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A joint initiative of the OECD and the European Union, principally financed by the EU

**Agentia Nationala  
a Functionarilor Publici**

## **Policies and Regulations on Conflicts of Interest of Civil Servants**

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**Conference on Public Integrity and Anticorruption  
in the Public Service**

**Bucharest, 29-30 May 2007**

This paper is a summary of a SIGMA Paper No 361 which provides an overview of approaches to managing conflicts of interest of civil servants in nine European countries, six of them are old EU members (Great Britain, Germany, France, Italy, Spain and Portugal) and three are new EU members (Latvia, Poland and Hungary). The paper is divided in four sections.

The first section introduces the conceptual framework for conflicts of interest in the public service and situates conflict of interest policies within the framework of broader preventing and combating corruption policies. It also explains the reasons behind those policies and their importance for the functioning of a democracy.

The second section broadly examines cross-country commonalities with respect to structures, mechanisms and methods used to manage conflict of interest throughout the selected EU countries. It also examines broad differences in legal frameworks, means of implementation, evaluation mechanisms and means of enforcements. As a result, the paper expects to show the rationale behind the different policies in designing and establishing restrictions for otherwise legitimate economic, social and political activities of public officials, including politicians (in the field of economic activities and transparency) and for civil servants (in the field of economic activities and political party involvement).

The third section summarizes the nine country case studies, and illustrates the main issues and difficulties encountered in formulating and implementing the policies against conflicts of interest in each country. It includes a critical account, including an assessment of advantages and disadvantages regarding the usefulness of the legal instruments to adequately prevent and manage actual conflicts of interest situations.

Finally, the fourth section focuses on recommendations showing different options for formulating and implementing conflict of interest policy.

This paper uses as a conceptual reference principally the OECD's generic definition of conflict of interest. That definition is as follows: "A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the public official's private-capacity interest could improperly influence the performance of their official duties and responsibilities".

We consider that a broad concept of conflict of interest includes not only the situation where there is, in fact, an unacceptable conflict between a public official's interests as a private citizen and their duty as a public official, but also the situations where there is an apparent conflict of interest and where there is potential conflict of interest. An apparent conflict of interest appears where there is a personal interest which might reasonably be thought by others to influence the public official's duties although there is not, in fact, such an undue influence, or may not be such influence. The potential for doubt to arise about the official's integrity, and the integrity of the official's organization, obliges one to consider the apparent conflict of interest as a situation that should be avoided. The potential conflict of interest may exist where an official has private-capacity interests which could cause a conflict of interest to arise at some time in the future. For example, if the official's spouse was going to be appointed at some as executive director or CEO of a company involved in a current decision made by the public official, in the weeks preceding that decision, and the public official was aware of such appointment. As a consequence, the basic definition used here assumes that a reasonable person, knowing all the relevant facts, would conclude that the official's private-capacity interest could improperly influence the official's conduct or decision-making.

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<sup>1</sup> SIGMA Paper No 36: "[Conflict of Interest Policies and Practices in Nine EU Member States](#)", OECD Publishing, Paris, 2006.

It should also be understood that conflict of interest is not the same as corruption. Sometimes there is conflict of interest and there is not corruption; and sometimes there is corruption and there is not conflict of interest. For example, some public official involved in making a decision in which he/she has a private-interest capacity can act fairly and according to the law, as a consequence there is not corruption. And a public official could take a bribe (corruption) for making a decision he would make anyway, without any conflict of interest involved in his/her action. But it is also true that, most of the time, whenever corruption appears there was a prior private interest which improperly influenced the performance of the public official. As a result, it would be wise to consider conflict of interest prevention as a part of a broader policy to prevent and combat corruption. Situated in this context, conflict of interest policies are an important instrument to build public sector integrity and to defend and promote a better democracy.

Public attitudes toward politics, politicians, political parties and Parliaments reflect a growing decline in confidence. Public opinion data clearly tell the story of this decline in confidence. Disillusionment with politics and politicians is an almost universal fact. In some countries this trend toward political dissatisfaction, mistrust of political leaders and declining confidence in Parliaments is weakening the functioning of democracy and entails a certain risk of democratic failure. In other countries it is simply an expression of tiredness with the traditional way of politics. The central thesis of this paper is that one of the most important reasons behind this disturbing trend is corruption. But in order to understand the previous statement it is important to know what corruption is about. If corruption would be only bribery, in most of the European countries corruption could not be the cause of disaffection, because bribery of public officials is not a common practice. But corruption is not only bribery. Corruption is also capturing policies, or the abuse of power, or illegal financing of parties, or buying votes, or trading favours, or trading in influence. Corruption is not only the illegal abuse of power by public officials for direct private interest. Corruption is also the unethical abuse of power. The private interest involved is not only direct but also indirect, that means that it could be relevant not for the public official himself but for the political party which appointed him.

The absence of a comprehensive framework and knowledge concerning the causes, consequences and nature of corruption, traditionally meant that the social scientists have assessed corruption in western democracies on a basis tilting towards a criminal law perspective. For example, according to the OSI 2002 Report, the absence of that comprehensive framework in EU countries has caused the Commission to assess corruption on a basis that tends to toward a “bribo-centric perspective”. Most western democracies do not have high criminal corruption. As a consequence, corruption was not considered an important variable when political disaffection in the most developed countries was analysed. But corruption is more than bribery. Corruption is the corruption of politics. That means all kind of actions where political actors (including public officials) breach the rules of the (democratic) political game and put their private interests before anything else. For example, the rules of the democratic political game establish that public officials should not abuse their power for direct or indirect private interest, and that there is abuse of power not only when they breach the law, but also when they breach the rules of the public ethics in order to increase their power or wealth.

Considering these issues, one has to say that corruption is an important threat to democratic institutions and processes. It has negative political, economic and social consequences. Politically, it reduces the quality of democracy and governmental performance, and creates negative social capital. When corruption is high there is not political equality, preferential treatment for the most corrupt is the rule in certain democracies where the corrupt networks have the power. In highly corrupt countries corrupt politicians and civil servants have a positive interest in an inefficient public administration, because they can then selectively offer protection from such inconveniences. Corruption requires trust among the actors who take part in illegal exchanges, this trust favours the spread of dense social networks, but these networks are synonymous with clienteles and bribery. Political corruption reproduces these networks.

Economically, corruption impedes development and discourages investment. Socially, it promotes economic and psychological inequality and spreads parochial and particularised trust. Particularised trust avoids the generation of generalised and inclusive trust, and generalised trust is essential for social solidarity and fair policy making. To sum up, dissatisfaction of citizens with the functioning of governments and political parties quickly translated into falling levels of satisfaction with democracy, into falling levels of generalized trust, and into increasing levels of popularity of populist candidates and extremist parties.

In a democratic system politics should be about how to identify and promote the general interest while respecting the rules of the game. Politicians should remember that. But also public officials should remember that principle when they participate in the formulation of politics, when they make decisions, when they implement those decisions or when they evaluate them. The omission of that principle, and sometimes the eradication of it, is one of the causes of the low confidence in basic democratic institutions and one of the most important reasons why most of the citizens in certain democratic countries are not satisfied with the functioning of their democracy. But it is also true that the results are not the same for all the countries. Obviously, when corruption as bribery is also high in a country the results of the surveys for that country are still worse than for the others with low traditional corruption, and are worse not only on the question about confidence in Parliament, but also on the question about satisfaction with the functioning of democracy.

In conclusion I propose to you a logical simple syllogism: conflict of interest policies need to be part of a broader policy to prevent and combat corruption. Those are very important for the quality of a democracy, and even for the defence of democracy against apathy and disillusionment. As a consequence, policies of conflict of interest are important for our democracies in the EU.