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Assessment of Conflict of Interest Policies and Practices: A Comparative Review

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Conflicts of interest

This presentation is based on a OECD SIGMA paper which provides an overview of approaches to managing public-sector conflicts of interest in nine EU 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).





Summary

1. **Corruption**: a definition.
2. **Consequences** of corruption in Europe
3. Corruption and **conflicts of interest**.
4. **Instruments** to prevent and avoid conflict of interest.
5. Conflicts of interest as a **public policy**
6. Broad **commonalities and differences**.
7. Conclusions and policy **recommendations**



CORRUPTION

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- Corruption is abuse of power for private interest.
- Abuse of public power is an abuse of public position. A breach of trust.
- It could be with legal breach or with ethical breach.
- The benefit could be direct or indirect.
- Corruption is not only bribery. A policy can be captured without bribery. I.e. through illegal donations to the political party in power.





Consequences

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- Corruption has negative political, economic and social consequences.
- Politically, it reduces the quality of democracy and governmental performance, and creates negative social capital.
- 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.





Consequences

- To sum up, citizen's dissatisfaction 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.





Consequences

- In a democratic system politics should be about how to identify and promote the general interest while respecting the rules of the game.
- The oversight of that principle, and sometimes the oblivion 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.





Table 1: Trust in Parliaments, satisfaction with the functioning of democracy and scores in Corruption Perception Index (CPI) in nine countries under comparative review and the Czech Republic

Country	A great deal, quite a lot confidence in Parliament %	Very satisfied, rather satisfied with the way democracy is functioning in our country %	CPI 2005
New EU			
Latvia	26,3	28,2	4,2
Poland	30,1	40,6	3,4
Hungary	32,6	31,6	5,0
Czech Rep.	12,0	36,6	4,3
Old EU			
Great Britain	34,1	44,4	8,6
Germany	34,2	72,8	8,2
France	38,8	45,5	7,5
Spain	45,0	63,2	7,0
Portugal	43,7	72,3	6,5
Italy	33,2	34,6	5,0



Corruption and Conflict of Interest

- “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”
- Includes not only the situation when 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 when there is an apparent conflict of interest and when there is potential conflict of interest.



Corruption and Conflict of Interest

- It should 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.
- 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.



Corruption and Conflict of Interest

- The policies to prevent and combat corruption incorporate very different instruments and strategies. We could organise them in four big groups: structural, prevention, detection and investigation, and penalization.
- But where are the policies of conflict of interest situated in the main framework of the anticorruption policies? Indeed they are in the four groups





Instruments to prevent and avoid conflict of interest

- Restrictions on additional ancillary employment.
- Declaration of personal income.
- Declaration of family income.
- Declaration of personal assets.
- Declaration of family assets.
- Declaration of gifts.
- Security and control in the access to inside information.
- Declaration of private interests relevant to the management of contracts.
- Declaration of private interests relevant to decision making.
- Declaration of private interests relevant to participation in preparing or giving policy advice.



Instruments to prevent and avoid conflict of interest

- Public disclosure of declarations of income and assets.
- Restrictions and control of post-employment business or NGO activities.
- Restrictions and control of gifts and other forms of benefits.
- Restrictions and control of outside concurrent appointments (For example, a NGO, a political organization, a government owned corporation...).
- Recusal (routine withdrawal from public duties when public officials realize that to participate in a meeting or to make a decision would place them in a position of conflict).
- Personal and family restrictions on property titles of private companies.
- Divestment either by sale or by the establishment of a trust or a blind management agreement





Conflicts of interest as a public policy

- These are constitutional policies, as they are concerned with defining the rules of the game (Lowi, 1972) providing an institutional defence against pathologies that are inherent to any political or administrative activity, especially the abuse of power for private direct or indirect benefit.
- Usually is a policy-making process that is partaken only by a small bunch of participants, in which very little open discussion, but a great deal of underground tradeoffs, exist, especially when it comes to drafting and implementing regulations.



Conflicts of interest as a public policy

- The cases of the nine countries show that, although regulations were put in place in all of them, in most cases their respective window of opportunity closed before the conflict of interest policy was actually adopted and implemented to the full of its consequences.
- At a first glance the analysis of these countries' programmes and policies show a surprising fact challenging the theory of the "window of opportunity" and that is that reforms often appear without "a pre-existing problem"
- Nevertheless policy instruments have been at the disposal of the political players on a continuous basis. A host of ready-to-use technical responses and instruments





Conflicts of interest as a public policy

- Politics has always been a key driver, because: the accession to the EU was a major political goal and anti-corruption policies were part of the regulatory package to subscribe to or because some scandal or other made it necessary to re-legitimate, also because relevant players managed to raise a powerful enough “advocacy coalition” around the idea of a good government, which the opposite coalition did not manage to prevent (Sabatier, 1999).
- The successful introduction of a policy issue on the government agenda does not prevent implementation strains. If there has been a sufficiently strong and united advocacy coalition the implementation of the policy and programmes has been relatively successful, whereas failing this condition, implementation has either been constantly delayed or merely failed.





Conflicts of interest as a public policy

- The higher the level of corruption the easier it is to build a coalition. However, the reverse is that the higher the level of corruption the more difficult is to promulgate “trap-free” rules and, doubtless, makes the implementation more difficult of the measures taken, as the regulation of these measures are explicitly designed to fail (“regulations with wanted loopholes” or “traps”).
- Anti-corruption policies generate diffuse benefits, but concentrated costs. Their outcomes are difficult to foresee and assess and will be visible only in the long run.



Broad commonalities and differences

- *Restrictions on additional employment.* In all the countries studied public officials have restrictions on additional ancillary employment. Members of government, political appointees, civil servants and judges have this kind of restrictions in all the countries, but in Poland, France, Germany and Spain are stricter than in the others.





Broad commonalities and differences

- *Declaration of personal income.* This kind of declaration is not necessary in France, Germany and Great Britain, but in these last two countries members of Parliament must declare certain type of payments when the amount is significant. Latvia officials must declare their income, not only the political appointees and elected, but also the civil servants.
- *Security and control in the access to inside information.* Civil servants must keep in secret confidential information in all the countries, but in Poland, Hungary, France and Spain there are rules and sanctions clearly stated about that.





Broad commonalities and differences

- *Declaration of family income.* Only in Poland must local elected officials and political appointees' spouses declare their income. In Spain declaration is voluntary for political appointees' spouses. In all the other countries is not obligatory.
- *Declaration of personal assets.* In Germany and Great Britain declaration of assets is not obligatory, although Members of British Parliament should declare assets if it is worth more than 59,000 pounds, and in Germany civil servants must make a formal statement recognising that they do not have high debt levels before being appointed.





Broad commonalities and differences

- *Declaration of family assets.* In Poland local elected officials and political appointees' spouses must declare their assets too. In Hungary, the families who live with the political appointees and senior officials must declare also their assets. In all the other countries is not obligatory.
- *Declaration of gifts.* In Latvia it is mandatory for all the public officials (included elected and members of Parliament). In Poland only for local elected officials and political appointees. And in Hungary only for members of Parliament. In Spain, Great Britain and Germany it is compulsory for political appointees and government.





Broad commonalities and differences

- *Declaration of private interests relevant to the management of contracts, declaration of private interests relevant to decision making or voting, and* A formal declaration is needed in countries like Portugal (including information of the three years prior to the appointment) and Spain (two years prior) for political appointees. In Great Britain, a formal declaration of interest should be made by public officials (included local elected officials) every time there is an interest which might reasonably be thought by others to influence her or his actions. British public officials should include family interests and interests from closely associated persons in their declaration.





Broad commonalities and differences

- *Public disclosure of declarations of interests, income and assets.* There are no provisions regarding publicity in Hungary and France, whereas in Poland public disclosure of declarations is mandatory only for local elected officials, and in Italy and Germany is established only for members of Parliament. In Great Britain political appointees must declare gifts and this declaration is public. The declarations of interest of the Members of the British Parliament are also public. In Spain, the declarations of interest of members of Parliament and local elected officials are public only upon request from an interested person (s), but according to a new draft law, the declarations of assets of the members of Government and Secretaries of State will be published.





Broad commonalities and differences

- *Restrictions and control of post-employment business or NGO activities.* In Portugal and Spain, during the two years after (Spain), or three years after (Portugal) the date they left the public post, political appointees may not undertake an appointment on a commercial or private company which is or was involved in a contractual, regulatory or direct relationship with their employing organization. In France there is a very detailed regulation on post-employment for civil servants, and in Great Britain civil servants must report approaches from outsiders offering jobs, including NGO,s.





Broad commonalities and differences

- *Restrictions and control of gifts and other form of benefits.* Great Britain has a very strict policy against gifts, for example, political appointees only can retain gifts when their value is less than 140 pounds.
- *Restrictions and control of outside concurrent appointments (For example, a NGO or Party).* These restrictions are very important for judges, because their independence and impartiality could be undermined if they are members of political parties. That is the reason behind the prohibition of political involvement for judges in most of the countries studied. In Latvia, Poland, Great Britain, France, Germany and Spain political appointees have restrictions on concurrent appointments in NGO,s.





Broad commonalities and differences

- *Recusal (routine withdrawal)*. All persons which act on behalf of the administration must be excluded of the release of an administrative act or an administrative contract when they have private interest on the decision.
- *Personal and family restrictions on property titles of private companies*. In Latvia, Great Britain, France, Spain and Portugal all public officials have restrictions on property titles of private companies when these companies contract with the public sector or when the public officials have to regulate, control or contract them.





Broad commonalities and differences

- Detection
- 4. 1. *Whistleblower protection?* Hungary, Great Britain and Germany have developed a system of whistleblower (people who report wrongdoing in the public sector) protection. The other countries do not have it.
- *Independent Body?* The institutional instruments to detect and investigate conflicts of interest are different in each country. There are no commonalities, except in the difficulties to have a real independent body. The Latvian Corruption Protection and Combat Bureau enjoys a certain degree of independence, and has broad powers of investigation and prosecution. But the only really independent body is the Constitutional Court in Portugal.



Broad commonalities and differences

- Investigation
- 5.1. *Who?* Criminal investigation is made by public prosecutors in all the countries studied. In Portugal the Central Directorate on Investigation of Economic and Financial Crime and Corruption, which is part of the judicial power, plays also a role in criminal investigations. In Spain there is a special Anticorruption Attorney's Office, which is charge of the investigation of relevant corruption crimes. This Office was created in 1995 by consensus among the leading Spanish political parties.





Broad commonalities and differences

- Nevertheless, there too is administrative investigation in all of the countries. Administrative investigation is usually done by the body/authority in charge of detection (see above). In Latvia the Corruption Protection and Combat Bureau investigates corruption cases and violations of the conflicts of interest regulations. It can investigate bank accounts or business transactions and has access to the Tax Agency databases. In Hungary the “Assets Declaration Register and Control Bureau” is the body in charge of investigation once the authorities have sent to it the case detected. It can investigate bank accounts or business transactions and has access to the Tax Agency databases.





Broad commonalities and differences

- Prosecution
- *Judicial or administrative.* There are both kind of prosecution in all the countries studied. Judicial prosecution proceeds when there is a crime. And administrative prosecution when there is a disciplinary fault.
- Sanctions
- 1. *Penal.* There are crimes related to “conflicts of interest inadequately managed” in most of the countries.





Broad commonalities and differences

- In Latvia, violations of the conflicts of interest rules are sanctioned with up to five years in prison if there is substantial harm to the public interest.
- In Great Britain there are criminal sanctions attached to non-disclosure of interest by members of the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly, and continue to apply for a transitional period to non-disclosure of pecuniary interests by members of local authorities and failure to withdraw from the local authority's deliberations.
- In Italy, members of Government could be indicted with criminal charges if they do not send the declaration of interests or send it with false information after requirement of the Competition Authority or the Italian Communication Authority.





Broad commonalities and differences

- France has a special crime called “unlawful interest seeking”, and the sanction could be up to five years in prison and fines of 75.000 euros. And it is also a crime to breach the post-employment restrictions on private companies and to obtain a pecuniary benefit from it; the sanction is up to two years in prison and fines of 30.000 euros.
- In Poland, local public officials can be sanctioned with up to three years in prison for false declaration of interests.
- In Germany there is a crime related to conflicts of interest called “accepting of advantage”. The regulation of § 331 Criminal Code covers all kind of advantages.





Broad commonalities and differences

- *Disciplinary*
- 2.1 *Suspension of salary.* These administrative sanctions are provided for civil servants in most of the countries.
- 2.2 *Dismissal.* Dismissal is the most serious administrative sanction for violations of conflict of interest regulations in all the countries studied. In particular, dismissal of civil servants and judges is provided in the regulations of most of the countries.
- 3. *Administrative.* The administrative sanctions found in the regulations are: Fines, moral sanctions (i.e. to publish the violation in the Parliament Official Gazette or the Official Bulletin of the State), reports to the Parliament, prohibition to hold public office for up to 10 years and restitution of quantities illegally taken.



Conclusions and policy recommendations

- **Include the conflict of interest policies in a broad strategy to prevent and combat corruption.**
- **Enact good administrative and criminal law frameworks .**
- **A professional civil service and an independent judiciary should be included in these frameworks .**
- **Establish general and clear ethical standards in public life.**





Conclusions and policy recommendations

- **Carefully regulate recusal and withdrawal in public decision-making.**
- **Regulate and manage well mandatory declarations:**
- Income declaration: Declaration of income is not absolutely necessary if there are declaration of assets and declaration of interests, but it could be helpful in controlling political appointees and locally elected officials





Conclusions and policy recommendations

- Asset declaration: Declaration of assets can be very helpful in detecting and controlling conflicts of interest of locally elected officials, members of parliament and political appointees.
- Family income declaration: Declaration of family income and assets is a measure that is too strict and probably difficult to sustain constitutionally. Declaration of gifts: It is better to have clear and strong restrictions on gifts and benefits than to oblige their declaration.





Conclusions and policy recommendations

- Declaration and registration of personal interests: Declaration and registration of personal interests constitute another cornerstone of a good conflict of interest policy.
- Publicity of declarations: Declarations of interests and assets of elected officials and political appointees should be open to public scrutiny, while at the same time respecting security rules and the protection of privacy.





Conclusions and policy recommendations

- Limit or even prohibit public officials to hold jobs outside the administration.
- Limit employment possibilities after leaving office: It is necessary to restrict and control post-employment business or NGO activities, because public officials are expected to refrain from taking improper advantage of a public office or official position which they have previously held, including privileged information, when seeking employment or appointment after leaving public office.





Conclusions and policy recommendations

- **Limit external activities while in public office.**
External, concurrent appointments in NGOs, trade unions or political parties – even if they are not paid – could cast doubts about the impartiality of public officials.
- **Punish the use of inside information**
- **Restrict owning shares in private companies**
The Italian case shows us the importance of personal and family restrictions on property titles of private companies. A public official should not own private companies that are under his control or subject to his decisions. Public officials should not own private companies that contract or have partnerships with the public sector.





Conclusions and policy recommendations

- **Establish a workable detection and investigation system, including an independent specialised body.**
- **Penal and administrative sanctions should be compatible and complementary:** When it has been proven that a violation of law has occurred, it is necessary to have a system of sanctions, with no exceptions.

