to consider setting up commissions to study and follow up political management of this crisis in municipalities. Reports of those commissions should include proposals to improve political management and communication during pandemic or similar crisis.

### 13. Improve lobbying regulation

The risk of undue influence or public policy capture increases in pandemic or catastrophe scenarios. In these cases, it is of paramount importance to guarantee transparency, equal opportunities and integrity in the exercise of lobbying activities.

Therefore, the Anti-Fraud Office requests that political groups holding parliamentary representation commit **to fostering a substantial improvement of the legal regulation of lobbying activities**.

This is not the only pillar of the national integrity system that still shows serious flaws<sup>5</sup>. However, in times of crisis, the gaps in the current regulation increase the **opportunities for undue influences in public decisions**. And in scenarios of economic and social crisis such as the ones currently foreseen, such reforms are important to strengthen citizens' trust in the impartiality and objectivity of public action.

## **3. COVID-19 and the Anti-Fraud Office's resources at the service of public entities**

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The Anti-Fraud Office offers the following resources to foster integrity and the prevention of corruption, fraud and irregularity risks in the public sector.

- **Documentation and tools on risk prevention.** In the area of public procurement, the Office has published information and tools for managing integrity risks, a catalogue of risks in public procurement and several documents highlighting the most common risk factors. Furthermore, the Anti-Fraud Office Proposals for an integrity policy in Catalonia compile up to 45 recommendations in 15 areas of public action.
- **The anonymous reporting channel**, which guarantees confidentiality and, if necessary, also anonymity, to disclose indicia of wrongdoing that may jeopardise the rightful use of public resources, as well as abuses of public office for private gain. These include any form of capture or

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<sup>5</sup> Transparency International Spain, in its NIS assessment, highlighted this measure among the 10 most urgent: "Regulate lobbying activity, according to the OECD guidelines". See Spanish *National Integrity System: Executive summary (Spanish version)*.



distortion of public decisions influenced by private interests in personal benefit, with methods ranging from different bribery modalities to obscure political donations, revolving doors, and so on and so forth.

- **Consultations and requests for advice** can be submitted via e-mail at [prevencio@antifrau.cat](mailto:prevencio@antifrau.cat).

## Conclusions

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In extraordinary times such as the current one, citizens are suffering losses, affectations and important deprivations. The success of public authorities' measures and recommendations to tackle the crisis and repair its effects depends on society's support and behaviour. And citizens' willingness to do so comes with **trust**.

However, the levels of trust in public institutions were not optimal before COVID-19 outbreak, a weakness that, unfortunately, we share with other surrounding countries.

Therefore, the recommendations gathered in this document aim to increase citizens' trust by reasserting the ethical commitment, transparency, control, and at a later stage, assessment and accountability of public institutions during this crisis. They advise public authorities to explain now and in real time what they do, why and how they do it. They aim to support internal and external control bodies so that they can carry out their roles in better conditions and in a more coordinated manner. And eventually, when the emergency sees its end, they encourage the public sector to commit to carrying out an independent assessment on how the COVID-19 crisis has been managed.

The Anti-Fraud Office offers these recommendations fully convinced that adopting them would send an unmistakable message to all citizens that every single public decision can be explained and that no private interests have prevailed over the general interest.

Barcelona, April 24th of 2020

