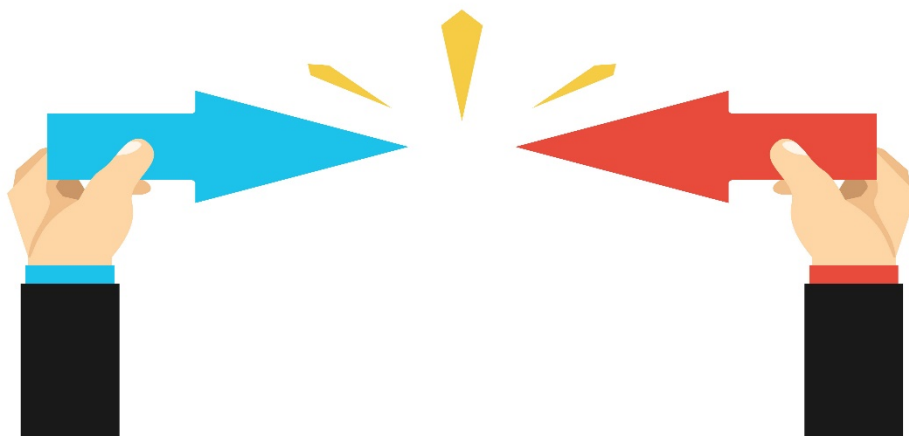


STUDY

Requested by the JURI committee



The Effectiveness of Conflict of Interest Policies in the EU-Member States



The Effectiveness of Conflict of Interest Policies in the EU- Member States

Abstract

This comparative study - commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs - analyses the effectiveness of relevant rules, policies and practices within Member States regarding conflict of interest for top political appointment (Head of Government, Ministers and other high ranking officials).

The research highlights the theoretical and practical aspects of the notion of conflict of interest, giving some policy recommendations.

This document was requested by the European Parliament's Committee on Citizens' Rights and Constitutional Affairs.

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LIST OF ABBREVIATIONS

ACOBA	British Advisory Committee on Business Appointments
AFME	Association of Financial Markets in Europe
CoI	Conflicts of Interest(s)
DG's	Directors-General
EBA	European Banking Authority
ECA	European Court of Auditors
ECJ	European Court of Justice
EP	European Parliament
EU	European Union
EUPAN	European Public Administration Network
GRECO	Group of States against corruption, Council of Europe
HPO's	Holders of Public Office
MS	Member States
OECD	Organisation for economic Cooperation and Development

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EXECUTIVE SUMMARY

Regulating conflicts of Interest (Col) requires defining it. Generally, a conflict of interest can be defined as a conflict between the private interests and the official or professional responsibilities of a person, or a conflict arising when a person holds a private interest that conflicts with the one of his/her employer. Col exist in many different situations, or as regards many different issues. Moreover, Col can be further classified: Whereas in the past, Col policies almost exclusively focused on nepotism and financial interests, later on, Col were classified into two very broad types: pecuniary and non-pecuniary Conflicts of Interest. Current definitions include ever new forms of non-financial Col. We also note an increasing overlap between the concepts of conflicting interests and conflicts of interest. This contributes to increasing confusion (about what should be a conflict of interest, and what not) and trends towards inflation of the concept of Col.

The field of Col is dominated by legal approaches. As regards rules in the field of Col, we can observe trends towards a) the adoption of more ethics rules and standards in different institutions and for different categories of staff/holders of public office etc., b) an "ethicalization of rules" (more laws, rules and standards in various policy fields include references to ethics and ethical standards), c) a broader applicability of ethical definitions (e.g. the term spouse) and d) the setting of stricter Col standards. Throughout the last years, trends have also been towards the adoption of more soft-law approaches, mostly as regards the adoption of more codes of ethics. Because of the limited effects of both (compliance based and value based) approaches, there is growing insecurity about the right regulatory mix, the role of self-regulation, the effectiveness of deterrence mechanisms and sanctions, the quality of regulation and the need for other political, behavioural and economical instruments.

Another challenge concern the fact that - in most countries - the regulatory landscape is highly fragmented. Many countries do not have a consolidated version of all existing rules in place. Moreover, various bodies are responsible for the monitoring of ethics policies such as various ethics commissions, ethics inspectorates, ethics commissioners, integrity officers, HR departments, audit bodies and ombudspersons. Similarly, to the legal situation, the administrative "oversight" is extremely fragmented. Member States have introduced ever more monitoring and enforcement bodies with different and often overlapping roles. Overall, the management of conflict of interest requires better administrative cooperation and enhanced interdisciplinary cooperation because it is a borderline concept in the intersection of law, politics, economy, sociology, organisational behaviour and morality. This situatedness immediately also raises the deep question of the limits of the law and traditional compliance-based approaches. Therefore, while designing new rules, policies and approaches, the early involvement of experts from various disciplines should be considered in the early phases of political decision-making.

Overall, in the field of Col, trends are towards the broadening of definitions and concepts, the adoption of more and stricter rules and standards, more investments in value-based management, and the institutionalisation of ethics policies. Despite the expansion and deepening of policies, there is no consensus regarding the mechanism by which instrument and management approach might impact output and outcomes. If in the past there were seen to be regulatory gaps and a lack of enforcement, the more recent concern is that some governments have gone overboard in building an elaborate ethics apparatus that reflects the prevailing negative assumptions about the motivations and capabilities of both politicians and public servants. Today, pursuing absolute integrity in every sense of the word, could mean that public institutions, organizations and their leaders end up pleasing no one. Further expanding the concept of conflicts of interest to include all sources of personal bias also threatens the effectiveness of conflicts of interest policies. Finally, regulating and managing ever more potential sources of conflicts of interests will impose a heavy burden on HR experts, ethics experts and

implementing agencies and authorities. Again, this does not suggest that deregulating ethics policies would be a solution. As such, being against more rules and standards is counterproductive. However, it is important to question the logic: ever more, ever stricter – ever better approach.

Therefore, the issue at the heart of the debate is not whether there is too little, too much or just the right amount of ethics. Instead, new discourses focus on the question of whether some policies and instruments are effective and what kind of institutionalization of ethics regimes is needed. At present, no EU- and national administration is equipped with the necessary resources, tools and skills to monitor Col in an efficient and effective way.

Col rules and policies are concerned with individual misconduct. Therefore, Col policies almost exclusively address individual causes of Col. This contrasts with other ethics policies such as the fight against corruption that address individual-, organizational- and systemic causes for misconduct. This individualized approach is ineffective as long as EU Institutions and Member States do not also address other causes for Col. In the future, one innovation should be to look for alternatives to the individualized “bad person” model and move instead towards an organizational integrity model in the field of Col. This means that countries and EU Institutions focus on the organisational dimensions and causes for Col.

As the concept of Col focuses on the misconduct of individuals and not, of organisations, increasingly, the management of Col requires sophisticated and complex interventions and high expertise of those who are in charge of monitoring the conduct of ministers and DG's. However, overall, individualised monitoring is difficult, complex, time consuming, increasingly costly. This all together can easily lead to an ethics- and control bureaucracy.

For a long time, ethically good or acceptable behaviour was defined in terms of rationality and law obedience. From the ethical point of view, applying the law or superiors' orders is usually not problematic. It is still a very relevant guideline for public officials, as it highlights the importance of the rule of law and loyalty to the democratically elected government. However, conflicts of interest are rarely either black or white. Often it is difficult to determine what motives have influenced a professional decision. Was it intentional, unintentional, was the decision taken with evil intentions, or not? Thus, differently to classical administrative doctrines, in reality, work (in the public sector) is not always predictable, clear, objective and rational. Instead, it is also paradoxical, individual, value-laden, emotional, pluralistic, political and unpredictable. Despite this, we are sceptical as regards the introduction of behavioural instruments in the field as this may lead to even more individualisation and a focus on personal causes of Col.

As such, detecting, managing and measuring Col policies involves some of the greatest challenges and difficulties in legal, political-, organizational- behavioural and administrative sciences. One reason for this difficulty is evident: one of the most sacred principles in the national legal systems is holding that a defendant is innocent until proven guilty of illegal behaviour. Contrary to this, conflict of interest laws are, by large, prophylactic in nature. They are meant to prevent the appearance of conflicts of interest and sanction a potential state of mind although we do not know whether a conflicted person acts accordingly. Because of this, it is difficult to prove whether a Minister or top-officials have been conflicted or whether the Col had an impact on the decision taken by the person. Col rules and policies could be more easily be justified if it could be proved that a conflicted state of mind has led to conflicting consequences. However, this is not possible. Moreover, Ministers and top-officials esteem too highly their ability to deal with their own Col. They also overestimate their capacity to deal in a conscious and impartial way with their own Col. In addition, current political trends in international politics and leadership are towards moral relativism and certain toleration of Col of leaders and ministers. The latter pose additional problems if leaders do not react as role-models. These trends

should not be tolerated. Even if we start from the assumption that (un-) ethical behaviour is contextual in some cases and it is therefore not always possible to act intentionally ethical, this is not an excuse. Governments and leaders have a duty to adhere to universally accepted values, integrity principles and political leaders must lead by example. Drivers of trustworthiness are a range of virtues that inspire trust – in particular reliability, integrity, accountability and fairness.

The Member States of the EU have no statistics and figures about the development of Col. Neither instruments nor methodologies are available to measure the development of Col over long periods of time. Compared with earlier decades, holders of public office must respect and apply many more rules and ethical standards. Still, there are reasons to believe that, by historical comparisons, ministers and top-civil servants have become more ethically aware and sensitive than before. However, as already discussed, we also note trends towards moral relativism and less acceptance of previously accepted (universal) norms. Therefore, it is impossible to state whether Col increase or decrease. New policy developments and changing concepts of governance create ever new ethical challenges and conflicts of interest. However, whereas certain ethical challenges emerge, others decrease or even disappear at the same time. Overall, the measurement of non-financial Col is more difficult to measure than for financial form of Col.

There is also no evidence whether some Member States of the EU have more Col than others. As regards longitudinal trends, almost all Member States have more rules and policies in place (higher coverage density than in 2007). In many cases, this applies to the development of revolving door issues. Member States that entered the EU in 2005 (and later) have a higher level of policy coverage density (more rules and policies in place) than older Member States. Nordic countries have fewer rules and policies in place than other EU Member States. Next, countries with higher corruption levels have more rules and policies in place (higher coverage density) than countries with lower levels of corruption. The latter can be interpreted differently: a) more rules and policies are not effective in the fight against corruption and Col, b) more rules and policies are a reaction to high levels of corruption and policies and distrust in politicians. Thus, whereas politicians call for more rules and policies in order to increase trust, this also shows that Col are also introduced as distrust measures/instruments. Indeed, some Member States with lower levels of trust in Government have a higher coverage density. However, this does not suggest that fewer rules and policies are a precondition for higher trust. Finally, we note that classical bureaucratic countries have a higher policy coverage density than countries with more (private sector like) managerial types of public administrations. In the field of disclosure policies, spouse activities are less regulated in northern countries. As regards Ministers and top-Officials, we conclude that top-officials have a similar policy coverage density than ministers, except in Belgium and Sweden.

Existing rules and policies can only be effective if EU Institutions and Member States are willing to invest in the implementation, monitoring and enforcement of rules. Although the EU Institutions and Member States place more attention on the implementation gap of Col policies than decades ago, current developments generate ever more administrative and bureaucratic burdens. This can be explained by the emergence of another vicious circle: countries accept that they need to do more (and also as regards the implementation and monitoring of policies). Consequently, they invest more in the institutionalisation of ethics policies. However, trends towards the expansion of Col policies require ever more investments and – parallel to this- create ever again shortcomings in the implementation of policies. Overall, we also note the existence of many shortcomings in the implementation of Col policies, especially because of the growing complexity of cases, and too high levels of tolerance, especially if Ministers commit Col.

As regards Col policies, the most acute implementation challenges exist as regards the management of disclosure requirements, as regards revolving-door cases and the management of Col due to side-activities and memberships (the latter mostly applies in the case of parliamentarians).

Overall, more transparency, openness, accountability, as well as more effective declarations of interests are widely applauded as remedies for public and individual deficiencies. As such, it is claimed that the more the public knows, the better people behave. Transparency and openness requirements are also popular since they are widely supposed to make institutions and their office holders both more trustworthy and more trusted. In addition, more reporting requirements about conflicts of interest should contribute positively to public trust. Unfortunately, all these suggestions are not without difficulties and important side-effects, as the main results of our survey show.

We also conclude that countries and EU Institutions have rarely anticipated the consequences of stricter and broader revolving door and disclosure policies as regards the bureaucratic and “red tape” impact on administrative burdens. Increasing revolving door cases give rise to 1) risks of a conflict of interest with the legitimate concerns of the EU Institutions and Member States that 2) that confidential information may be disclosed or misused; 3) risks that former staff members may use their close personal contacts and friendships with ex-colleagues to lobby. While (therefore) all revolving door cases need to be assessed on a case-by-case basis, greater scrutiny of moves by senior officials is imperative given the higher potential risks involved in the interests of the institution. The nature of the employment contracts also needs to be taken into consideration, whether it is a permanent official who is leaving or retiring, or a temporary or contract agent. In the case of countries that apply top-officials with limited contracts, this means fewer permanent officials and therefore a more mobile workforce with individuals who move several times in their careers between the public and private sectors, thus making managing this “revolving doors” issue more complex. This also suggests that it may be particularly important to take a more robust approach to prevent or deal with serious cases of conflict as regards employees with limited contracts, temporary agents and contract agents with access to “sensitive information who are leaving or who have left the various (EU-) Institutions. On the EU level, there is less need to focus the attention on sector switching of top-officials, at least compared to some Member States. Overall, mid-career sector switchers on the EU level concern very few cases. Instead, EU-Institutions and Member States should focus more on post-employment challenges, including Col arising if Ministers/Commissioners “leave” office, go on retirement or fulfill all sorts of new private activities. As regards post-employment, ideally, the responsible bodies should assess revolving door cases of all persons leaving the service. Moreover, these assessments should be carried out by staff who have not had any direct professional connections with the official concerned. All administrations should request leaving top-officials and Ministers/Commissioners to provide **sufficiently detailed** information in order to allow the responsible services to carry out a full analysis of the revolving door case. All administrative decisions should be set out in well-reasoned and well-documented decisions.

At this point, we wish to highlight again that, within the discussions of managing the revolving door issue, the discussions on how to effectively manage, implement and enforce policies are not keeping pace with the call for ever more standards and stricter rules. The management of revolving door issues requires a highly professional case by case assessment by experts who have the necessary skills to carry out these tasks. Most national and EU Institutions are not in the position to carry out professional and speedy assessments in each case. Often responsible administrations have very little means and incentives in place to rigorously enforce post-employment provisions. Consequently, national and EU administrations rarely prohibit former staff or politicians from any new job or activity.

Still, there is too little interest in what else happens to politicians/holders of high public office when they leave. Today, former office holders are strongly exposed to a Conflict of Interest (Col) because of

various active post office occupations. Never had former office holders so many opportunities for employment, visibility and influence. Leaving politicians are preoccupied with their historical reputes, and thus they write memoirs, teach at universities, lead charity work and foundations and search out awards and prizes. Today, there are more opportunities for former office holders than simply taking up a new “conflicting” job. Thus, we suggest that revolving door laws and rules should not only focus on post-employment conflicts and also examine other conflicts arising from other activities than professional jobs.

Often, countries shy away and act reluctantly when it comes to enforcing Col against top-level personnel. In this context, a current (academic) concern seems also to be increasing politicisation of senior appointments, both for top-officials and for Ministers/Commissioners and the neglect of Col when politicians apply for office or leave office, and this issue is by no means unique to EU institutions. Rather, it appears to be a common problem across the Western European states of the ‘old Europe’ as well as the Central and Eastern European countries.

There is no doubt that significant problems continue to occur, in the context of senior-level officials' appointments, regarding the implementation of Col rules. There is a discernible perception that some of these principles and rules, as well as ethical requirements, are at the very least being not implemented and enforced. This practice generates distrust amongst citizens. Therefore, we suggest that cases of Col of top-level leaders (including Commissioners) in the appointment process should be more rigorously monitored. Only in theory, all countries consider that appointment of senior-level officials should be based on the principles of rule of law, impartiality and merit.

Increasingly, some kind of external body for recruiting or advising on the best candidates for senior civil service positions is used as the main tool in ensuring political neutrality and objectivity in the appointment of senior-level officials. However, also here, practice differs; appointment procedures are often carried out in opaque and complex ways. Overall, little is known as to appointment committees in general and how Col are dealt with in these committees.

Whereas in some countries, selection committees are still internal bodies and ministers enjoy a great amount of discretion in decision-making, more countries have decided to create independent selection boards and introduce specific monitoring procedures. Both models raise important questions about how to best manage conflicts of interest and political discretion in the appointment process and combine this with the need for neutral expertise in the appointment process.

Overall, any internal form and self-regulation have the advantage that it is simpler, easier and less conflictual. However, arguments in favour of the introduction of more transparent and independent structures outweigh the critical points.

Therefore, current trends in the field of appointment policies of top-officials are indeed towards the introduction of more independent scrutiny and monitoring. However, often, the term “independent ethical committee” hides that, in fact, it is not an independent committee (see Art. 12, para. 4 of the Code of Conduct for the Members of the European Commission, OJ of 21.2.2018 (2018/C 65/06))

For the EU level, this study also recommends a series of measures to enhance the appointment process of commissioners, including inter alia:

- As regards the role of the European Parliament, we suggest that the responsible parliamentary committee should be given more time to evaluate potential Col of designate Commissioners (including giving a clear time frame).
- However, overall, we suggest that the evaluation of potential Col of designated Commissioners should be de-politicised. To this end, we suggest the setting up of an external and independent appointment committee.

- We suggest the introduction of this independent Col appointment committee in the premises of the European Court of Auditors.
- During each nomination (phase) of Commissioners designate, this appointment committee should verify and monitor revolving door Col of Commissioners designate. If the committee concludes that candidates violate existing norms and rules, the nominating Member States shall take into account the opinion of the committee while proposing an alternative.
- The findings of this committee should be made public.
- We also suggest that the EP uses more extensively another – so far – widely underestimated tool of political control. This is its power to establish committees of inquiry.

Overall, conflicts of interest policies are ineffective if ethics policies are not integrated into other policies and if they fill the gap of ever new “unethical” effects of other Governance logics. If ethics policies and ethical logics are not integrated into other organizational and systemic logics, too much is expected of ethics policies. In fact, Governments and EU administrations are advised to focus on Good Governance policies and on the development of institutional integrity models, considering concepts of organizational justice and fairness. Because of the limitation of this study, we also suggest to further study the link between Good Governance, the rule of law, the state of democracy, the state of government integrity and the acceptance and toleration of Col policies and corruption. For example, the toleration and shortcomings in the implementation and enforcement of Col are higher in countries with lower ratings in democracy, rule of law, transparency, good governance etc. Overall, systems based on Good Governance have lower tolerance levels for unethical conduct. Contrary to this, countries with lower ratings in democracy, rule of law and integrity also have higher levels of acceptability of corruption.

Overall, ethics policies are becoming more and more politicised and slowly emerging as a perfect policy field in electoral campaigns. The downside of this development is that it becomes more difficult to avoid that ethics as a policy issue is abused as moral stigmatisation. On the EU level, high-level Col cases are easily abused by populists. Overall, ministers and top-officials are subject to increased public and media scrutiny and an exponential rise of ethical and moral scandals. While it can be doubted that holders of public office have become more unethical as such, a generalised and inflated use of the term moral scandal, the increased (digital) media visibility of scandals and the political abuse of moral issues have negative side-effects on trust perceptions. .

1. GENERAL INFORMATION

KEY FINDINGS

For a long period of time, the field of conflict of interests (Col) was dominated by legal approaches. In the meantime, there is growing insecurity about the right regulatory mix, the role of self-regulation, the effectiveness of deterrence mechanisms and sanctions, the quality of regulation and the need for other political, behavioural and economical instruments. Today, the issue at the heart of this debate is not anymore whether there is too little, too much or just the right amount of ethics. Instead, new discourses focus on the question of whether some policies and instruments are more or less effective and what kind of institutionalization of ethics regimes is needed. As this study also shows, good governance is strongly related to the effectiveness of Col policies. Overall, effective institutionalisation and implementation of Col policies pay off.

Compared with earlier decades, holders of public office must respect and apply many more rules and ethical standards. Overall, ministers and top-officials are subject to increased public and media scrutiny and (an exponential rise of) ethical and moral scandals. While it can be doubted that holders of public office have become more unethical as such, a generalised and inflated use of the term moral scandal, the increased (digital) media visibility of scandals, and the political abuse of moral issues have negative side-effects on trust perceptions. Increasingly, anti-corruption and moral campaigns against the elites have helped populists far more than it has helped politicians genuinely committed to fighting anti-corruption and conflicts of interest. On their side, politicians continue to promise ever higher ethical standards as a means to gain political and public support. Therefore, ethics measures are often introduced by politicians with an eye on the perceived problem of decreasing public trust in their own political class. The intention of increasing public trust, however, is rarely met in reality.

This survey concludes that the problem is not so much the people and the development of individual causes for unethical behaviour. Instead, the problem is that the concept of Col becomes ever broader. Consequently, implementing Col is also becoming more complex and bureaucratic. Overall, the expansion of Conflict of Interest (Col) systems pose challenges to those who implement and enforce Col. Unfortunately, the focus is still on the adoption of ever more and ever stricter policies. Overall, shortcomings in the implementation of policies are neglected.

Still, if in the past there were seen to be regulatory gaps and a lack of enforcement, the more recent concern is that some governments have gone overboard in building an elaborate ethics apparatus that reflects the prevailing negative assumptions about the motivations and capabilities of both politicians and public servants. Today, trying to be ethical in every sense of the word, could mean that public institutions, organizations and their leaders end up pleasing no one. However, this does not suggest that deregulating ethics policies would be a solution. As such, being against more rules and standards is also risky – from a political point of view. However, it is important to question the focus on individuals and the ongoing logic: ever more, ever stricter – ever better approach.

Because other things are more important than ethics and trust, ethics and trust are more important than any issue (D. Thompson)

"We expect nothing less than exemplarity from public-office holders. (...) in too many countries we are witnessing corruption or unethical behaviour by the very persons who are in charge of our public institutions. This lowers trust in and respect for such institutions which, in turn, erodes democracy, Human Rights and the rule of law. We should not be surprised then if there is an increased distance between the people and their public institutions. This is intensified by

the fact that people's growing expectations with respect to exemplary conduct by public office holders have increasingly been disappointed over recent times. The many mass demonstrations which have taken place in 2019 in Europe and around the world to call for justice and hold public office holders to account are a testament to this. Politicians, irrespective of their political affiliation, need to lead by example as it is exemplarity which is expected from them. After all, politicians are meant to serve, not to rule, the people" Marin MRČELA, Vice-President of the Supreme Court of Croatia, President of GRECO, Council of Europe.

1.1. Introduction: Conflicting interests and Conflicts of Interest in a changing world

In 2020 the European Parliament commissioned the University of Vaasa to undertake a comparative study entitled: "The Effectiveness of Conflict of Interest Policies and Practices for Ministers and Top-officials in the Member States of the European Union" while taking into account the above-mentioned developments. According to the mandate given by the European Parliament the main purpose of this study is to analyse and compare the effectiveness of the various rules and standards of professional ethics contained in the laws, regulations, or codes of conduct for ministers and top-officials. Another point of interest for the European Parliament was to receive advice and suggestions as to the nomination procedure of EU Commissioners and the management of Conflicts of Interest (Col).

As we will see, studying the effectiveness of Col policies for Ministers and top-officials cannot be done without considering the wider political and societal context.

Already three months after the outbreak of the Coronavirus in China, the OECD¹ published a policy paper entitled "Public Integrity for an Effective COVID-19 Response and Recovery", which discussed the problem of rising integrity violations that undermine recovery efforts. The "COVID-19 crisis is obliging governments to make quick decisions and implement drastic measures to protect communities at risk and limit the economic consequences that will follow. Past crises have shown that emergencies and subsequent rapid responses create opportunities for integrity violations, most notably fraud and corruption, seriously weakening the effectiveness of government action".²

As the COVID-19 crisis shows, new policy developments and changing concepts of governance indeed create ever new ethical challenges and new forms of unethical behaviour and conflicts of interest. Whereas certain ethical challenges emerge, others decrease or even disappear at the same time³ but then again new solutions arise, and new ideas emerge how to proceed. New rules and standards, growing media attention, new innovative managerial approaches, and trends towards the monitoring of Col policies continuously shape the Col landscape. Still, there is no final solution to the problem as such, but many initiatives are taken and reforms are being implemented in order to tackle the existing challenges.

Recent trends have been towards the "ethicalization" of (EU-) laws⁴, the expansion of ethics policies, the adoption of more and stricter standards, more investments in value-based management, the institutionalisation of ethics policies, the implementation of policies, and the monitoring of ethics policies. The EU Institutions and the Member States have also introduced new and more oversight-, monitoring- and enforcement bodies such as ethics committees, ethics inspectorates and specific audit

¹ OECD, (2020), Public Integrity for an Effective COVID-19 Response and Recovery, OECD-Paris.

² Ibid.

³ Demmke, C., (2006), Ethik und Integrität in den öffentlichen Diensten in Europa, in: Zeitschrift für öffentliche und gemeinwirtschaftliche Unternehmen. Vol. 29, pp.68-84.

⁴ Frischut, M., (2019), The Ethical Spirit of EU Law, Springer Open.

bodies, nominated experts in the field of ethics such as ethics commissioners, integrity officers, or ombudspersons and allocated new ethics responsibilities in HR departments. Despite the fact that responsibilities are highly fragmented, Col policies are nonetheless a subject of great activity and expansion. Does this also mean that policies have also become more effective?

Until today, neither instruments nor methodologies are available to measure the development of ethical behaviour and Col over long periods of time. Still, there are reasons to believe that, by historical comparisons, ministers and top-civil servants have become more ethically aware and sensitive than before. Compared with earlier decades, holders of public office must respect and apply many more rules and ethical standards. Ministers and civil servants are subject to regulation by their constitutions, penal law, disciplinary law, civil service laws and various ethics laws, regulations and codes (often with different applicability for different holders of public office and public officials). Whatever a minister does, it rarely escapes the eye of the public (and social media).

As long ago as 2000, Paine published "Does Ethics Pay?" and discussed the added value of ethics.⁵ Since then evidence is mounting that ethic management is related to government and organizational performance although significant methodological and theoretical challenges still exist. Methodologically, there is no consensus regarding which practices constitute a theoretically complete set of ethics policies, how to conceptually categorize these practices; the definition of ethical performance, the link between ethics and organizational costs/benefits, discussions on the effectiveness of incentives; or how ethics and ethical leadership are to be measured. However, research as regards the link between ethics policies, ethics management, ethics culture and organisational performance concludes that ethics pay off. Also, many studies link ethical leadership and ethical culture to organizational performance and come to positive conclusions. Thus, ethical governance correlates with organisational performance. On the other hand, high organisational performance correlates with organisational justice and the ambition to secure equality of opportunity including the elimination of favouritism, privileges, and discrimination. As we will see in this study, Governments with high levels of integrity, strong democratic systems and systems based on the rule of law are also less tolerant of corruption and Col. Vice versa: The more a country disrespects the principle of democracy and the rule of law, the more it also tolerates corruption and Col.

Ethical Governance is Good Governance which again is based on impersonal treatment, the rule of law, impartiality and principles of democracy. Ethical and Good Governance (Rothstein) is about the implementation of principles of ethical universalism. It is Governance above partial interests, a "state becoming autonomous vis-à-vis private interests, and thus able to treat citizens equally and impersonally". Similarly, to this, Dahlström & Lapuente⁶ show that countries with low levels of politicization and strict attention to policies that are merit-based and impartial score better on Governance Performance indexes.

According to Mungiu-Pippidi⁷, ethical universalism is an important element of Good Governance. Mungiu-Pippidi defines ethical universalism as systems in which all "persons ought to be treated with equal and impartial positive consideration for their respective goods or interests" and as systems that respect ethical universalism as equity, providing equal outcomes to people who make equal contributions, as reciprocity, calling for fairness and as impartiality as a rejection of favouritism.

⁵ Paine, L.S., (2000), Does Ethics Pay? Business Ethics Quarterly, Vol. 10, No. 1, pp. 319-330.

⁶ Dahlström, C., & Lapuente, V., (2017). Organizing Leviathan: Politicians, bureaucrats, and the making of good government. Cambridge, U.K.: Cambridge University Press.

⁷ Mungiu-Pippidi, A., (2020), The Rise and Fall of Good Governance Promotion, Journal of Democracy, Vol. 31, 88-102.

However, almost all recent Governance indexes show worrying trends in the fields of democracy, justice, human rights, rule of law, corruption, politicization, inequality, and the freedom of the press. For example, the so-called “transformation Index” of the Bertelsmann Foundation shows, trends in many countries are rather towards “bad governance”.⁸ Trends are also towards the decline of moral and leadership in international politics, the decline of universal (administrative) models, the blurring of boundaries between the public and private sector, and the emergence of ever new value conflicts.

During the past years, the conviction grows that there is no truth, objectivity, and rationality, but instead diversity, best-fit, context, contingency, nominalism, bounded rationality, and individualism. The problem with this trend towards relativism and destandardisation is the parallel decline of universal standards and basic moral principles. Moral relativism deprives us of moral confidence, of the sense that we are right to condemn the actions of wrongdoers, and relativism removes the sense of conflict between apparently conflicting moral judgments that since they are relative, they do not really conflict, or the conflicts do not really matter.⁹

Finally, research in the field of public service ethics concludes that corruption is on the rise¹⁰, politicisation in public services is increasing.¹¹ In addition, national public management reforms differ, and outcomes of reforms are, at best, critical¹², especially in central- and eastern European countries.¹³ Of course, the latter does not suggest that the situation looks much brighter in other countries.

However, in all EU Member States and in the EU Institutions, there is a common understanding that policies, rules, and standards are necessary in order to control and manage conflicts of interest of elected representatives and top executives.

Strangely enough, within this contradictory context, many people come to study conflicts of interest policies as a purely legal-, administrative- and technical issue and expect to find best-practices, detailed laws, rules, standards, and standardised advice governing the behaviour of people, organizations and systems. These people will be disappointed!

As we will also see in our study, discussions about conflicts of interests challenge many popular assumptions, increasingly puts into question traditional assumptions about the effects of good governance and integrity policies, and leave us puzzled as to the outcomes of reforms in this dynamic policy area.

As regards Ministers and Directors-General, we doubt whether it is possible to measure whether they have become more unethical as such and then whether it makes sense at all to study the underlying reasons for this. Contrary to this, a generalised and inflated use of the term moral scandal, the increased (digital) media visibility of scandals and the political abuse of moral issues have negative side-effects on perceptions. Consequently, anti-corruption and moral campaigns against the elites have helped populists far more than it has helped politicians genuinely committed to fighting anti-corruption and conflicts of interest.¹⁴

⁸ Bertelsmann Foundation, (2020), Sustainable Governance Indicators, <https://www.sgi-network.org/2019/>.

⁹ Lukes, S., (2008), *Moral Relativism*, Picador, New York, 18.

¹⁰ Mungiu-Pippidi, (2020).

¹¹ Blomeyer, R. & Demmke, C., (2020), Criteria and Instruments for the Appointment of Top-Officials in the EU Member States and the EU Institutions, *Journal of Human Resource Management*. Vol. 1.

¹² Demmke, C., (2016), *Doing better with Less?* Peter Lang, Frankfurt/M.

¹³ Mazur, S. et al., (2020), *Public Administration in Central Europe*, Routledge, London.

¹⁴ Mungiu-Pippidi, (2020), 100.

In this survey, we focus on the changing context of Col policies, the implementation of Col policies and how Col are dealt with in a context of growing complexity, contradictions and innovation. Is Col still a matter for lawyers? Should we continue and consider Col mainly as a legal concept and continue to adopt laws, rules, and legal standards to prevent and combat Col? How to distinguish conflicting interests and Col? How to address the constant expansion of issues, the development towards stricter requirements in the field? How to link the adoption of strategies and the effective implementation and monitoring of concrete issues? How to fight flagrant violations of standards?

Before we address these issues, we also wish to emphasize that the study of integrity policies cannot be done with absolute predictivity since the multiplicity of variables and factors is too great to predict precisely the impact of expectations, pressures, rules, and policies on individuals, organizations and (political) systems. Therefore, it may be wise to be careful when defining best-practices in the field. Instead, especially Col policies need a context-based- and best-fit-approach.

1.2. Evaluating the Effectiveness of Col policies

In this study, we do not take an interest in individual motives for unethical action and individual causes for unethical behaviour. We argue that – despite current trends towards a return of the so-called “bad apple” logic (meaning: individuals are the main cause for unethical behaviour) – we doubt whether conflicts of interest policies can be effective at all if they focus on individuals. As such, we plea for a stronger focus on institutional integrity.

Thus, the purpose of this study is to focus on the analysis of the effectiveness of institutional features, rules, policies, and standards in the field of Col. This is particularly difficult. As we will see in this survey, the expansion of Conflict of Interest (Col) systems and the implementation, monitoring, and enforcement of conflicts of interest pose ever new challenges. If in the past there were seen to be regulatory gaps and a lack of enforcement, the more recent concern is that some governments have gone overboard in building an elaborate ethics apparatus that reflects the prevailing negative assumptions about the motivations and capabilities of both politicians and public servants. Today, trying to be ethical in every sense of the word, could mean that public institutions, organizations and their leaders end up pleasing no one.

As Anecharico & Jacobs noted already years ago: “the public standard of morality has also become much stricter.... Previously accepted conduct...is now deemed unethical and previously unethical conduct is now deemed criminal”.¹⁵

This does not suggest that deregulating ethics policies would be a solution. In fact, it would be the wrong answer to a very complex challenge. The issue at the heart of this debate is also not whether there is too little, too much or just the right amount of ethics. Instead, new discourses focus on the question of whether some policies and instruments are effective and what kind of institutionalization of ethics regimes is needed.

However, the increasing (media) interest in Col has not yet produced more clarity and consensus on what good governance means in the field of Col in different countries, contexts, situations, about different sectors, categories of staff and as regards the right choice of policy instruments. More work is

¹⁵ Anecharico, F. & Jacobs, J.B., (1996), *The Pursuit of Absolute Integrity*, Chicago and London: The University of Chicago Press, 4.

also needed as regards what types of rewards or penalties work best to create incentives for responsible and accountable behaviour, including the search for improvement.¹⁶

Finally, more ethics policies do not necessarily mean better ethics policies. During the past years, trends have been towards an “ethicalization of EU and national law”.¹⁷ Ethicalization means that ever more laws, regulations and administrative provisions refer to ethical requirements and ethical standards. Take the case of health policies or other issues like digitalisation or artificial intelligence). Moreover, as we will see in the empirical part of this survey, ethics policies have also become broader and standards have become stricter. Also, the implementation of ethics policies is more professional than years ago. It has also become more costly. In the meantime, all countries find themselves in a process of institutionalisation of ethics policies. Increasingly, these policies are managed by experts and more professional than ever before.

However, most ethics policies are still a “plug-in policy” that fills the gaps that other policies and other governance logics produce. For example, if mobility between the public and private sector is enhanced, governments change faster, politicians accept lucrative post-employment activities and the delivery of public services leads to a further “blurring” of boundaries between the public and private sector, even the best policy is doomed to fail and “revolving door cases” continue to increase.

Also, the new attention to monitoring the effectiveness of ethics policies illustrates a huge paradox: On the one hand, there have never been so many efforts to quickly adopt and regulate new Col policies and instruments, mostly after the revelation of new scandals. On the other hand, scientific evidence about trends and data as well as about the measurement, impact, and effectiveness of the different reforms, measures, and instruments are still lacking. Moreover, there is still no consensus regarding the mechanism by which instrument might impact on output and outcomes. In which situation, in which sector and as regards which instrument is a law, rule, code, standard better suited than awareness-raising, transparency, the change of accountability requirements, or simply the call for ethical leadership? And what could be the role of new behavioural instruments?

Therefore, also recent trends in the field of conflicts of interest policies indicate a growing interest in these trends and in evaluating the effectiveness of integrity policies, powerful forms of institutionalization of ethics, and the right design of ethics infrastructures. Driven from insights of implementation theory, there is growing awareness that – when designing effective instruments – there must be a connection between the design of policies and the implementation of policies. This means that any instrument should be tested (ex-ante) whether it can be implemented and enforced. So far, the focus has been on regulation which is still the preferred instrument in the field. In most countries, Col is a purely legal concept. We will come back to this. Because of this tradition, it is an important question of whether Col can be a suitable field for regulatory and managerial innovation.

Or, should conflict of interest be a legal question at all, or rather one of virtue?¹⁸ What about introducing other instruments in the field like, for example nudging, new digital approaches in enforcing wrongdoings?

Answers to these questions are not that simple, because individuals deal with conflicts of interests differently and depending on individual moral development, moral awareness, and moral identity.

¹⁶ Jarvis & Thomas, (2009), 11.

¹⁷ Frischut, M., (2019), *The Ethical Spirit of EU Law*, Springer Open.

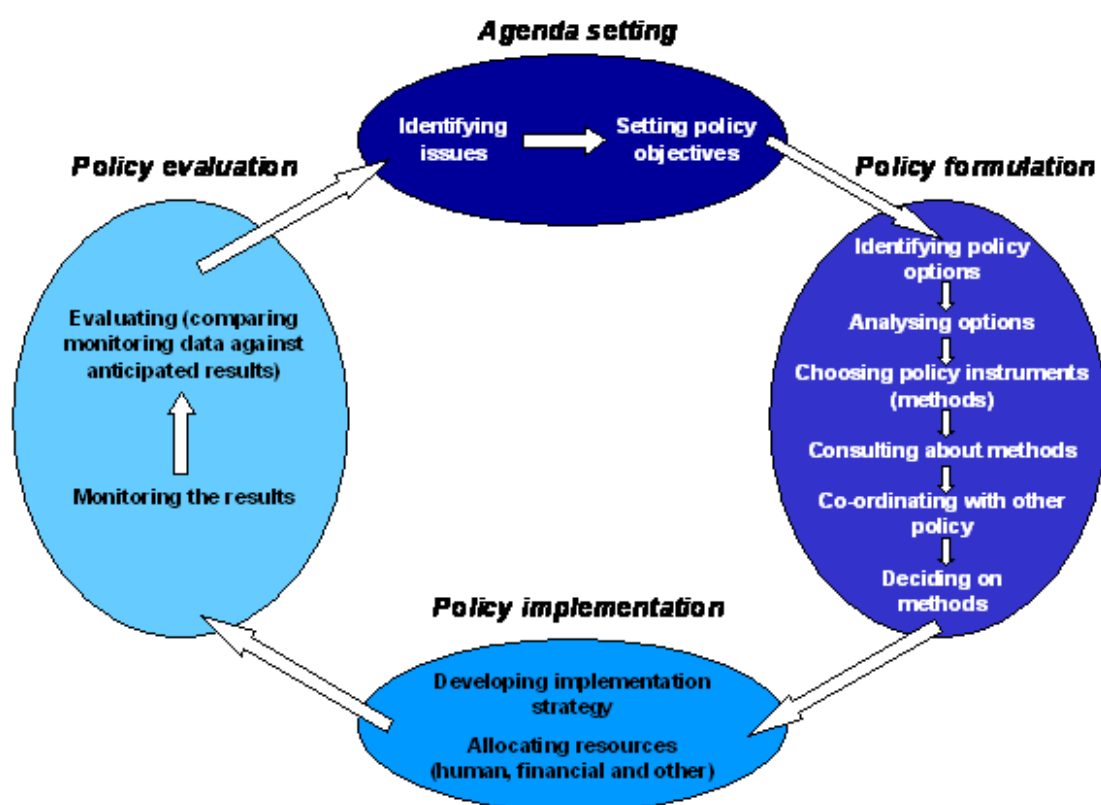
¹⁸ Peters, A. & Handschin, L. (eds.), (2012), *Conflict of Interest in Global, Public and Private Governance*, Cambridge, Cambridge University Press, 404.

Overall, it is much easier to predict the existence of potential Col than to know whether a person is in an actual Col.

1.3. Conflicts of Interest in times of societal change and innovation

Effective Col policies are supported by political processes that support ethics policies from the design of the policy (or instrument) to its implementation and enforcement. Ideally, the decision-making process in the field of ethics policies can be defined as a policy cycle or a political process in which ethics policies are designed, adopted, implemented, enforced and evaluated. The policy as such can be evaluated as to whether it has attained (or not) the objectives and according to its outcomes. The input includes the agenda-setting and the policy formulation phase, the adoption of rules and laws, principles and codes, models, and instruments. The policy implementation phase includes all managerial and organisational tasks, including the distribution of roles, functions, coordination mechanisms, structures. In administrative practice, judging and evaluating (the effectiveness of) Col is a tremendously difficult task. Managers, HR officers and integrity experts spend hours, days, if not months or even years with the monitoring of specific Col cases. The output includes monitoring, reporting, and enforcement of policies, and includes all issues as regards the implementation of the input policies and the evaluation of policies.

Figure 1: Ethics Policies from a Policy Cycle Approach



Source: Demmke & Moilanen, 2012

In the field of ethics, for a long time, the focus has been on the input of ethics policies (including the agenda-setting process and the policy formulation, until the adoption of rules).

Politicians and public managers typically approach ethics from the utilitarian perspective. They try to make ethical decisions that benefit the greatest number of employees, or voters. The current political

climate seems to be more favourable for ethics politics and moral politics. One reason for the growing respectability of ethics is, no doubt, that politicians have discovered that moral talk, and moral action is popular and helps them to gain political support. In many countries, populists and authoritarian leaders are popular because of their anti-elitists and anti-corruption agendas and because people are distrustful of the powerful and of politicians, political parties, and public authorities. Like this, anti-corruption and integrity policies are abused as political stigmatisers.

Therefore, in all countries, the difficulty of managing conflict of interest, to some extent has also to do with these trends and challenges: evolving attitudes, increasing expectations, changing trust levels, political change, economical- and societal change, sometimes abrupt change.

Currently, societal developments towards more individualization, informalization, digitalization, internationalization, and intensification are also related to new integrity risks in the public sector¹⁹. Also, societal developments present ever new challenges, conflicts, and dilemmas. In *"What money can't buy"*, Sandel suggests that the "marketization" of societies leads to ever new forms of moral and ethical dilemmas and conflicts.²⁰ On the other hand, other experts believe that the COVID-19 crisis has led to a revival of the Leviathan – the strong, authoritarian and protective state and also towards a change of "moral politics".²¹ In this context, others like Gros²² discuss the overriding importance of "security" as the top-political issue in the next years which will also have implications on the regulation of ethics policies and side-effects on whistle-blower policies and transparency requirements. Moreover, trends towards a sharing economy, differentiation, digitalization, inequality, and individualization have an impact on perceptions of fairness, attribution, and justice: "The age of standardization and the decline of patronage government were well suited for the belief in and practice that equal treatment for all is fair treatment. Postmodern societies along with ethnic, racial, gender, and age diversity have challenged elected officials and administrators around the world to rethink how to treat people unequally and yet to be fair".²³ Thus, countries have become more meritocratic but, at the same time, more polarized, producing ever more conflicting interests. In *"The Responsible Administrator"* Cooper²⁴ argues that "we are in a time of transition in which the modern heritage of public administration is increasingly in conflict with a postmodern model"²⁵.

Other societal trends are important for understanding the effectiveness of ethics policies such as Col policies: Whereas key phenomena of modernity are assumptions about universal values, absolute values, bureaucracy and rationality, currently, trends are towards "moral relativism" which puts into question important universal concepts such as "the rule of law", "the principle of democracy", "universal human rights" and "supranationalism". As it seems, "assumptions about objectively real and universal human nature, or natural law, or absolute values and ultimate truths (...) no longer hold..."²⁶.

¹⁹ Van Veldhuisen, A. & Snel, D., (2014), Integriteit in Ontwikkeling, Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, Den Hague.

²⁰ Sandel, M., (2012), *What Money Can't Buy: The Moral Limits of Markets*, Farrar, Straus and Giroux.

²¹ Hurka, Steffen; Knill, Christoph; Rivière, Léonie (2018): Four Worlds of Morality Politics. The Impact of Institutional Venues and Party Cleavages. In: *West European Politics*, Vol. 41, Nr. 2: S. 428-447

²² Gros, F., (2015), *Die Politisierung der Sicherheit*, Matthes & Seitz Berlin (original in French).

²³ Menzel, D., (2011). *Ethics and Integrity in the Public Service*. In: D. Menzel & H.L. White (eds.), *The State of Public Administration*, London: Sharpe.

²⁴ Cooper, T.L., (2006), *The responsible administrator*, Jossey Bass, 5th edition.

²⁵ Cooper, op cit, p. 45.

²⁶ Cooper, op cit, p. 46.

Today, “individuals play multiple public and private roles with accompanying tensions between their conflicting demands”.²⁷ Already, from a personal dimension, leading an ethical life is confronted with many challenges, ethical conflicts, and value dilemmas. Not only for ministers and top executives. Buying ethically, investing ethically, eating and drinking ethically, traveling ethically, driving ethically, raising your children ethically... In “*A life stripped bare. My year trying to live ethically*”, the journalist of the British Guardian, Leo Hickman tries.²⁸ His novel is a breath-taking illustration of how difficult, if not impossible, it is to live ethically in the 21st century. “It is easier to teach, preach, study, advocate, debate and publish ethics than to practice ethical living”, especially in times of rapid change and in times of crisis. However, this should not be interpreted for a justification for unethical deeds. It simply means that judging the behaviour of others’ is no easy task and should be done with caution. This call for caution stands in contrast to current trends towards ever more scandal reporting and personal accusations. Often, politicians and media have very strong opinions about – often – very complex issues.

In fact, one of the most sacred principles in the national legal systems is holding that a defendant is innocent until proven guilty of illegal behaviour. Contrary to this, conflict of interest laws are, by large, prophylactic in nature. They are meant to prevent the appearance of conflicts of interest and sanction a potential state of mind although we do not know whether a conflicted person acts accordingly. Thus, the conflict is a state of mind of a person. Because of this, it can hardly be proved whether a Minister or top-official has been conflicted or whether the Col had an impact on the decision taken by the person. Col rules and policies could easily be justified if it could be proved that a conflicted state of mind has led to conflicting consequences. However, this is not possible. Because the doctrine of Conflicts of Interest is at the intersection of law and morality, the problem with conflicts of interest laws and policies is that they easily become a “politicized” moral stigmatizer, however in reality, the public debate should focus on law and rational facts.

Although the concept of conflicts of Interest is related to intrapersonal conflicts, the emergence of conflicts of interest is strongly influenced by other societal and institutional developments. Currently, in all countries, we observe trends towards the blurring of boundaries between the state of society, government and citizens, public and private sector, work and leisure time, office and homework, etc. These trends have implications on the development of conflicts of interest.

²⁷ Rose-Ackerman, S., (2016), Corruption and conflicts of interest, in: Jean Bernard Auby/Emmanuel Breen/Thomas Perroud (Eds.), *Corruption and Conflicts of Interest, Studies in Comparative Law and Legal Culture*, 3.

²⁸ Hickman, L., (2006), *A life stripped bare. My year trying to live ethically*, Eden. See also A. L. Allen (2004), *The New Ethics*, Miramax, New York.

Table 1: Societal Developments and Conflicts of Interests: Blurring of Boundaries

Distinction between state, government, and society	Emerging conflicts of interest's due to reversal of governance logic: state is for the citizens and not vice versa
Distinction between public and private sector	Emerging conflicts of interest's due to increased interaction
Distinction between public administration and citizenry	Emerging conflicts due to interaction amongst citizen interests and public administration
Distinction between public service delivery by public sector and public service delivery by (semi) private actors	Emerging Col due to more lobbying, corruption, public and private interaction, communication
Distinction between professional and private life, office and homework	Emerging Col because of blurring of professional and private roles and interests
Distinction between centralized and monolithic administration and collaborative management	Emerging Col because of increasing contacts, communication, networking, collaboration
Distinction between Weberian civil service and private sector employment	Emerging Col because of facilitated public private interaction, more mobility, short term contracts
Distinction between homogenous employment and representative anti-discriminatory employment	Emerging loyalty conflicts because of conflicts between the concepts of representativeness and merit
Distinction between cultural homogeneity and traditional nationality and cultural diversity and changing citizenship, dual nationality, migration, open public employment	Emerging loyalty conflicts due to developments towards more diversity
Distinction between traditional values such as secrecy, confidentiality, closeness, and emerging values openness, transparency, right to information	Ever new value conflicts because of emerging new values and mixing of values
Distinction between Public Administration Reform and Private Sector Reform disappear	Focus in public management reform produce new value conflicts, focus on efficiency and autonomy vs. fairness, equity, quality; paradoxes and unintended consequences of reform outcomes

Overall, Col also develop in the context of changing values as value conflicts.²⁹ Overall, value conflicts are increasing.

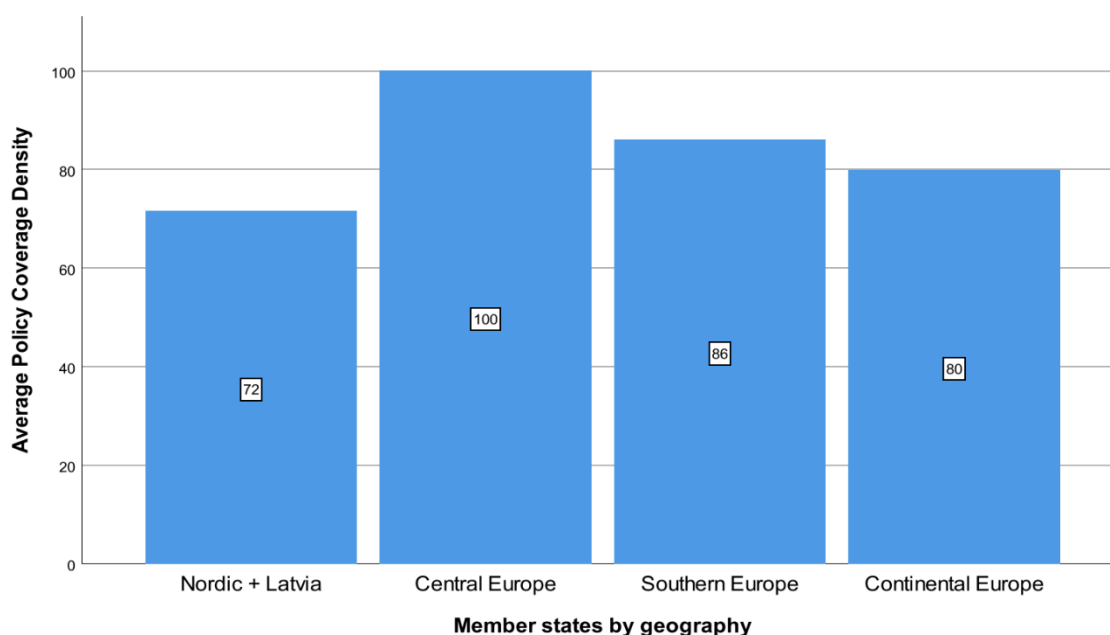
²⁹ De Graaf & van de Wal, (2008), de Graaf, G./van der Wal, Z. 2008. On value differences experienced by sector switchers, in: *Administration and Society* 40(1), 79.

On the other hand, in today's discussions on public values, it is too often assumed that there is one set of public sector values versus private sector values³⁰, whereas research shows that values increasingly differ in different organizations and "among the organizations within each sector".³¹ Of course, differences exist between public and private sector values: De Graaf and van de Wal show that the values of profitability, competitiveness, and customer orientation have a greater influence on business decisions; in public organizations, values such as legitimacy, lawfulness, accountability, and impartiality play a larger role.

However, differences between public and private sector values are becoming less, but – at the same time – the future will be dominated by more value conflicts and newly emerging values.

Experts also accept that the geography of a country is linked to conflicts of interest's policies. Overall, Nordic countries have fewer rules in place as regards the most important Col policies than Central European-, Southern European- and Continental European countries. This feature applies similarly to Ministers and to top-officials.

Figure 2: Member States policy coverage density as regards the most important Col for Ministers by geography



Source: Own calculations by the authors based on the information/data received from the Member States of the EU

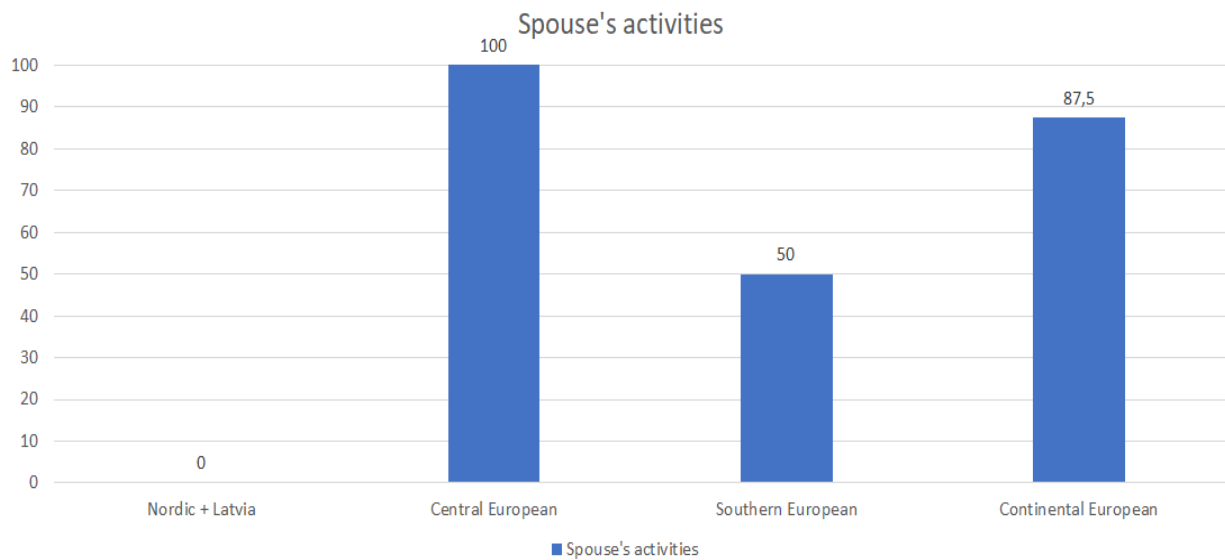
Within this, it is also important to note that these differences can be best seen as regards specific Col policies. For example, Nordic countries have no rules in place as regards spouse activities (for example obligations to declare income, or assets), whereas this issue is very densely regulated in central European countries as well as continental European countries. This, again, can be explained by the fact

³⁰ Van der Wal, Z. & van Hout, E. Th., (2009), Is public value pluralism paramount? The intrinsic multiplicity and hybridity of public values, in: *International Journal of Public Administration*, Vol. 32, 3-4/2009, pp. 220-231, 231.

³¹ Van Thiel, S., & van der Wal, Z., (2010), Birds of a feather? The effect of organisational value congruence on the relationship between ministries and quangos, in: *Public Organisation Review*, Vol. 10 No 4/2010, pp. 377-397.

that Nordic countries are much more careful when balancing privacy rights with obligations to disclosure private interests.

Figure 3: Policy Coverage Density as regards Spouse Activities for Ministers (without Belgium)



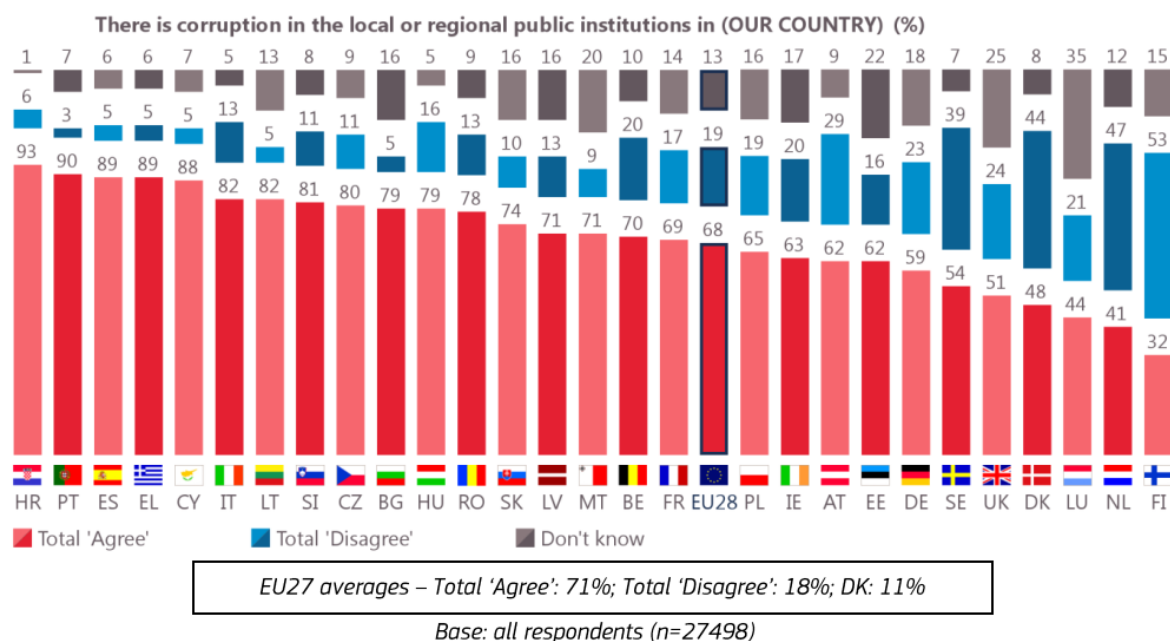
Source: Own calculations by the authors based on the information/data received from the Member States of the EU

Moreover, the size of the country influences the density of contacts, networks, communication and “friendships”.

The greater directness and frequency of their relationships with citizens offer temptations that test the integrity of local politicians and public servants. Considering these factors and the place of local government in society, the integrity of local politicians and public servants deserves extra vigilance.³²

³² Klitgaard, R., & MacLean-Abaroa, R., (2000), *Corrupt Cities: A Practical Guide to Cure and Prevention* World Bank Publications.

Figure 4: Attitudes regarding corruption in member states

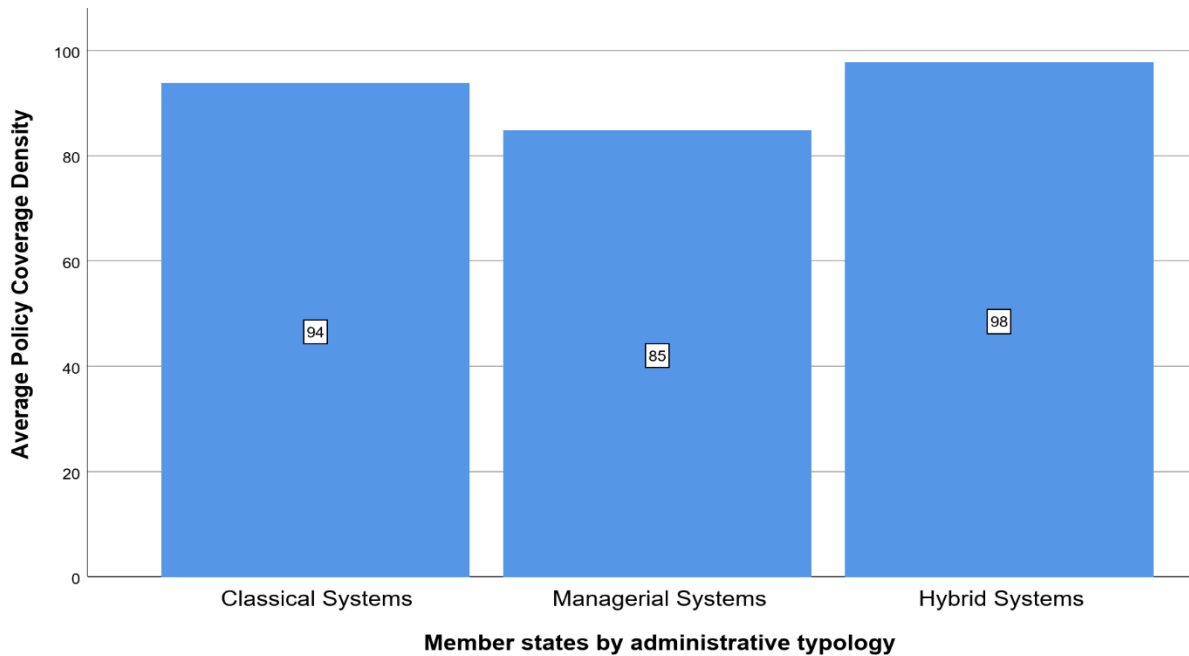


Source: Eurobarometer, 2020, Special Report Corruption

Also, close relations between the political and the private sector are very sensitive and give cause for conflicts of interest. With increased contacts between those two sectors due to the increasing trend towards private-public partnerships, conflicts of interest situations are becoming more frequent. The latter may also be a greater problem in small countries, or in institutional contexts where people have close personal contexts and “micro-politics” (Neuberger) play an important role.

This also relates to the role of public administration and public management as such. As regards effectiveness, the role of public administration in the implementation of conflicts of interest policies is crucial. Effectiveness depends on capacities, expertise, information, coordination, resources, leadership, technology, culture and motivation. However, we also note a clear connection between the type of administrative system and the policy coverage density. To be more precise, if countries have a classical bureaucratic system this is also an indicator for the (higher) number of rules and codes in place. So-called bureaucratic career systems and hybrid systems have more highly regulated Col systems than more private-sector like managerial systems. This feature applies, both, to Ministers and to top-officials.

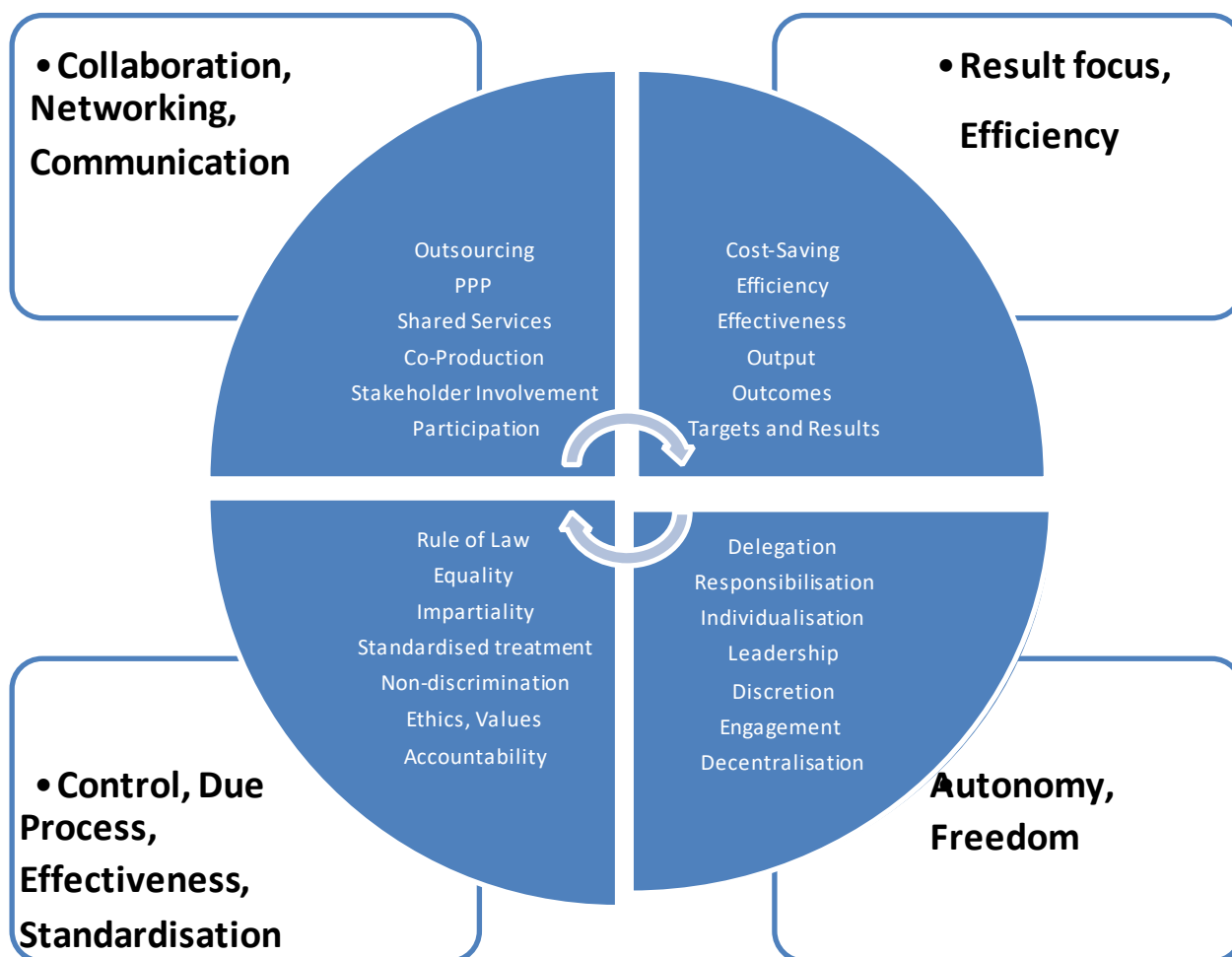
Figure 5: Policy Coverage Density and administrative typology for Ministers (without Belgium)



Source: Own calculations by the authors based on the information/data received from the Member States of the EU

Nowadays, in the field of public management, decision-making is less hierarchical, employment conditions are more flexible and destandardised and the public- and political systems are less separated from the citizenry. Whereas the term bureaucracy represented clear values, such as hierarchy, formalism, standardization, rationality, and obedience, new forms of governance imply conflicting values and value dilemmas. For example, public governance and management reforms try to achieve several, often conflicting reform objectives at the same time such as more efficiency, more effectiveness, better quality, control, autonomy, and flexibility, etc.

Figure 6: Conflicting Public Policy Objectives



So far, evidence about reform effects and reform outcomes concludes that the varieties of post-bureaucratic governance or New Public Management continue to be challenged owing to the focus on results and cost savings³³, compounded by the tendency to downplay the importance of other values and principles such as quality, fairness, equality, and impartiality. According to Andersson³⁴, NPM reforms did not live up to expectations:

- First, the evidence is mixed regarding if performance has improved or costs dropped.
- Second, the democratic nature of public administration was affected as the role of public service consumers substituted the role of citizens.
- Third, fairness, as measured by service user’s perceptions, seems to have worsened.
- Fourth, in many cases, vulnerability for corruption increased.³⁵

³³ Hood, C. & Dixon, R., (2013), A Model of Cost-Cutting in Government? The Great Management Revolution in UK Central Government Reconsidered. *Public Administration*, Vol. 91, No. 1. pp. 114–134.

³⁴ Andersson, S., (2019), Ethics Management Strategies in Public Organisations : The Case of Sweden. Presented at The Annual Conference of the American Society for Public Administration (Panel: Best Practices in Public Ethics Management: The Role of Democratic Values), March 10, 2019, Washington, D.C

³⁵ Ibid, 9.

Yet, recent research illustrates that the effects of public management reforms are neither positive, nor negative, but depend on national political and institutional contexts.³⁶ Overall, times of optimism are over.

1.4. Towards effective implementation of Conflicts of Interest Policies – what are preconditions?

As already discussed, for a long time, Col policies were largely input driven. Elected representatives focused on the adoption of ever more rules and codes, but much less on investments in the effective implementation and enforcement of policies. In the 1980s, Transparency International was the first body to promote the concept of ethics infrastructures and ethics regimes. This was a reaction to the existing “implementation gap” in the field. Afterward, international organizations such as the OECD, Council of Europe, and the EU started to adopt useful toolboxes, guidelines, and practical Col manuals for decision-makers and public officials. Moreover, the demands for better “Ethical Leadership”³⁷ and the institutionalization of integrity policies³⁸ and “institutionalization” of ethics became popular.

It is not easy to define institutionalization in the context of Col policies. One reason for this is the fragmented nature of approaches. Moreover, academic publications about institutionalization are rare.³⁹ According to Breaky, Cadman, and Sampford⁴⁰, Sampford was actually the first academic to distinguish between institutional and individual integrity. Since then, Hoekstra and Kaptein are the leading experts in the field of institutionalising (public service) ethics. Also related to the issue of institutional integrity, Cropanzano and Folger⁴¹ were the first to invent the term of organizational justice. Next, Linda Trevino⁴² invented the concepts of unethical behavior in the workplace and ethical culture. In the private sector, the concept of managerial ethics was founded by Schminke.⁴³ The notion of integrity systems seems to originate in the works by Jeremy Pope, the founder of Transparency International.⁴⁴

Other concepts discuss organizational ethics integrity or ethics infrastructure concepts (such as those published by the OECD) As regards the latter, the most important distinction between integrity systems⁴⁵ and ethics infrastructures seem to be that the former is a more technical concept and the latter relies on a discussion of much broader variables such as the importance of the rule of law,

³⁶ Lapuente, V., & Van de Walle, S., (2020), The effects of new public management on the quality of public services, *Governance*, Vol. 33, No. 3, pp. 461-475.

³⁷ Lasthuizen, K., (2008), *Leading to Integrity: Empirical Research into the effects of Leadership on Ethics and Integrity*. Amsterdam: University of Amsterdam.

³⁸ Hoekstra, A., (2016), *Institutionalizing Integrity Management: Challenges and Solutions in Times of Financial Crises and Austerity Measures*. In: Lawton, A., Z. van der Wal and L.W.J.C. Huberts (Eds.) (2016), *The Routledge Companion to Ethics and Public Service Organizations*.

³⁹ Schwartz, M., Harris, H. & Comer, D., (Eds.) (2015), *The Ethical Contribution of Organizations to Society*, Emerald: Bingley.

⁴⁰ Breaky, H., Cadman T., & Sampford, C., (2015), *Conceptualizing Personal and Institutional Integrity: The Comprehensive Integrity Framework*, In M. Schwartz/H. Harris, Brooke N. Shannon/Zachary Mc Gee and Bryan D Jones. 2019. *Bounded Rationality and Cognitive Limits in Political Decision-Making*, Oxford Research Encyclopedia Politics, 2019, Doi: 10.10193/acrefore/9780190228637.013.961, 3.

⁴¹ Cropanzano, R., & Folger, R., (1991), *Procedural Justice and Worker Motivation*, In Steers/Porter, (eds) *Motivation and Work Behavior* (5th edition), New York, pp. 131-143.

⁴² Trevino, L., (1986), *Ethical decision making in organizations: A person-situation interactionist model*. *Academy of Management Review*, 11: 601-617.

⁴³ Schminke, M., (1998), *Managerial Ethics: Moral Management of People and Processes*, Lawrence Erlbaum.

⁴⁴ Pope, J., (1996), *National Integrity Systems. The TI Sourcebook*. Berlin: Transparency International.

⁴⁵ Huberts, L. & Anechiarico, F., & Six, F.E., (eds.) (2008), *Local Integrity Systems: World Cities Fighting Corruption and safeguarding Integrity*. Den Haag: BJU.

democracy and the judiciary.⁴⁶ Finally, according to the OECD⁴⁷, the concept of integrity management can be defined as the activities undertaken to stimulate and enforce integrity and prevent corruption and other integrity violations within a particular organization. Integrity management is the sum of systematic and integrated efforts to promote integrity within public-sector organizations.⁴⁸ Integrity management requires an integrated, systematic and coherent approach. Integrity instruments and initiatives are more effective when they are part of a systematic style. Although the importance of such a concerted approach seems almost a matter of course, this is not yet the case in many public organizations. Second, integrity management suffers from implementation deficiencies. Integrity policies have repeatedly proven to be a somewhat paper issue that has not received a direct follow-up. Third, it is difficult to find a balanced integrity management approach combining both compliance and integrity strategies.⁴⁹

Much of the literature assumes that institutional integrity systems constitute “best practice” and are universally applicable management. The best-practice approach is based on the belief that ethics institutions and infrastructures can be used in any organisation and the view that all organisations can improve ethical performance if they identify and implement best practices. As such the expectation is that the effective institutionalisation of ethics policies positively contributes to organisational and also to government effectiveness.

According to Huberts⁵⁰, it is possible to stress the “basics of an integrity system”⁵¹: Suggested instruments include rules, disciplinary policies, standards, codes of ethics, codes of standards, value management, ethical leadership, whistleblowing, job rotation, risk analysis, training, integrity plans, integrity monitoring, scandal management, registers, disclosure policies, ethical climate surveys, self-assessments, integrity officers, ethics committees and good working conditions. It is also widely accepted that preconditions of effective ethics infrastructures include openness and independent control mechanisms because principles of ethics cast suspicion on any process. In the meantime, there is also considerable consensus on what constitutes bad practices, for example, the absence of free media and independent judicial systems, high levels of politicization, poor leadership, unfair HR policies, lack of training, unprofessional performance measurement, etc. in which holders of Public Office and public officials discipline themselves.

⁴⁶ Fernandez, J.L., & Camacho, J. (2016), Effective elements to establish an Ethical Infrastructure: An Exploratory Study of SME's in the Madrid Region, *Journal of Business Ethics*, 138: 113-131; Martin, S., Kish-Gephart, J. & Detert, J.R. (2014), Blind Forces: Ethical Infrastructures and moral disengagement in organizations, in *Organizational Psychology Review*, Vol. 4/4, pp. 295-325.

⁴⁷ Maesschalck, J. & Bertok, J., (2008), *Towards a Sound Integrity Framework, instruments, processes, structures and conditions for implementation*, Paris: OECD.

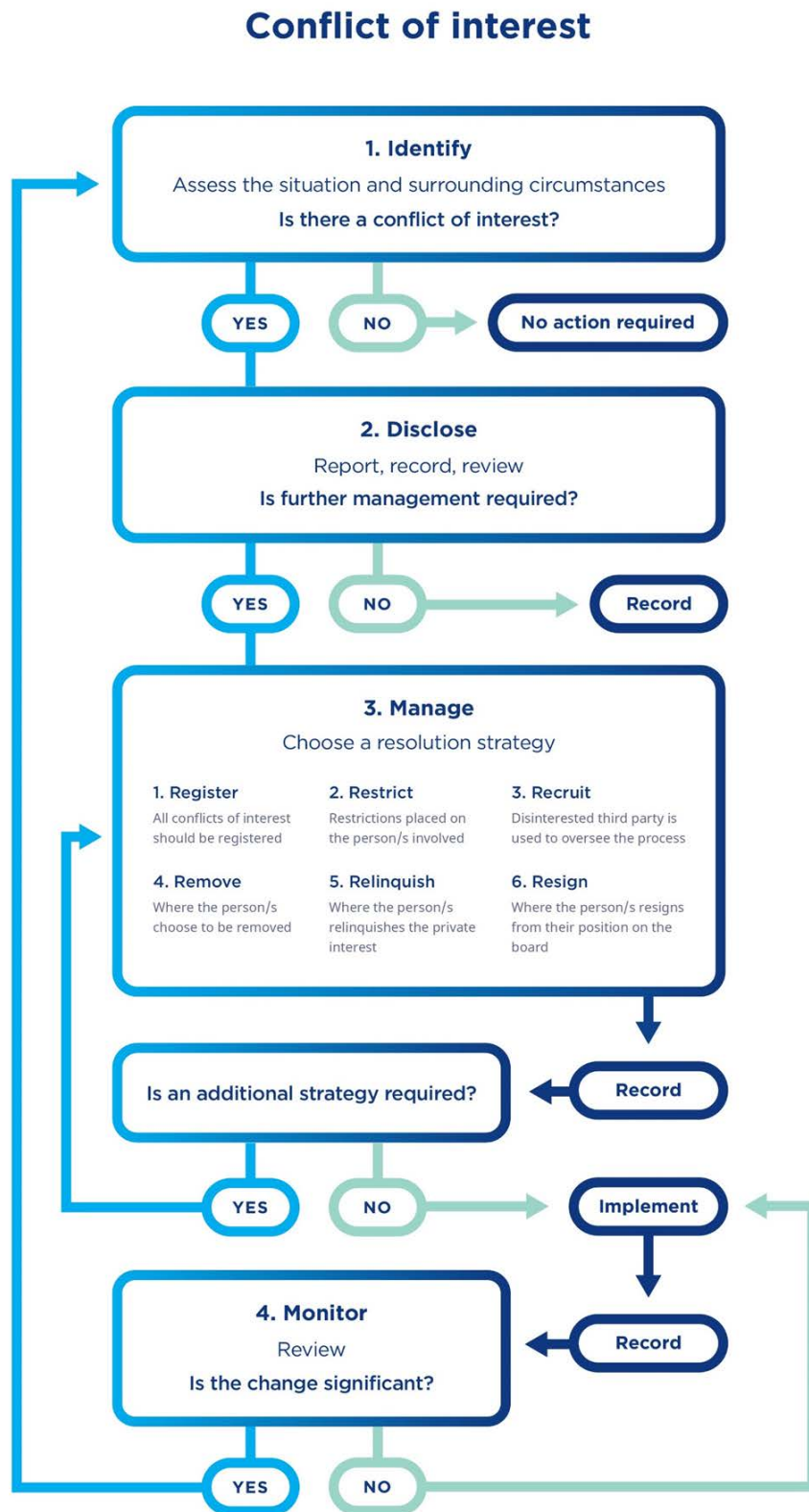
⁴⁸ Kaptein, M., (1998), *Ethics Management*. Dordrecht: Kluwer.

⁴⁹ Hoekstra, A. & Heres, L., (2016), Ethical Probity in Public Service, In A. Farazmand (ed.), *Global Encyclopedia of Public Administration, Public Policy, and Governance*, Springer International Publishing Switzerland 2016, DOI 10.1007/978-3-319-31816-5_922-1.

⁵⁰ Huberts, L., (2014), *The Integrity of Governance*, IIAS Series. London: Palgrave MacMillan.

⁵¹ Huberts, L. & Frederick Six, F., (2012), Local Integrity Systems, *Towards a Framework for Comparative Analysis and assessment*. *Public Integrity*, Vol. 14, Issue 2.

Figure 7: Managing Process of Conflict of Interest



According to the OECD, preconditions for the establishment of effective CoI management include the following elements.⁵²

- Compliance versus integrity: There are two general approaches to ethical issues. One focuses on strict rules to be followed, sanctions for wrongdoing, and control systems to ensure that rules are respected. The other is an integrity-based approach to promoting ethical behaviour and providing incentives for good conduct. To be effective, an ethics framework must incorporate both elements and use them in a complementary and balanced way. Regulation is essential, but not sufficient.
- Cultural diversity: There is no general blueprint for creating an ethics framework. Countries have their own cultural, administrative, and political traditions. However, it is especially important that values such as organisational justice and fairness and issues of ethics and standards of behaviour are given a high priority in modern public service.
- Citizens have a role to play: It is also accepted that the public should have a right to know how public institutions apply the power and resources entrusted to them. The conduct of officials is therefore subject to scrutiny. In this sense, active transparency and access to public information are essential to democratic governance, but citizens need to be further empowered to play a role in public affairs.

Despite this listing of ingredients of integrity systems, the increasing interest in institutional integrity has not necessarily produced more clarity and consensus on the effectiveness of ethics policies in different contexts. Finally, it is unclear what kind of institutional integrity systems works best in different sectors and for different holders of public office (for example, independent and outside control is still rare in the case of parliaments). For example, in our discussion about revolving-door issues, we will see that institutional approaches to the problem only make sense when they fit into the existing administrative system (for exp. a highly attractive tenure system in the EU Institutions, or into a fixed-term model in less attractive contexts).

⁵² OECD, (2003), Recommendation of the Council on guidelines for managing conflict of interest in the public service, June 2003.

2. THEORETICAL PART

KEY FINDINGS

Whereas many definitions exist as regards the term Col, the main challenge is to adapt rules and policies to the different importance for different Institutions and for different holders of public office. For example, obviously, there should be more attention to post-employment policies in countries with career systems and life-time tenure than in countries where top-officials have performance contracts and are employed on a fixed-term basis. Also, side-activities play different importance for MoP than for Ministers. On the other hand, attention to the implementation of Col policies is even more important for Ministers, because any violation of rules and standards may generate public scandals and influence trust perceptions in the political system as such.

Overall, people have a right to expect ministers to have very high standards of integrity because they have more power, influence, and decision-making discretion than any other public official and holder of public office. They exercise public powers on behalf of the country. They spend public money on important governmental projects. They raise taxes. They hunt down criminals. They protect the people. They take decisions that have an impact on the fundamental rights of the citizens. They decide on health and risk protection. For all these important tasks, it is important that they exercise their role properly, and act lawfully, honestly and loyally without acquiring any personal advantage. Because of this, standards of integrity must be set at high levels.

Nowadays, ministers also decide on new technological developments (such as in fields like the Internet of Things, robotics, biometrics, persuasive technology, virtual and augmented reality, artificial intelligence and social media) which have a great impact on privacy, autonomy, security, human dignity, justice, and balance of power. Overall, the new wave of digitization is putting pressure on these public values. To effectively shape the digital society in a socially and ethically responsible way, Ministers and other stakeholders need to have a clear understanding of how these trends relate to each other and how they relate to the emergence of ever new conflicting outcomes. As members of Government, yet politicians, little research has been undertaken on the effectiveness of Col policies and laws for Ministers.

The most important challenge when comparing and analysing ethics rules and standards for politicians and top-officials concerns the access to reliable data (or how to obtain honest answers to sensitive questions). Thus, also in this study, not only the availability but also the reliability of data was a sore point in the development of this comparative work. In our survey, this mainly concerned open questions on the development of conflicts of interests, the introduction of new instruments to prevent conflicts of interest, and about the nature of ethics committees. Despite all limitations, this study presents detailed findings as regards the regulation and management of Col of ministers and top-officials.

2.1. Defining Conflicts of Interest

2.1.1. Conflicting interests and Col

In every day's life, people have many roles and take many decisions that are conflictual, or even contradictory. As Ackerman notes (in Auby, Breen & Perroud, 2014, 3), we live in an era where people are taking on ever more conflicting roles, identities, and changing loyalties. This cannot be avoided. Also, in political life, leaders and politicians must take (often quick) decisions that are based on

“bounded rationality”, limited information and are taken before the background of various interests and value conflicts.⁵³

The concept of conflicts of interest refers to the risk that some of the many individual interests might conflict with the public and professional duties (David-Barrett, 2020). In fact, every day, people, politicians, civil servants and managers face difficult moral questions, moral conflicts and moral dilemmas (the latter as a situation where people must choose between two courses of action both of which it would be wrong to undertake). As we will see later, men involved in political activity⁵⁴ face specific (and sometimes very difficult) moral conflicts. Therefore, leading a moral life is not about choosing to live a moral life without moral conflicts and conflicts of interest. Rather it is about knowing how to deal with moral conflicts.

It is the nature of things to live with these conflicts and to manage them. In fact, balancing different interests is a core element of democracy, administration, and public officials. Therefore, everyday conflicting interests, values, and conflicting targets or objectives as such are not always conflicts of interest.

However, the change of governance and an increasingly commercialized public sector that works closely with the business, citizens and the non-governmental sector private sector gives rise to the potential of new forms of conflicting interests that may also lead to conflicts of interest between the individual public duties of officials and their private interests.⁵⁵

Governments and decision-makers react to these trends by broadening the definitions and concepts of conflicts of interest. In the meantime, ever more “grey issues” are emerging that can be neither defined as a clear (legal) conflict of interest, but rather conflicting interest which may also lead to a conflict of interest. A conflict of interest is related to a bias of personal judgment and personal decisions. It relates to conflicts between primary and secondary interests and therefore goes beyond conflicts of interest which focus on conflicts between professional obligations and interests. In most cases, conflicting interests concern broader societal, political, economic, or cultural issues.

Take the following cases:

- While Art. 2 TEU refers to the Unions common values, the Treaty also requires the EU to respect the diversity of culture, traditions as well as national identities. This EU approach to ethics and values can be described as following conflicting objectives “united in diversity”⁵⁶ and may explain why the EU approach to ethics and values is relatively cautious and modest.
- Similarly, the achievement of an internal market is a key objective of the EU. Nonetheless, on an exceptional basis, Member States can restrict the free movement of goods based on grounds of public morality. Whereas the objective of the internal market is about the removal of “barriers”, the concept of ethics and morality is about the setting and maintenance of standards.
- While the EU is continuously criticised as being too distanced from local politics and citizens' interests and therefore should focus more on citizens and their concerns, it should nonetheless refrain from becoming a populist EU.

⁵³ De Graaf G., (2015), The Bright Future of Value Pluralism in Public Administration, in: Administration and Society, 2015, pp. 1-9.

⁵⁴ Walzer, M., (1973), The Problem of Dirty Hands Philosophy & Public Affairs, Vol. 2, No. 2 (Winter, 1973), pp. 160-180.

⁵⁵ OECD, (2003), 13.

⁵⁶ Frischut, M., (2019), The Ethical Spirit of EU Law, Springer Open.

- Art. 45 TFEU allows for the free movement of workers within the European Union. However, the exception clause in Art. 45 4 TFEU makes an exception to employment in public administration and allows Member States to restrict the employment of certain positions – that exercise public powers – to nationals. Whereas some countries apply these provisions, others do not, or only to very minor positions. Still, some countries believe that non-nationals would be in a conflict of interest while exercising top-positions in another country and therefore, some positions should only be exercised to nationals. This is the case of loyalty conflicts. These types of conflicts are expanding. Take the case of a person who is moving from a Commissioner's Cabinets or from the COREPER to the European Commission – will this move create a conflict of interest, or not? Are dividing loyalties possible while serving the national and the EU Interest at the same time?
- Or, take the case of a national Minister with double nationality and portfolio in the field of the other nationality. Will this create a conflict of interest? Note that former French Prime Minister Manuel Valls with dual French/Spanish nationality: Was he in a Col representing French interests as a Prime Minister? Would he be in a Col if he would be elected mayor of Barcelona and competing for receiving EU-social funds with the city of Paris?
- Or, again, take the case of a German civil servant with Turkish migration background negotiating on behalf of Germany in an EU-working group on migration issues with Turkey? Or, the case of a French Police officer (born in Alger) who is working in the banlieues of Paris and called up to discipline migrants from Algeria. Is he/she in a Col?
- What if a Minister and MP who is involved in a national decision-making process at the governmental level and the outcome of this very decision will negatively affect his local constituency – is he/she in a Col?
- How to deal with the countless defeated former ministers or even presidents who enjoy different informal roles and post-political activities. For example, the puzzlement over the role of private foundations and philanthropic activities – take the cases of – Bill Clinton or Bill Gates inevitably raises questions about personal as well as the political influence of private (very affluent rich) persons and their influence on former colleagues and friends still in power.
- How to deal with alleged conflicts of interest of experts who participate in the European Commission's Scientific Advice Mechanism (SAM). This mechanism should provide the Commission with high quality, timely, and independent advice. Scientific Advisors who work in SAM must have no conflicts of interest and declare all their interests. However, the mechanism regularly raises valid concerns about the independence of scientific experts (see also the Decision in the case 560/2019/KR of the European Ombudswoman on 30 March 2020). However, it also raises the question of whether it is possible at all to completely avoid Col within this process?
- European Commissioners and officials working in the European Commission are obliged to serve the European public interest. All of these have a European citizenship. However, all of them have also a national citizenship. More than 1000 officials and temporary staff in the European Commission even have double nationalities.⁵⁷ Does this lead to loyalty conflicts amongst different European- and national loyalties while carrying out professional duties?

As these cases show, the problem with the concept of conflicts of interest is that it is difficult to separate and to distinguish from the concept of conflicting interests.

⁵⁷ According to the European Commission, (2018).

Whereas an office holder not necessarily commits a Col if he/she finds him/herself in a conflicting situation, a conflicting interest nonetheless may lead to a conflict of interest. Today, both concepts overlap, and both are dynamic. As we will see, this leads to an expansion and inflation of the classical concept of conflicts of interest, as presented at the beginning of this chapter. This again has a dramatic impact on the effectiveness of Col policies. Overall, this challenge is, not yet, sufficiently recognized by decision-makers and academics.

2.1.2. Defining Conflicts of Interest (Col)

Conflict of Interest policies are “individualised” policies. They relate to individuals and intrapersonal conflicts. Conflict is a state of mind of a person. Because of this, it can hardly be proved whether a Minister or top-official has been conflicted or whether the Col had an impact on the decision taken by the person. Col rules and policies could easily be justified if it could be proved that a conflicted state of mind has led to conflicting consequences. However, this is not possible.

Therefore, Col tackles not only the conflict but also the appearance and prevention of conflicts. However, real Col can hardly be measured. Regulating Col is not a straightforward concept. People implicitly believe that the conflict will distort the person’s decision. We also expect that the person should recognize the conflict and shield their own decision-making from improper influence. Deciding and realizing when an apparent conflict may lead into inappropriate decision-making is difficult. As such, it is only the person in question who knows about its own interests and potential conflicts (David-Barrett, 2020).

Often, Ministers and top-officials esteem too highly their ability to deal with their own Col. They also overestimate their capacity to deal in a conscious and impartial way with their own Col. Because of this, innovative approaches in the field of Col policies and rules are badly needed.

In daily life, multiple conflicting interests may pull people in different directions but only when they compromise professional obligations is there a conflict of interest. Compromising professional obligations may then lead to corruption, but a Col is not necessarily corruption.

Therefore, when defining Col, many authors refer to a definition of Col that goes beyond the term corruption.

“A 'conflict of interest' involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities”⁵⁸

As we will see, defining Col is no easy task. The concept as such functions as an umbrella that incorporates all sorts of tensions between official and private roles.

Moreover, the relationship between Col and conflicting interests is not clear, as both concepts overlap and influence each other. Increasingly, conflicting interests are also defined as Col.

This trend poses not only challenges to the definition of Col and to the concept of Col. Rather, this trend also contributes to new very practical implementation challenges in the field.

Differently to Col, conflicting interests are everywhere. Thus, whereas conflicting interests emerge in all sorts of daily life situations, a conflict of interest is always related to professional life and work-related issues.

⁵⁸ OECD, (2003).

Since the field of conflict of interests has been dominated by legal approaches for many decades, there is great insecurity about the need for alternative instruments, the right regulatory mix, the role of self-regulation, the effectiveness of incentives, the definition of good governance in the field and the relationship of classical legal instruments to other political, psychological and economical approaches, etc.

Thus, for sure, conflict of interest requires interdisciplinary cooperation because it is a borderline concept in the intersection of law, politics, economy, sociology, organisational behaviour and morality. As we will see in this study, increasingly, different disciplines are engaged in studying conflicts of interest. However, this situatedness immediately also raises the deep question of the limits of the law and compliance-based approaches. Still, despite its fashionable character, we are also critical whether new behavioural instruments should replace legalistic approaches. In fact, it is true that the context of any conflict of interest is the personal (psychological) and institutional environment. But this, again, is influenced by the legal-, political-, cultural and economic context. These different systems (the political system, public administration, the economic system, the legal system, science, religion etc.) function based on different values and each system develops towards ever more differentiation. Each area of study is defined by its own set of paradigms, theoretical concepts, research methodologies, and scholarly journals and book series”.⁵⁹

Therefore, according to legal doctrines, a conflict of interest arises only whenever activities, decisions, or relationships compromise the loyalty or independent judgment of workers, civil servants, or holder of public office. And not of citizens in ordinary life.

Therefore, Col may result in an abuse of public office for private advantage and holds the potential for unfair behaviour.

Figure 8: Conflicts of Interest, Institutional, and Personal Level



Note in this respect that the well-known OECD definition “A conflict of interest involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities”⁶⁰ only addresses conflicts in the professional-private domain.

⁵⁹ Andersson, S. & Anechiarico, F., (2014), The Political economy of conflicts of interest in an era of public-private governance, in: Paul M. Heywood (editor) (2014), Routledge Handbook of Political Corruption, Routledge Handbooks, New York, 65.

⁶⁰ OECD, (2003), 4.

Another important difference to the concept of conflicting interests is the concept of Conflict of interest is a legal concept.

Col as a legal concept has a long agreed-upon meaning in law used to regulate fiduciaries – individuals entrusted to serve the interest of another party or to serve a designated mission – who are held to the highest legal standards of conduct. Generally, these laws and codes do not permit fiduciaries to promote their own interests or the interests of third parties. Instead, they require fiduciaries to be loyal to the party they serve, to act prudently and diligently, and to account for their conduct. To advance these goals the law regulates certain situations – designated as conflicts of interest – that increase the risk that fiduciaries will betray their trust. It often prohibits fiduciaries from entering into situations that create conflicts or require that they cease the activity that creates a conflict or that they disclose their financial interests so that third parties can identify and manage the conflict and thereby reduce the risk of misconduct⁶¹.”

Thus, from a legal point of view, a conflict of interest can be defined as a conflict between the private interests and the official or professional responsibilities of a person in a position of trust, or an actual or potential conflict arising when a person holds a private interest that conflicts with the one of his/her employer; persons in a “conflict of interest” whenever they themselves, or members of their family, business partners or close personal associates, may personally benefit either directly or indirectly, financially or otherwise, from their position on the Board.

Next, a Col is always a psychological state of mind. In most cases, we do not know whether a person has a Col and acts accordingly. However, we can judge whether a Col can be perceived, whether there exists a potential or actual conflict of interest.

For example, the actual conflict of interest is different from an apparent conflict of interest: “...where it appears that a public official’s private interests could improperly influence the performance of their duties but this is not, in fact, the case”, and a potential conflict of interest: “where a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future”.⁶²

Table 2: Actual, Potential and Perceived Conflict of Interest

Actual	Potential	Perceived
<p>There is a direct conflict of interest.</p> <p>For example, you are in a close personal relationship with an employee of the organisation you are a director of.</p>	<p>There could be a conflict of interest.</p> <p>For example, you are a director of two charities that may both compete for the same grant in the future.</p>	<p>There may appear to be a conflict of interest.</p> <p>For example, you are an investor in a company that your board may be perceived to be able to influence.</p>

Still, as a holder of public office, a person of trust acts in the public trust for millions of people. People should indeed not guess whether decisions taken by powerful persons are decided because of private, or because of public interests. Therefore, it is important to avoid even the appearance of a Col. Most Col take a preventive character.

⁶¹ Rodwin, M., (1993), *Medicine, money and morals: Physicians Conflicts of Interest*. New York: Oxford University Press, pp. 179–210; Rodwin, M., (2018), *Attempts to redefine conflicts of interest*, *Accountability in Research*, Vol. 25, No. 2, pp. 67.

⁶² OECD, (2003).

Next, Col may arise in many different situations, or as regards many different issues. Thus, Col can be further classified. For example, whereas in the past Col policies almost exclusively focused on nepotism and financial interests, later on, Col were classified into two very broad types: pecuniary and non-pecuniary Col.

- Pecuniary interests involve situations of financial profit or financial problems. People have a pecuniary interest if they (or a relative or another close associate) own property, hold shares, have a position in a company bidding for government work, or receive benefits (such as concessions, discounts, gifts or hospitality) from a particular source.
- Non-pecuniary interests do not have a financial component. They may arise from personal, political, ideological- or family relationships, or other activities. They include any tendency towards a personal favour or prejudice resulting from citizenship, friendship, animosity, or other personal involvement with another person, party, institution, or country.

Also, different Col may produce different types of behavior, which result in

1. Corruption of officials through bribery, kickbacks, office-buying: Financial interests can affect an official and affect his behaviour/judgment, duties, values, work, motivation, and performance
2. Self-Dealing: One official – one interest. A Col may affect an office holder in the office role because of a motivation to act in his/her personal interest. Involves a single official with an interest he/she possesses that can affect his job.
3. Undue Influence: Involves two officials and one interest. A Col may cause an undue interest. An undue interest involves one person taking advantage of a position of power over another person. This inequity in power between the parties can force one party's consent as it is unable to freely exercise its independent will.
4. Abuse of Office. Involves one official and two private interests. A Col may cause abuse of Office. Abuse of office is the commission of an unlawful and unethical act, done in an official capacity and as the result of power, information, or resources, which affects the performance of official duties. Officials who utilize abuse of power are often those who exploit the ability of their position, status, information, or resources to influence others to their advantage.
5. Private gain for public acts: A Col holder has the capacity to affect the interests of a private party that transfers value to an office-holder. The official receives a value in his personal capacity as a result of his public decision.
6. Private gain from public office: This Col refers to situations where officials draw on knowledge skills, experience, stature, or prestige derived from their public office to reap some form of private gain.

All these forms may be a result of intentional Col but also unintentional Col. Not all violators of conflicts of interest rules and policies are simply uncaring, evil people. We will come back to this.

2.2. Purpose and objective of Col policies

What is expected of conflicts of ethics policies? Are expectations realistic? What happens if expectations are not fulfilled? In order to answer these questions, we need to clarify the objectives and purposes of Col policies.

Of course, conflicts of interest policies should provide a tool for preventing conflicts of interest. This as such merit's further examination. However, most national and international regulations and code also mention other objectives such as:

- Increase public confidence in the government.
- Demonstrate the high level of integrity of most elected representatives and Government officials.

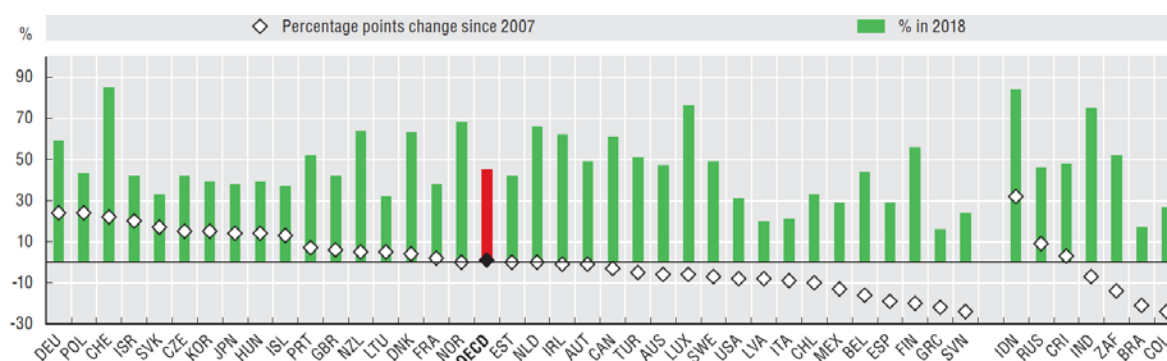
- Deter conflicts of interest from arising because official activities would be subject to public scrutiny.
- Deter persons whose personal finances would not bear up to public scrutiny from entering public service.
- Better enable the public to judge the performance of public officials in the light of their outside financial interests.

Besides these main objectives, there is also a common understanding that Col should not undermine nor contract the achievement of other policy objectives such as the need to:

- Reduce administrative burdens and red tape.
- Retain the attractiveness of public sector employment in times of demographic challenges.
- Protect privacy.
- Enhance accountability of Holders of Public Office.
- Increase transparency, accountability and citizen orientation.

As such, many of these objectives take the character of wishing lists in a contradictory context. For example, how to maintain the attractiveness of public sector employment, if countries introduce ever-stricter revolving-door policies? How to reduce red-tape and administrative burdens if countries introduce ever more rules and standards in the field? How to increase transparency in the field while protecting privacy? How to protect privacy if countries require ever more data and information about potential, personal Col issues? How to increase transparency and accountability if countries themselves have no oversight about the development of Col cases? How to evaluate the contributions of Col policies to trust developments? As such, this relationship is much more complex than it looks in the first place. Overall, trust levels are very dynamic and are related to a number of factors. Also, trust differs amongst public institutions. During the last years, trust levels went up in some countries and downwards in other countries. Overall, trust in public institutions seems to decline (slowly) worldwide.

Figure 9: Confidence in national Government in 2018 and its change since 2017 (OECD, Governance at a Glance, 2019)



Source: Gallup World Poll, 2018

StatLink <https://doi.org/10.1787/888934033137>

As regards the relationship between trust and Col, Col rules are an instrument that communicates in an implicit way that they are installed because of the potential distrust and conflict that is present in

society. Therefore, often, countries with lower trust levels have more rules in place than countries with higher trust levels. Thus, "the level of public trust in government... impacts the choice of legislation".⁶³

It is also fair to state that conflict of interest policies are inherently distrust policies although their objective is to contribute to an increase in trust in elected representatives and public institutions.

This can be called the COI trust-paradox: Normally, conflict of interest legislation is enacted to counteract the lack of an integrity culture but seems to work only in the context of a distrust culture.⁶⁴ Also, Mackenzie⁶⁵ states: The whole field of ethics policies "is a culture rooted in distrust..."⁶⁶ and results from demands for more accountability of the powerful and of public officials. Indeed, as we will see later, there is a clear correlation between the regulation of COI and the development of trust: if a country has low trust levels in political institutions, the stronger the tendency to manage COI by detailed rules.

Moreover, the more rules and standards are introduced, the more often rules and standards can be violated. Consequently, the media and the public may interpret this as a sign of declining ethical standards. "Thus, rather than decreasing the number of cases of unethical behaviour, by declaring behaviour unethical which was formerly in accordance with the rules, the absolute number of scandals and cases of unethical behaviour increases, thus creating the appearance of public officials becoming more unethical. However, higher ethical standards lead to an overall more ethical public service".⁶⁷

Therefore, critics⁶⁸ argue that more rules of ethics do not necessarily provide an effective response to the decline of public trust and integrity issues but may cause even more cynicism regarding public and political institutions. The problem, critics say, is that the expansion of ethics regulations and more public discussions about the need for more and better (conflict of interest) rules have not contributed to a rise in public confidence in the government. The calls for more and better ethics have the opposite effect. In fact, the calls for more and better ethics may even have the opposite effect. More "ethics regulations and more ethics enforcers have produced more ethics investigations and prosecutions... Whatever the new ethics regulations may have accomplished... they have done little to reduce publicity and public controversy about the ethical behaviour of public officials".⁶⁹

Despite the increasing number of rules and regulations, politicians continue to promise ever higher ethical standards to gain votes. Therefore, ethics measures are often introduced by politicians with an eye on the perceived problem of decreasing public trust in their own political class. However, the intention of increasing public trust is rarely met.⁷⁰ In fact, why do public authorities "feel the need to justify public integrity? The habitual answer goes in order to breed trust amongst citizens (...). However, a commitment to public integrity implies an obligation to disclose the government's lack of integrity. And this, it should be stressed, is not likely to promote trust in government. Justifying integrity by means of trust, then, produces a paradox. On the one hand, the government's sincere commitment to

⁶³ Auby, J.B., Breen, E. & Thomas Perroud, T., (eds.), (2016), *Corruption and Conflicts of Interest*, Studies in Comparative Law and Legal Culture.

⁶⁴ Peters, A. & Handschin L., (eds.), (2012), *Conflict of Interest in Global, Public and Private Governance*, Cambridge, Cambridge University Press.

⁶⁵ Mackenzie, G.S., (2002), *Scandal Proof, Do Ethics Laws Make Government better?*, Brookings Institution, Washington D.C.

⁶⁶ Mackenzie, op cit.

⁶⁷ Behnke, N., (2005), "Ethics as Apple Pie: The arms race of ethical standards in congressional and presidential campaigns", EGPA-Paper, "Ethics and Integrity of Governance: A transatlantic dialogue", Leuven, June 2005, 8.

⁶⁸ Nieuwenburg, P., (2007), *The Integrity Paradox*, in: *Public Integrity*, 2007, Vol. 9, No.9, pp.213-224; also Anechiarico & Jacobs (1996), Mackenzie (2002), Stark (...), Saint-Martin & Thompson (...), Behnke (2005).

⁶⁹ Mackenzie, (2002), 112.

⁷⁰ Rosenson in Saint-Martin/Thompson et al, (2006), 137.

integrity entails an obligation to reveal its violations of integrity, which is not likely to increase trust. On the other hand, a government cannot refrain from making these revelations, for that would constitute a violation of the commitment to integrity".⁷¹

Therefore, most ethics experts think that more rules, even if well managed, may not automatically build more trust. Contrary to this, new rules may even decrease public trust. As Behnke⁷² shows "in spite of the individual rationality of these strategies, the collective irrationality lies in the fact that ever more transparency, ever higher standards and tighter regulations create ever more violations of ethical rules, more scandals and more investigations, thus undermining the legitimacy of the institution and destroying public trust and creating collective costs that far outweigh the individual benefits. In addition to the individual rationality leading to collective irrationality, the last element that makes the situation a real Prisoners' Dilemma is the fact that no built-in mechanism can stop this arms race." The assumption on the part of the legislators and Members of Government who favour the adoption of new rules and standards is that this will have a positive effect and increase public trust in Government. However, a strong focus on ethics, too strict approaches, too much publicity, and too many rules may also undermine public trust.

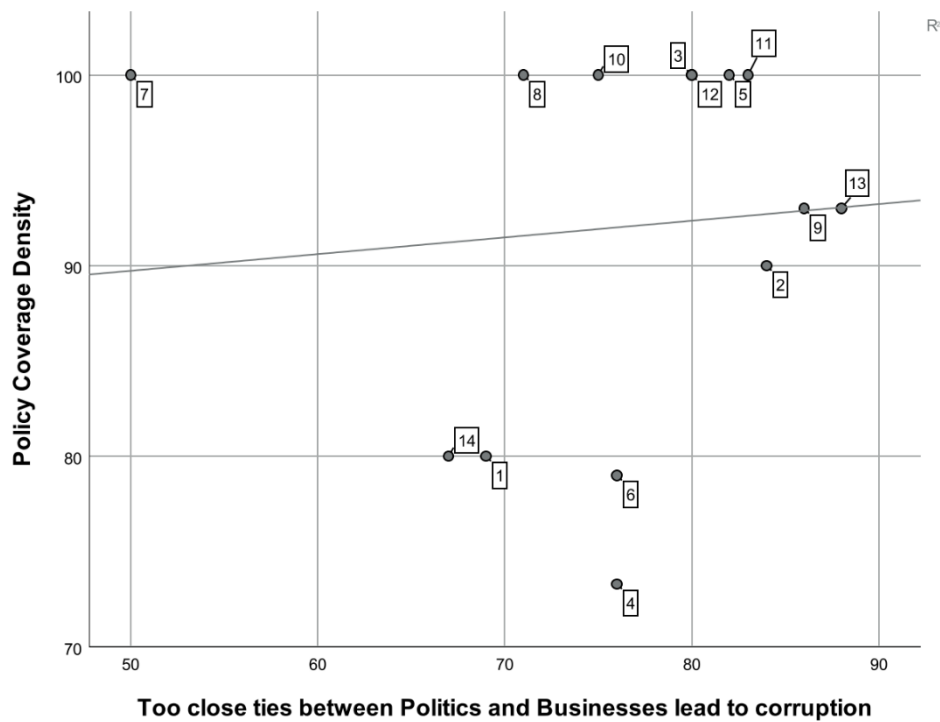
Therefore, present trends towards the adoption of more rules and policies do not necessarily provide for an efficient response to conflicts of interests, the decline of public trust, and may cause even more cynicism regarding national, European, and political institutions as such.

Our study further confirms that higher levels of policy coverage density do entail slightly more distrust in too close ties between politics and businesses. The higher the policy coverage density, the more citizens think that too close ties between politics and businesses lead to corruption.

⁷¹ Nieuwenburg, (2007), 21.

⁷² Behnke, N., (2005), "Ethics as Apple Pie: The arms race of ethical standards in congressional and presidential campaigns", EGPA-Paper, "Ethics and Integrity of Governance: A transatlantic dialogue", Leuven, June 2005, 3.

Figure 10: Relationship between Policy Coverage Density⁷³ and Perceptions about ties between politics and business leading to corruption (without Belgium)



Source: Own calculations by the authors based on the information/data received from the Member States of the EU

Explanation: 1: Austria, 2: Bulgaria, 3: Czech Republic, 4: France, 5: Hungary, 6: Latvia, 7: Luxemburg, 8: Netherlands, 9: Portugal, 10: Romania, 11: Slovakia, 12: Slovenia, 13: Spain, 14: Sweden

However, one should also not overemphasize this explanatory variable. Would deregulate ethics policies and standards increase trust levels? As such, being against more rules and standards is risky – from a political point of view. Overall, ethics policies are becoming more and more politicised. Ethics is slowly emerging as a perfect policy field in electoral campaigns. Politicians can be sure that calls for new initiatives will be applauded by the citizenry because these calls reflect a widespread perception in European societies that levels of corruption and conflicts of interest are increasing, and something must be done. From the point of view of a Holder of Public Office (and even more of an elected representative, a legislator, or a Minister) it would not only be detrimental to be against new or even higher ethical standards. In fact, the call for higher ethical standards and tighter rules of ethics are more and more the subject of election campaigns in many countries.

The downside of this development is that it becomes more difficult to avoid that ethics as a policy issue is abused as moral stigmatisation. More and more politicians use “accusations of unethical conduct as a political weapon...”⁷⁴ Rules of ethics are resources that politicians mobilise to attack and discredit their

⁷³ As to the methodological approach used in this study, please see chapter 2.6 in which we define “policy coverage density” as the quantitative degree of coverage of conflict of issues by laws, legally binding rules and codes. If a Member State regulates all conflict of interest issues by laws and/or codes the country has a high degree of coverage density.

⁷⁴ Williams, (1978), 41.

opponents. Consequently, ethics are increasingly used as a moral instrument with the aim of denouncing political opponents.

This illustrates how Col are related to the national context. The level of public trust affects the choice of instrument. However, the solution to the problem is not to deregulate Col rules and policies to increase public trust. In fact, deregulation would most likely not improve the situation in low trust countries. As such, there is no clear answer to this dilemma.

As Hartmann⁷⁵ notes: the problem seems that we know very well that trust is very important, but we face ever more difficulties to create the conditions that are necessary for building trust.

2.3. Col and the need for different policies for different Holders of Public Office – Why taking a special interest in Ministers (and EU Commissioners)?

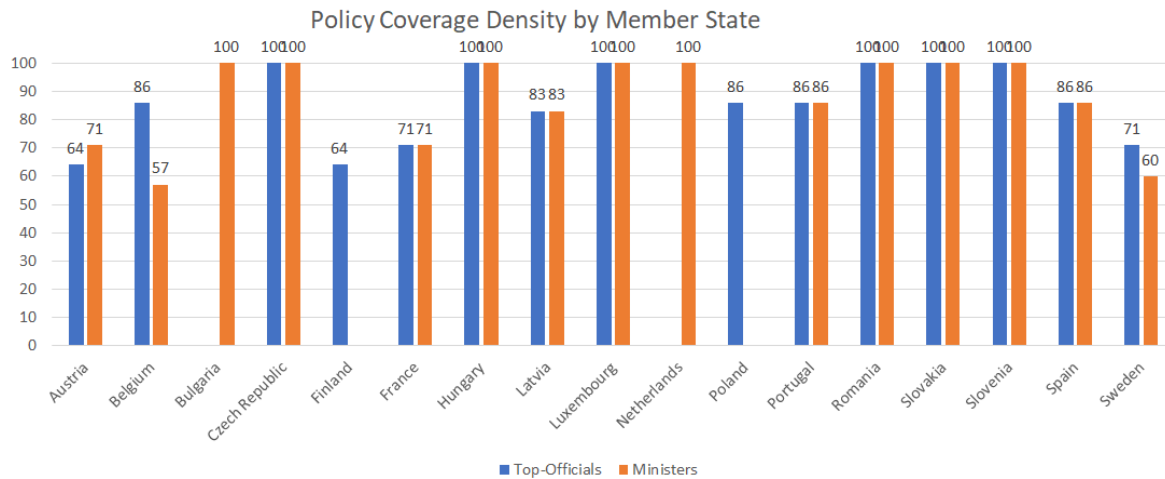
Obviously, it is important to design Col policies and rules and adapt these to the specific situation, power, and influence of the various institutions. However, the downside of this is also the danger of fragmented and uncoordinated approaches. Therefore, it makes sense to adopt a mixed-approach. For example, we share the opinion of the European Court of Auditor as regards the need for a flexible approach: “We also found areas where the ethical frameworks would benefit from cross-institutional harmonisation (e.g. outside activities for staff, and declarations on Members’ spouses and partners’ activities)...”.⁷⁶ Why should the management of disclosure policies be different for different institutions, or persons? Why should the definition of the term spouse be different?

From this point of view, it is not surprising that there exist little differences in the policy coverage density of Ministers and top-officials (except in Belgium and in Sweden). Nevertheless, it’s important to emphasise that the consistency in most other countries is not to be derived from the fact that the same rules apply to ministers and top-officials, this is most definitely not the case. It just implies that regulation is in place for both, ministers and top-officials, for roughly the same amount of Col issues. It should further be noted that Bulgaria and the Netherlands only answered regarding ministers, whereas Finland and Poland only answered regarding top-officials. Hence, the data for the counterpart in each country lack respectively.

⁷⁵ Hartmann M., (2020), *Vertrauen*, S. Fischer: München, 13.

⁷⁶ European Court of Auditors, (2019), Special report no 13/2019: The ethical frameworks of the audited EU institutions: scope for improvement.

Figure 11: Policy Coverage Density of most important Col issues in Member States



Source: Own calculations by the authors based on the information/data received from the Member States of the EU

However, Col issues have different importance for different Institutions and holders of public office. For example, obviously, there should be more attention to post-employment policies in countries with career systems and life-time tenure than in countries where top-officials have performance contracts and are employed on a fixed-term basis. Also, side-activities play different importance for MoP than for Ministers. On the other hand, attention to the implementation of Col policies is even more important for Ministers, because any violation of rules and standards may generate public scandals and influence trust perceptions in the political system as such.

Overall, people have a right to expect ministers to have very high standards of integrity because they have more power, influence, and decision-making discretion than any other public official and holder of public office. They exercise public powers on behalf of the country. They spend public money on important governmental projects. They raise taxes. They hunt down criminals. They protect the people. They take decisions that have an impact on the fundamental rights of the citizens. They decide on health and risk protection. For all these important tasks, it is important that they exercise their role properly, and act lawfully, honestly and loyally without acquiring any personal advantage. Because of this, standards of integrity must be set at high levels.

However, the different categories of Holders of Public Office are not the same: They have different positions and tasks, enjoy different degrees of media attention, have different powers, and work in different organisational, institutional, political, and legal settings. Moreover, Col are more acute in certain sectors and certain policies. Therefore, countries should focus more on the management of Col in certain areas and in sectors than in others.

Table 3: Prevalence of Conflict of Interest
Prevalence of COI

COI present in six types of public servant activities	COI situations happen most frequently in	But the three most frequent forms of COI are
<ol style="list-style-type: none"> 1. Public service delivery 2. Recruitment and appointment 3. Procurement 4. Project licensing and approval 5. Inspection and audit 6. Handling of violations. 	<ol style="list-style-type: none"> 1. Procurement 2. Project licensing and appraisal 3. Recruitment and appointment. 	<ol style="list-style-type: none"> 1. Gift-giving 2. Doing family members or relatives favors 3. Using inside information for personal benefit.

Therefore, countries have adopted different requirements for different categories of staff and different holders of public office. Take the example of the EU Institutions:

“While there are common provisions applicable to all of the EU institutions, there are also different specific legal ethical requirements for each EU institution, for the Directorates-General (DGs) of the European Commission (Commission), and for staff and Members of the EU institutions. The specific provisions reflect different roles, responsibilities and risks”⁷⁷

Generally, the higher the position of a public official (or politician), the stricter the policy, regulations, and codes, and the more transparency is required. For example, whereas Members of Government are often required to avoid or withdraw from activities, memberships, financial interests or situations that would place them in a real, potential or apparent conflict of interests, legislators are often allowed to take part in professional activities unless these activities are likely to give rise to a conflict of interest. As regards the latter the most important argument for this is that Parliaments should not develop into arenas where only full-time professional politicians can represent their constituencies. Another – frequently cited – argument is that legislators should be allowed to keep contact with their profession as this would also be beneficial for Parliamentary systems. Finally, full-time Parliamentarians may lose contact with the “real world” if they are prohibited from exercising other activities.

Still, the question of whether these additional professional activities should be (more strictly) regulated is the subject of intense discussion. At least finding the right balance between the right to have a professional life, respecting ethical values, and avoiding corruption and conflicts of interest remains a real challenge. It is important to note that legislators are placed in an area in the political system where conflicting interests are abundant.

A comparative study⁷⁸ on legislative ethics concluded that “...the problem is not that legislators are inherently corrupt, or will necessarily become so. Rather, the nature of their positions requires legislators to continually face difficult ethical dilemmas. Legislators must constantly decide among

⁷⁷ European Court of Justice, ECA 2019, op cit.

⁷⁸ National Democratic Institute for International Affairs Legislative Research Series, Paper No. 4 Legislative Ethics: A Comparative Analysis, National Democratic Institute for International Affairs (NDI) 1999.

competing interests: national, constituent based, political and personal. This difficulty is amplified by the fact that most legislators simultaneously hold positions in the private sector, and as such are perpetually 'changing hats' from one position to the other. In addition, legislators are subject to intense scrutiny by the media, non-governmental organisations and the public at large".⁷⁹ In a way being a politician implies being involved in the political process where different interests come together. Thus, being a legislator means per se being confronted with many conflicting interests. Consequently, it is in the nature of being a Member of Parliament (or a minister) to deal with and to manage these conflicting interests and values. Moreover, the sovereignty of parliament means that it is not easy to introduce external (executive) forms of monitoring and control.

Obviously, politicians also face different conflicts of interests than Judges or Directors of Central Banks. Also, the media scrutiny is different than for Judges or Directors of banks, etc. Legislators also face different accountability and legitimacy challenges. For example, which has primacy: one's own political career, one's own professional activities, the party, the electorate, the government, or the nation? "Probably legislators face the widest range of potentially conflicting interests: personal, representational and other private pecuniary and non-pecuniary interests. Certain interests are personally inherent: as a resident of a town or province, as a parent, spouse, or child, as a female or male, as indigenous or non-indigenous, and so on. Other interests arise from the representative role: as a member of the legislature, as the representative of his or her electorate and as a member of a political party. Further interests arise from outside activities as a member of a non-political organisation, as a businessman, professional, farmer, grazier, or employee.

As already mentioned, another important difference between legislators and other categories of Holders of Public Office is the fact that, in most countries, Parliaments have little interest in allowing for external and independent control. Instead, they often monitor themselves and decide themselves upon the setting up of "independent" ethics committees. Therefore, rules of conflict of interest for Members of Parliament are generally enforced through a system of self-regulation.

Conflicts of interests may also occur because in most countries' legislators decide on essential parts of their own remuneration. In addition, politicians decide upon the laws and regulations, on the party and election finance, and on lobbying issues. Finally, they also legislate on behalf of their own interests when defining their own rules and standards in the field of conflicts of interest. Also, Parliamentary immunity is an issue for the Parliament itself. In many countries, this constitutes a sensitive issue, since Parliamentarians are almost exempt from any civil or criminal prosecution.

Thus, legislators are – at least partly – regulating themselves. This is problematic as it raises suspicion and raises doubts about independence, fairness, and accountability. However, it would also be problematic to ask the executive to regulate, manage, and/or monitor the legislative.

Consequently, more countries are thinking about the introduction of external interinstitutional ethics committees or independent offices. "This is because traditional systems of self-regulation are more and more discredited. They can no longer command public confidence".⁸⁰ Yet, countries like Canada and Britain have recently adopted measures allowing for the first time the involvement of "outsiders" in their system of ethics regulation, making it less internal and more external. The move towards a more external form of ethics regulation is designed to enhance public trust and confidence in the procedures that Parliament uses to discipline its Members. It is intended to depoliticize the process of ethics

⁷⁹ National Democratic Institute for International Affairs, op cit, p.3.

⁸⁰ Ibid.

regulation. The goal is to mitigate the perception that MPs face an inherent and inescapable conflict of interest when they sit in judgment on fellow MPs. Yet, even if the maxim that “no one should be the judge in his own cause” has great moral power it seems difficult to oppose”.⁸¹ However, trends differ widely. Whereas many Parliaments have at least established different forms of self-regulation others do not even have this.

2.4. Special challenges for Ministers

More than other Holders of public office, ministers (and EU Commissioners) are exposed to several (specific) conflicts of interest. They exercise important positions of power and influence, interact regularly with the private sector, take important decisions which have a financial impact, hold (often) important functions in boards, agencies or committees, possess information about important issues, allocate grants of public funds, make appointments to positions, etc. Besides, Ministers are involved in decision-making as regards public-private partnerships, Co-production, citizen orientation, the outsourcing of policies, and the enhancement of mobility between the public and private sectors.

Ministers also decide on new technological developments (such as in fields like the Internet of Things, robotics, biometrics, persuasive technology, virtual and augmented reality, artificial intelligence and social media) which have a great impact on privacy, autonomy, security, human dignity, justice, and balance of power. Overall, the new wave of digitization is putting pressure on these public values. To effectively shape the digital society in a socially and ethically responsible way, Ministers and other stakeholders need to have a clear understanding of how these trends relate to each other and how they relate to the emergence of ever new conflicting outcomes.⁸²

As members of Government, yet politicians, little research has been undertaken on the effectiveness of CoI policies and laws for Ministers.

Obviously, ministers face different motivations and have different responsibilities than Parliamentarians, top-officials and other public employees in general. What makes ministers a special case for ethical consideration? It is the different degree of power that significantly distinguishes ministers from top-officials and their Parliamentary colleagues. As senior members of their parties, they wield considerable influence both inside and outside Parliament, demonstrating considerable autonomy and discretion in their dealings with colleagues and the public in general. The central place of the cabinet and the ministry in the political system itself puts the power of ministers on another plane to that of Parliamentarians on the whole.⁸³ “Their status gives them wide access to public sector confidential files and other privileged information. A minister also has the right to expert advice on matters pertaining to his/her portfolio and ready access to lobby groups with whom policy is discussed. Overall, the minister is in a very powerful, information-rich position. The potential abuses of this often confidential information make ministers vulnerable to ethical errors”.⁸⁴ “Additionally, ministers are subject to a variety of pressures – answerable not only to their constituents, but unlike their backbench counterparts, to the cabinet, the prime minister, special interest groups and Parliament. These kinds of

⁸¹ Saint-Martin, D. & Thompson, F., (eds.) (2006), *Public Ethics and Governance: Standards and practices in comparative perspective*. Vol. 14. Amsterdam/Boston/Heidelberg//New York/ Oxford/Paris/San Diego/San Francisco/Singapore/Sydney/Tokyo, 2006.

⁸² Lambèr R., Timmer, J., Kool, L. & Rinie van E., (2018), *Societal and ethical issues of digitization*, No. 20, pp. 127-142.

⁸³ Fleming, J. & Holland, I., (2000), *Motivating ethical conduct in government ministers*, International Institute for Public Ethics Conference, Ottawa, September 2000, No. 1, 3.

⁸⁴ Ibid.

often conflicting pressures in a party political system can be particularly onerous to co-ordinate and arguably expose ministers to potentially unethical situations".⁸⁵

Despite the widespread existence of established accountability mechanisms such as Parliamentary commissions, ethics advisors, ethics committees, and Parliamentary procedures, it is difficult to find out how and whether Ministers and their conflicts of interest are effectively monitored. Data in our survey does not allow for a clear answer to this question. However, we took note of the fact that 33% of all responding countries concluded that countries are reluctant to sanction ministers and top-officials. One country even mentioned that there exists a "high tolerance for Col of ministers".

Given the specific ethical challenges of ministers in relation to civil servants, we would have expected that countries have specific Col for ministers. In reality, the situation differs from one country to the next. Many countries have the same rules and standards for ministers and top-officials.

In the following, we will argue that specific standards and procedures are needed for ministers, similarly to specific standards for European Commissioners on the EU law.

In reality, the most stringent codes of ethics and rules on conflicts of interest apply to ministers, as ministerial positions include the power to decide upon public funds and programmes. Also, ministers are typically exposed to more sensitive information than Parliamentarians. Ministers are more likely to face a direct conflict between their public duty and private interest since, unlike legislators, they exercise specific discretionary powers. In addition, ministers have many different responsibilities. They are responsible to the Government for the administration of their portfolio, they are constitutionally responsible to Parliament, responsible to constituents and to the broader public, responsible to the president, prime minister or chancellor, responsible to the cabinet and responsible to the own political party. Consequently, ministers are subject to more specific and detailed regulations and codes. Take, for example, the so-called Dutch Blue Book, which codifies the behaviour of Dutch Members of Government (Bewindsleden).

The Bluebook describes and regulates a number of issues and situations that put Ministers in a specific situation and poses additional challenges to the emergence of potential conflicts of interests.

Some examples:

1. After elections, former politicians may still be in power until a new government is formed. In these periods, former members of Government are requested to observe restraint while exercising public power.
2. It is good practice that ministers do not speak in parliament debates in their function as MP where a fellow member of government defends government policy.
3. Often, Ministers are bound to strict forms of secrecy and confidentiality about discussions held in the Cabinet. However, ministers may also be tempted to inform colleagues, party members, or the press on these confidential issues.
4. In the Netherlands, politically exposed persons such as ministers are subject to strict (financial) monitoring and investigations by banks, financial authorities, etc. as regards their financial situation. Often, investigations extend to family, spouses, and close friends. This is necessary to control for potential conflicts of interest, money laundering practices, fraud, and the fight against terrorism. "The responsible institutions may always take appropriate measures to identify the source of the power and of the power the resources used in a business relationship or incidental transaction" (Dutch, Bluebook, translated).
5. Digital means and social subject must be subject to specific controls, spy software. This is also necessary in order to prevent wrongdoings in case of loss of information or damage to these

⁸⁵ Ibid, 4.

devices. Ministers should be aware that digital means bear the risk of generating conflicts of interest in case of loss of information.

6. The regulation for journalists accompanying ministerial business trips is central that travel and accommodation expenses are paid by journalists themselves. Journalists can, if this is (technically) possible, only travel without payment if sufficient space is available in the available service transport. If possible support is provided from the ministries through block bookings. Journalists then pay the costs themselves.

These selected cases illustrate that ministers are subject to specific risks, challenges, contexts, and, therefore potential conflicts of interest. It should also be noted that ethical challenges are continuously changing. Therefore, rules and codes need to be adapted on a regular basis in order to adapt to ever new challenges.

These cases show that Ministers face specific ethical challenges that are not always the same as for Members of Parliament. In both cases, ministers and legislators are obliged to look after their particular constituents, citizens, lobbyists, various local, national and international interests, the interests of their fellow party members, interests in coalitions, and the interests of the political party as such. Overall, a holder of political office owes allegiance to many principles and many different groups of people and institutions. Contrary to this, political ethics calls for public action on public principles, but – in reality – legislators may act less generally and autonomously and as a response to particular obligations and interests. Thus, conflicts of Holders of public office arise from the conflict that they act for us, with others, their constituency, and the public good. Moreover, politicians also act for themselves: “Indeed, he cannot serve us without serving himself, for success brings him power and glory, the greatest rewards that men can win from their fellows”. Finally; officials are also persons, and they have rights and obligations that all citizens share. While demanding less privacy for citizens (in order to enhance security), they can not demand more privacy for themselves.

Therefore, countries should be advised to design specific instruments for both groups. The need for specific treatment can best be discussed as regards the issue of “dirty hands”.

2.5. Ministers, Commissioners, Prime Ministers and Presidents and the relationship between Col, political ethics and “dirty hands”

Trust in leadership is the level of confidence that one individual has in a leader’s competence and his and her willingness to act in a fair, ethical and predictable manner. Thus, leadership must be trustworthy. Trustworthiness is the perception of someone to behave with fairness, integrity, professionalism, and competence. Trustworthiness relates to personal competences and personal integrity of the leader. Thus, preventing and avoiding Col contribute to one aspect of trustworthiness – ethical leadership. However, there is no denying that (political) leaders are also like the rest of us: trustworthy and deceitful, cowardly and brave, greedy and generous. To assume all leaders are good people is to be willfully blind”.⁸⁶ All politicians may act morally but also commit immoral deeds out of greed, the desire for power, because of conflicting interests or because of loyalty to country, interests, and own egoism.

In the case of top politicians and Ministers, the question is even more acute when taking into the problem of “dirty hands”⁸⁷ which means that top-politicians may be caught in a situation where they are required in some cases to do morally wrong in order to do right. Could it be that – at least in some

⁸⁶ Kurtulmus, B.K., (2019), *The Dark Side of Leadership*. Springer, 13.

⁸⁷ See for a good introduction: Stephen de Wijze Punishing “Dirty Hands” – Three Justifications, *Ethical Theory and Moral Practice* (2013) 16:879–897.

situations – Ministers need to commit conflicts of interest to do right? And, should those who get dirty hands be punished?

There is strong disagreement among even those who support the existence of such scenarios. The problem arises because the conflicting nature of dirty hands – doing wrong to do right – conflicts with our moral intuitions (see the discussion at the beginning of this study). It is difficult to argue that an action can be right, but nevertheless also wrong. “I do not think there is a comfortable solution, something which consequentialists and deontologists claim to have and seek to impose on us. To accept their views would require us to ignore our complex moral reality and diminish our ethical lives. The price of doing that is too high and even more uncomfortable than living with ambiguity and paradox”⁸⁸. Michael Walzer⁸⁹ in *“Political Action – the Problem of Dirty Hands”* argues that “a particular act of government may be exactly the right thing to do in utilitarian terms and yet leave the man who does it guilty of a moral wrong”⁹⁰.

The conflict is between consequentialism and deontology logics. This is a conflicting mixture of positions. It means that a political act or decision may be the right thing to do in utilitarian terms and yet be morally wrong. This is the problem of dirty hands. Most often, of course, political leaders accept the utilitarian calculation. Nevertheless, we do not want to be governed by men who consistently adopted that position.

For a long time, discussions about the morality of dirty-hands often take place in the context of discussions about the prospect and likelihood of a Nazi victory that the price of severe immorality was worth paying. According to Walzer the doctrine of dirty hands is that leaders may sometimes find themselves in situations where they cannot avoid acting immorally in order to do the right thing “when anything less than the ongoingness of the community is at stake, or when the danger that we face is anything less than communal death”.⁹¹ Thus, one could say that “dirty hands” are about extreme emergencies such as the devastation of whole peoples and/or their ways of life. However, in reality, “dirty hands” may also exist in daily life situations.

Walzer also believes that the morality of rights (deontologist view) and morality of consequences (utilitarian view) co-exist. Although rights trump utility in normal circumstances, a “utilitarianism of extremity” rightly overrides the morality of rights of normality in some rare circumstances.⁹² Thus, dirty hands may be justified in cases of supreme emergency.

One may argue about the justification of dirty-hands theories and in which cases dirty-hands may be justified, or not. Does it in some conflict of interest cases? For example, if the President of a national bank is also a member of the European Central Bank and – in his capacity as a member of the ECB – should act abstain from national influence. But what if he/she is also bound to national political, or even constitutional imperatives?

Still, these discussions illustrate that the relationship between politics and morals is difficult to delineate. So is the relationship between conflicts of interest and politics.

⁸⁸ De Wijze, op cit, 895.

⁸⁹ Walzer, (1973)..Political Action: The Problem of Dirty Hands, *Philosophy & Public Affairs*, Vol. 2, No. 2 (Winter, 1973), pp. 160-180.

⁹⁰ Walzer, 161, op cit.

⁹¹ Ibid.

⁹² Ibid.

Machiavelli believed that politics require that the Prince must learn how not to be good, though he should maintain the appearance of virtue and indeed behave virtuously when the cost is low⁹³. Max Weber stresses the opposition between “an ethic of responsibility” and “an ethic of ultimate ends” and that regard for consequences should dominate the thinking of the politicians (and not religiously inspired ethics).

Also, current trends in international relations seem to conform with the position of the school of “political realists” (Carr; Schlesinger; Morgenthau) who are rejecting the comprehensive relevance of morality by reference to something special about politics or international relations and “the realist view” that no ethical standards are applicable to international politics. Today, it seems, other spheres such as geopolitics, strategy, and economical interests override quite often law and moral standards. As such, international relations, increasingly, fall outside the provenance of morality. Because of this, also, political leadership violates the constraints of morality. However, the question of whether the overriding of moral constraints take place within morality or somehow beyond it is not only relevant to the “dirty hands” discussion in international politics.

In fact, the more “realism” and “dirty hands” are accepted, the more it is likely that this also becomes accepted for public officials, citizens, and other areas of life. And, also as regards the acceptance for the overriding of moral standards and the overriding of conflicts of interest standards? Will the latter become legitimate in some specific cases? Again, we refer to our discussion at the beginning of our survey.

Also, in the field of conflicts of interest, possible moral violations may be perceived as less profound and the justification for acting unethically may hardly be considered as “supreme” or “avoiding a catastrophe”, as in the case of dirty hands. For example, what about patronage and nepotism? When is it legitimate for a minister to appoint a friend or a trusted colleague? Never, because we believe that merit-based approaches and impartiality should apply? But what about other considerations like the principle of responsiveness and the need for a Minister to surround him with competent people and people he/she trusts?

As it seems, political life is not only pervasively morally problematic (this was already the case in times of Machiavelli).

Instead, current trends seem to be a growing acceptance of questionable behaviour, conflicts of interests, and grey zones (see also the chapter on Tolerance and Col). So is the treatment of conflicts of interest. “Bernard Williams distinguishes between the morally ‘disagreeable or distasteful’ and the morally criminal.”⁹⁴ Although Williams allows that some political actions that are popularly believed to be morally dubious, may well be morally acceptable when circumstances are properly understood, he casts a pretty wide net for the morally disagreeable. It involves such things as “lying, or at least concealment and the making of misleading statements; breaking promises; special pleading; temporary coalition with the distasteful; sacrifice of the interests of worthy persons to those of unworthy persons; and (at least if in a sufficiently important position) coercion up to blackmail”.⁹⁵

Yet more people claim that not all of these are morally wrong in all circumstances and that lying is acceptable in many circumstances (although a deontologist like Kant would reject these claims). Could

⁹³ See Walzer, op cit, 168

⁹⁴ Williams, B., (1978), *Politics and Moral Character*. In S. Hampshire (Ed.), *Public and Private Morality* (pp. 55-74). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511625329.004, 71.

⁹⁵ Ibid, 59.

it be that things Williams mentions are in the category “normally morally wrong but morally permissible in certain circumstances”?

In the past, in the field of conflicts of interests, discussions followed a deontologist “Kantian” logic and the principle that all conflicts of interest should be avoided.

However, in light of current trends towards more realism in international relations and a retreat of moral thinking as such in politics, it can also be accepted that discussions whether some conflicts of interest may morally be wrong, but acceptable, morally distasteful, disagreeable or morally criminal, will emerge soon.

2.6. Methodological Approach

This study compares and analyses the existing rules and standards for ministers and top-officials as regards conflicts of interest in the Member States of the EU. It also seeks to evaluate the implementation, institutionalisation and the management of conflicts of interest at the national level and of those who govern Europe. Because of continuous change in the field, analysing the development and the effectiveness of conflict of interest policies involves some of the greatest challenges and difficulties in legal, political, and administrative sciences. To this should be added the difficulty in comparing and analysing different (legal) instruments in different legal and administrative traditions and in different languages.

As we will see later in our study, Col is indeed a legal concept but – increasingly – it overlaps with the fuzzy concept of conflicting interest. Parallel to this trend, more disciplines study conflicts of interests from different angles, with different interests, methods and use different approaches. Obviously, researchers on conflicts of interest are “prisoners of their own perspectives”⁹⁶ and it is difficult to broaden the own horizon and open up for interdisciplinary approaches. Typically, lawyers focus on (the interpretation and enforcement of) legal instruments and easily ignore political-, organisational-, HRM-, or psychological aspects, or the socio-economic context. Psychologists easily ignore interests, power relations and the political context of Col. Political scientists underestimate the grand tradition of “law” in the field of Col.

In this study, we follow the methodology to study Conflicts of Interest, as defined by Blomeyer & Sanz⁹⁷ According to this approach, the following matrix presents the main issues covered by Col regimes for public office-holders.

- *What needs to be covered?* The actual conflict of interest issues covered can be organized in four categories, namely, conflicts related to the in-office activity (activities related to the office); conflicts related to political activity (e.g. if the office-holder intends to stand for election); other activity (e.g. other public functions, charitable activities, etc.); and financial interests.
- *At what point in time is the coverage required?* This addresses the time before taking office (pre-office), during office (in-office), and after leaving public office (post office).
- *Who needs to be addressed?* Ethics rules focus on the office-holder. However, some of the possible conflicts of interest situations also involve the office holder’s family and other relations (e.g. partners, friends, and pre-office professional contacts).
- *What are preconditions for effective implementation and how can compliance be enforced?* Ethics rules generally include provisions on the prevention of conflicts of interest (e.g. via training),

⁹⁶ Huberts, L., (2014). *The Integrity of Governance*, IIAS Series. London: Palgrave MacMillan, 15.

⁹⁷ Blomeyer and Sanz, (2009), *The Code of Conduct for Commissioners - improving effectiveness and efficiency*, Study for the European Parliament, Brussels PE 411.268.

internal enforcement (i.e. within the office), external enforcement (e.g. reporting to outside bodies), and sanctions (i.e. the consequences of unethical behaviour).

Table 4: Content of Ethical Regimes with regard to Conflicts of Interest

1) What?	2) When?			3) Who?			4) How?			
	2.1) pre-office	2.2) in-office	2.3) post-office	3.1) office holder	3.2) family	3.3) other	4.1) prevent	4.2) internal enforcement	4.3) external enforcement	4.4) penalty
In-office activity										
<ul style="list-style-type: none"> ▶ Conflict of interest with pre-office activity ▶ Public and private behaviour respectful of the public office (dignity) ▶ Confidential treatment of in-office information (discretion) ▶ Gifts / decorations / honours ▶ Other benefits / hospitality ▶ Operational resources: travel and representation, appointment of support staff 										
Political activity										
<ul style="list-style-type: none"> ▶ Supporting political activity (e.g. engagement in national political activity) / Standing for election 										
Other activity										
<ul style="list-style-type: none"> ▶ Public office ▶ For benefit (including seeking future employment) ▶ Non for benefit: artistic / scientific / creative / literary / charitable / educational 										
Financial assets										
<ul style="list-style-type: none"> ▶ Financial / real estate 										

Source: Blomeyer & Sanz, The Code of Conduct for Commissioners – Improving Effectiveness and efficiency, published by European Parliament. PE 411.268, Brussels, 2009

In this study, we have taken this model as a blueprint for our analysis. However, we deviate from this model as regards the focus of our analysis: We are particularly interested in evaluating the effectiveness of the various instruments and the institutionalization of Col policies and to a lesser extent in studying the enforcement of policies, the effectiveness of penalties, deterrent mechanisms etc. We also take a special interest in the effectiveness of revolving door policies for Ministers.

Today, the contours of an international approach to establishing effective conflicts of interest policies are steadily coming into view. They include the following:

- Measuring and assessing conflicts of interest in ways that focus on generating information that is useful, e.g. through staff assessments and other indicators.
- Strengthening the focus on transparency, openness, and accountability, so that interested stakeholders can have access to the information they need to prevent, detect, investigate and sanction Col.
- Supporting efforts to tackle conflicts of interest through cycles of awareness-raising and learning about the risks of Col.
- Focusing more on analysing the effectiveness of Col policies in relation to specific policy sectors, problems, issues or instruments.

- Paying more attention to compliance and results and not only the implementation of rules as such.

While all aspects merit to be treated in our analysis, neither time nor resources have allowed us to study all these elements in detail. Further research is needed to investigate all of these issues in order to progress with research evidence and demonstrate satisfactory findings.

The research in this study is comparative and evidence-based, drawing on previous surveys, existing academic studies, literature reviews, and new quantitative and qualitative data from the national and international levels.

In the field of Col, longitudinal studies do not exist. Therefore, this study is also the first attempt to compare data with an earlier study that was carried out in 2007 for the European Commission.⁹⁸ This study analysed the situation of all holders of public office in Government and covered various national institutions (Court of Auditors, Banks, Courts, Government, and Parliaments) and the EU institutions.

⁹⁸ Demmke et al, (2008).

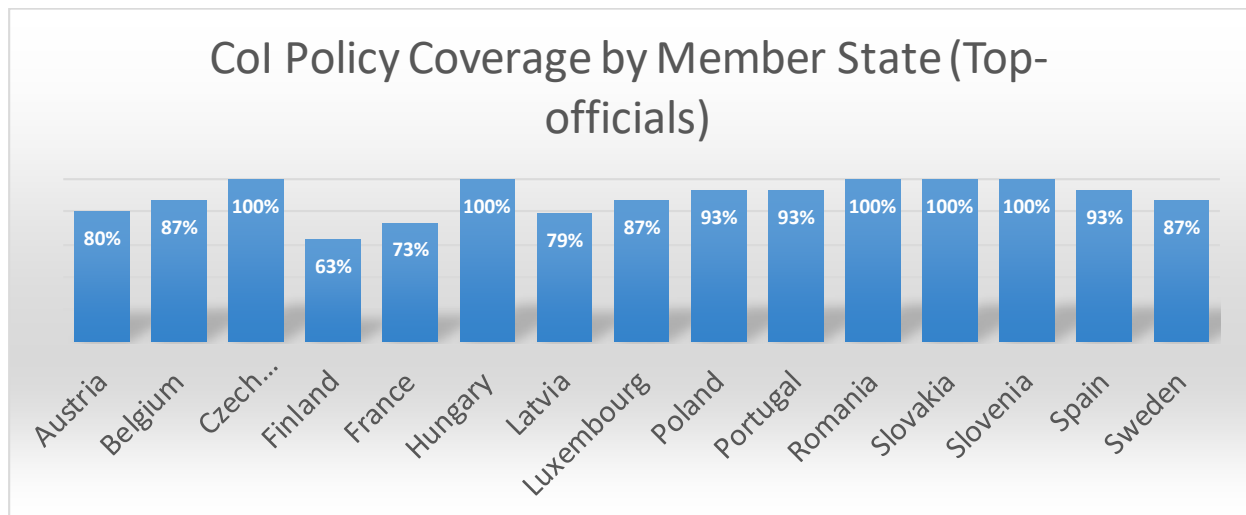
Table 5: Different forms of regulation in institutions

<i>Applicable to (Scope) Type of regulation</i>	ALL INSTITUTIONS (GOVERNMENT, PARLIAMENT, COURT OF JUSTICE, COURT OF AUDITORS, CENTRAL BANK)	INDIVIDUAL INSTITUTION(S) – 'LESS THAN ALL' INSTITUTIONS
General rule/and or regulation (including provisions on conflicts of interests) <i>Compliance based (normative)</i>	General regulation applicable to all institutions [GL]: <ul style="list-style-type: none"> • Constitution • Penal Code • Administrative Acts • Civil Servants Act 	General regulation applicable to individual institutions [GIL]: EX: Central Bank Act; Court of Auditors Act
<i>Integrity based</i>	General codes and/or standards for all institutions [GC]: EX: Seven Principles of Public Life (UK)	General codes and/or standards for individual institutions [GIC]: EX: Codes of Conduct, Rules of Procedure
Specific rule and/or regulation (explicitly on ethics and conflicts of interests) <i>Compliance based (normative)</i>	Specific regulation CoI applicable to all institutions [SL]: EX: Prevention of Corruption Act (SI); Ethics in Public Office Act (IE);	CoI legislation applicable to individual institutions [SIL]: EX: Incompatibility Act for Government and Parliament (AT)
<i>Integrity based</i>	Specific codes and/or standards for all institutions [SC]: EX: Conflict of Interest and Post- Employment Code for Holders of Public Office (CA)	Specific codes and/or standards for specific institutions [SIC]: EX: Ministerial Code of Ethics (UK)

Source: Demmke et al, 2007

In this study, we define “policy coverage density” as the quantitative degree of coverage of conflict of interest issues by laws, legally binding rules and codes. If a Member State regulates all conflict of interest issues by laws and/or codes the country has a high degree of coverage density. Our basic statistical analysis about the policy coverage density for top-officials illustrates that countries like the Czech Republic, Hungary, Romania, Slovakia and Slovenia have the highest policy coverage density whereas Finland has the lowest.

Figure 12: Col Policy Coverage, Top-officials



Source: Own calculations by the authors based on the information/data received from the Member States of the EU

In order to measure the policy coverage density we forwarded to the Member States a list of 15 Col issues and requested information on whether and how they regulate or manage (by codes) these issues. Member States were requested to answer separately for Ministers and for Directors-General. However, some countries answered that they do not have different rules for Ministers and Directors-General. Other countries applied clear distinctions.

The term “instruments” defines all legally and non-legally binding measures and behavioural instruments that are applied in the field of Col to reach the anticipated effects and reform outcomes.

Overall, the diversity of codes manifests the relevance of ethical infrastructures and the necessity to combat and prevent corruption not only by highlighting hard law deterrence based sanctionary mechanisms, but by raising awareness and giving ethical guidance.

However, there is still a definitional lack of what these ethics documents should include. As the variety of literature suggests, ethical guidelines can be comprised of different types of documents, sometimes referred to as codes of conduct, codes of practice, codes of ethics or codes of professional behaviour.

According to the OECD, there is a definitional differentiation between codes of conduct and codes of ethics. A code of conduct serves as an instrument of a rules-based compliance approach. It describes as specifically and unambiguously as possible what kind of behaviour is expected and establishes strict monitoring and punishment procedures to enforce the code. A code of ethics is rooted in the values-based management approach. It focuses on general values rather than on specific guidelines, putting more trust in the employee’s capacities for moral reasoning. A code of ethics seeks to support and coach on the application of these values in daily real-life situations.⁹⁹ However, the choice for a respective version is depending on several factors, including the existing jurisdiction’s legal framework and the organization’s ethics culture in management and leadership. Therefore, in most cases, a hybrid form is desired, providing a general ethics scope and clear behavioural instructions.¹⁰⁰

Codes for the different categories of institutions, sectors, policies and categories of staff are also subject to some considerable variation. Besides, the different codes vary as to their legal and political effects.

⁹⁹ OECD, 2009, 34.

¹⁰⁰ OECD, 2009, 35.

Also, as regards the term “code” many countries differentiate between code of ethics, code of conduct and code of rules and regulations.

Generally, most codes can be divided into three types. Whereas code of ethics discusses general and abstract principles of behaviour (such as the Seven Principles of Public Life in the UK), code of rules and regulations have legal and disciplinary consequences in the case of non-compliance. Codes of conduct are within these two extremes: generally, they contain norms that set both aspirational values and expectation values. Therefore, their level of abstractness varies from moderately abstract to moderately concrete. This distinction is a heuristic device and in practice, these terms are used in an interchangeable way.

According to Frankel¹⁰¹ “three types of codes of ethics can be identified. An *aspirational* code is a statement of ideals to which practitioners should strive. Instead of focusing on notions of right and wrong, the emphasis is on the fullest realisation of human achievement. Another type is an *educational* code, one which seeks to buttress understanding of its provisions with extensive commentary and interpretation. A conscious effort is made to demonstrate how the code can be helpful in dealing with ethical problems associated with professional practices. A third type is a *regulatory* code, which includes a set of detailed rules to govern professional conduct and to serve as a basis for adjudicating grievances. Such rules are presumed to be enforceable through a system of monitoring and the application of a range of sanctions. Although conceptually distinct, any single code of professional ethics may combine features of these three types. A decision about which type of code is appropriate for any single profession at a point in time will necessarily reflect a mixture of both pragmatic and normative considerations”.

Categories of Codes

1. Legally-binding or voluntary
2. Aspirational, compliance-oriented or regulatory,
3. Educational or public relations
4. Integrative ethics instrument or guideline
5. Combined with sanctions or without deterrent mechanisms
6. Detailed or general/short

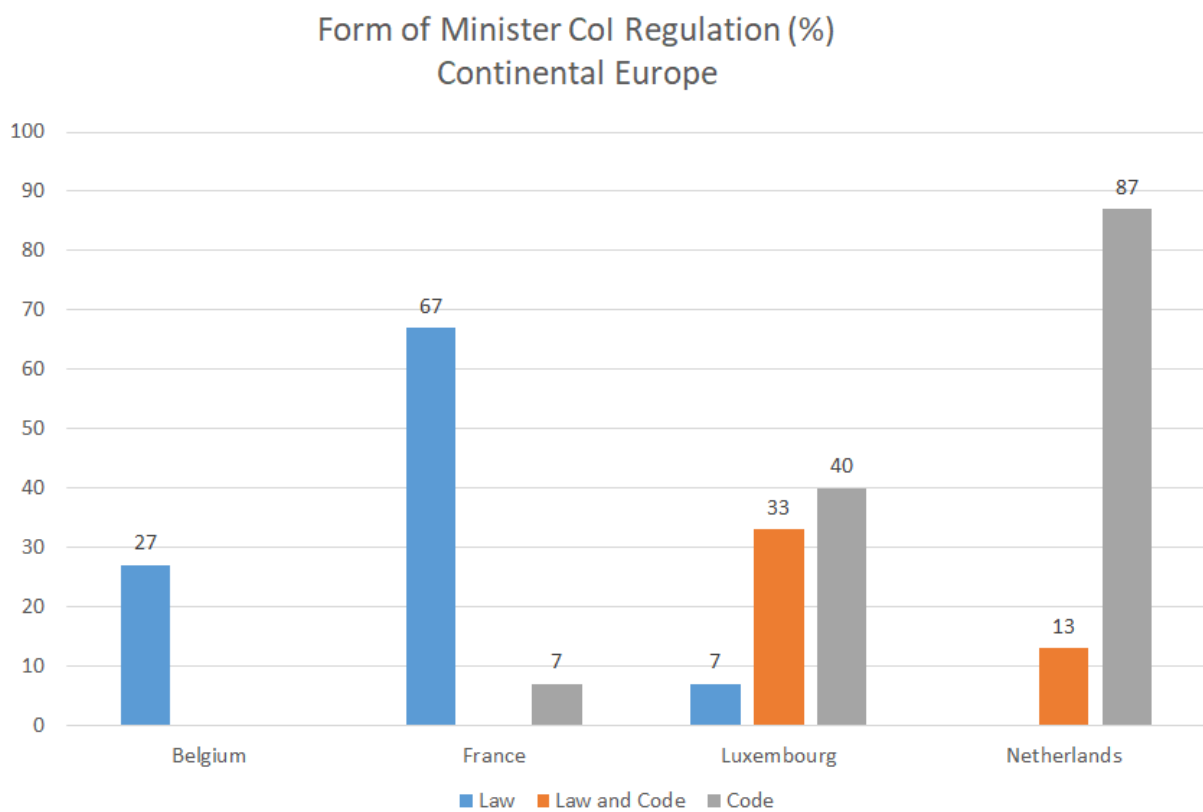
In most cases, countries distinguish laws and codes of conduct/ethics. For our purpose in this survey, all legally binding acts and provisions (constitution, laws, regulations, acts, statutes) can be treated as laws, whereas codes can be defined as all internal documents and administrative practices (such as codes of ethics etc.). In some Member States, general rules are laid down in the constitution or in the penal codes that refer to ethics (and conflicts of interests). These constitutional or criminal law rules are applicable to more than one institution and apply to the whole country. In other countries, the constitution does not regulate ethical issues at all. Rather, in some Member States general or specific rules and standards regulate all or individual institutions. The different degrees of regulation and the different levels of regulation suggest that regulation by the Constitution or the general penal code should be handled differently than specifically designed rules on conflicts of interest.

¹⁰¹ Frankel, M.S., (1989), Professional Codes: Why, How, and with What Impact?, in: Journal of Business Ethics, No.8, pp.110-111.

Professional codes of conduct have existed since antiquity. Especially when applied to the professions – doctors, lawyers and public servants – they have always been an important expression of values, ethical standards and principles. One important common feature of almost all codes is their overall purpose: codes should guide behaviour. Grundstein-Amado¹⁰² conclude that Codes of Conduct fulfill three purposes. They should articulate the organization’s values and norms and by doing so, create an ethical culture amongst members of an organization, so that support for solutions to ethical dilemma situations can be provided.

Next, it is important to note that the term *code* is defined differently in various countries. Especially in the Netherlands (but also in Sweden), codes are mostly understood as code of conducts or codes of standards, whereas a code de travail (as an example) is a legally binding instrument in France or in Luxembourg.

Figure 13: Form of Minister Col Regulation in Continental Europe

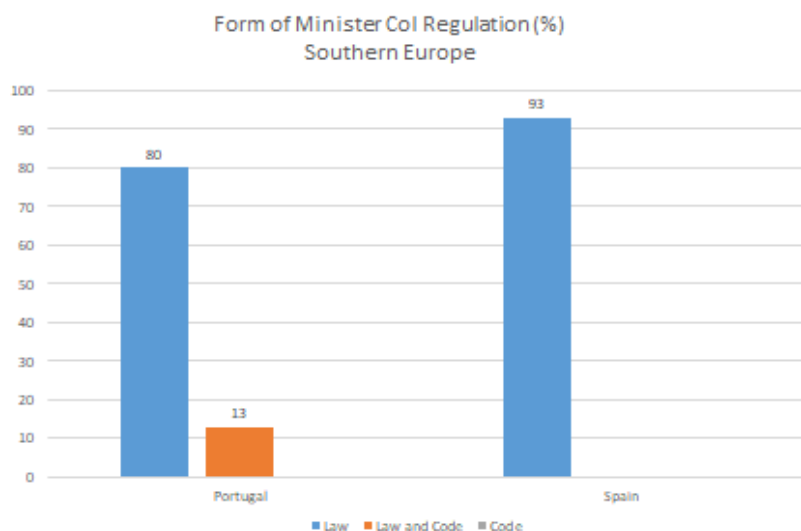


Source: Own calculations by the authors based on the information/data received from the Member States of the EU

This distinction is of great importance since Col are mostly “regulated” by codes in the Netherlands but a mixture of instruments in France and in Luxembourg. Again, differently to the situation in The Netherlands, countries like Portugal and Spain focus on the instrument “law”.

¹⁰² Grundstein-Amado, R., (2001), A Strategy for Formulation and Implementation of Codes of Ethics in Public Service Organizations. In: International Journal of Public Administration, 23(5), p. 463.

Figure 14: Form of Minister Col Regulation in Southern Europe



Source: Own calculations by the authors based on the information/data received from the Member States of the EU

Therefore, we should highlight that any understanding about the management of Col also requires an understanding of each instrument and how it is interpreted in the various national systems. For example, similar to the 2007 survey on Col¹⁰³, we also note in our survey that there is a clear relationship between the nature of administrative systems and the policy coverage density. As already mentioned, despite all differences in detail, classical bureaucratic countries (like Luxemburg) have more Col rules (laws and regulations) in place for the most important Col policies than more (private sector like) managerial systems (like the Netherlands).

Given our limited mandate and the limited time framework, we focused on ministers (and not all holders of public office) and top-officials in central public administration (and not top-officials in various national institutions). Thus, we note that our comparison with the 2007 study¹⁰⁴ does not match exactly with the same categories of staff and the same pool of politicians.

Still, it was possible to compare some of the findings of both surveys, at least as regards the so-called regulation density index. Similarly, to the 2007 study¹⁰⁵, this study was also carried out in co-operation with the European Public Administration Network (<http://www.eupan.eu>), which is composed of top-officials from all Member States of the EU and officials from the European Commission. Thus, the respondents were also very similar to those in the 2007 study.

2.6.1. Data collection, data analysis, and shortcomings of the survey

As regards the operationalization of the research mandate, our research team decided to carry out an international survey, which was sent to the responsible ministries in the Member States of the EU (see annex 1). In the survey, we asked the Member States and the institutions to provide information on

¹⁰³ Demmke et al, (2008).

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

whether and how they regulate different conflict of interest issues ranging from the declaration of interests and property, rules on confidentiality and loyalty to post-employment policies.

Apart from the analysis of the list of all potential Col issues (question 1 in the survey) we also examined the situation as regards the group of most important Col (question 1 issues a, b, c, e, l, n, o) in order to get more comparable evidence about the core Col issues. Other objectives were to gather information on the implementation of ethics policies in times of expansion of Col concepts, the effectiveness of management methods, attitudes towards Col, existence and working methods of disclosure and revolving door policies and oversight mechanism, for example through the setting up of ethics committee.

As regards the latter, we noticed that information on ethics committees was scarce. Moreover, Member States were reluctant to provide for detailed data and information about the operation of “the opaque” world of ethics committees. We concluded that a full analysis of the situation requires additional work in the future (and therefore we will discuss the issue of ethics committees only shortly).

We operationalized the research by testing the following hypotheses:

Research hypotheses

H 1 Countries with higher levels of corruption have more regulation (coverage density)

H 2 Classical bureaucratic countries have more regulation (coverage density)

H 3 Countries with lower levels of trust have more regulation (coverage density)

H 4 The most important Col issues are more regulated in a) bureaucratic countries, b) countries with lower levels of trust and c) countries with high levels of corruption

H 5 Northern countries have lower levels of regulation

H 6 Spouse activities are less regulated in northern countries

H 7 Overall, countries have a higher coverage density than in 2007

H 8 Overall, countries have a higher coverage density on revolving door than in 2007 (survey questions n, o)

H 8 New Member States have a higher coverage density than older Member States

H 10 Top-officials have a higher coverage density than ministers

H 11 The level of Col coverage in the various countries is not related to government effectiveness, freedom of press, democracy, rule of law, impartiality, corruption etc. However, toleration and shortcomings in the implementation and enforcement of Col are higher in countries with lower ratings in democracy, rule of law, transparency, good governance etc.

H 12 A high coverage of Col is not related to public trust

Box 1: Research hypotheses

During the research which took place in 2020, it became clear to us that there are no perfect answers. However, as this study will show, there are some promising answers and many – surprising – results that contradict some widely accepted theoretical concepts.

Hypotheses and main empirical results of the survey

H1 Member states with higher levels of corruption have more regulations in place (policy coverage density)

- Member states with high levels of corruption also have a high policy coverage density
- The higher the policy coverage density, the more people also believe that corruption is widespread
- The higher the policy coverage for ministers, the more people believe that too close ties between politics and business lead to corruption (without Belgium)
- The higher the policy coverage density, the more people believe that anti-corruption measures are applied impartially (without Belgium)
- The higher the policy coverage density, the more people believe that corruption is tackled effectively by governments (without Belgium)
- (Note to bullet points 2-5: Often, citizen perception polls are prone to contradictions and paradoxes)

H2 Member states with classical bureaucratic administrative systems also have more regulation (policy coverage density) in place than other administrative systems

- Partly Confirmed

H3 Member states with lower levels of trust in the public institutions have more regulation (policy coverage density)

- Neither confirmed nor denied
- Since trust is a complex concept, many variables and indicators influence trust developments in a country. Policy Coverage Density is only one indicator and as such the study couldn't identify a clear link between policy coverage density and trust.
- We tested multiple variables related to trust. However, we couldn't identify a clear and concise pattern. Thus, H3 can't be conclusively confirmed or denied.

H 4 – Hypothesis not able to be operationalised – not analyzed

H5 Northern European member states have less regulation in place than other European member states

- Confirmed. This may be explained by the fact that citizens place higher trust in the integrity of Government in these member states. Another reason is that public administrations in these member states are less bureaucratic. Another explanation may relate to the fact that these member states are more reluctant to interfere in privacy rights, e.g. by establishing strict rules as regards the declaration of spouse activities.

H6 Spouse activities are less regulated in northern member states

- Confirmed

H7 Overall, member states have a higher policy coverage density than in 2007

- Confirmed, overall, member states regulate Col more intensively than in 2007
- Member states also have a higher policy coverage on most Col issues

H 8 Member states have a higher policy coverage density on revolving door than in 2007 (n, o)

- Confirmed

H9 New Member States who entered the EU in 2005 or afterwards have a higher coverage density than older Member States

- Confirmed

H10 Top-officials have a higher policy coverage density than ministers

- Not confirmed, the policy coverage density is very similar in most member states.
- This does not suggest that the existing rules as regards the various Col policies are also the same.

H11a) There is no statistical evidence whether Col are increasing or decreasing in the member states included in our survey (e.g. Hungary vs. Sweden).

- Member states included in our survey have no statistical evidence about the development of Col

H 11b) The policy coverage density in the various member states is not related to the state of democracy and the rule of law.

- (We cannot observe a straight link between the number of policies and rules in place and the state of governance in a member state or institution)

H 11 c) However, the toleration and shortcomings in the implementation and enforcement of Col are higher in member states with lower ratings in democracy, rule of law, impartiality and government integrity.

- Independently of our data, we note that great shortcomings exist in the implementation of Col policies and rules in all member states of the European Union.
- The higher the democracy index in a member state, the fewer people accept corruption
- The higher the rule of law index in a member state, the more people do not accept corruption
- Member states with high government integrity have low tolerance of corruption
- The more satisfaction with the functioning of democracy, the more people do not accept corruption (only slight effect).
- Member states in which many people accept corruption are mostly also member states where people believe that the state of rule of law needs improvement (only slight effect).
- Highly effective governance systems have higher intolerance toward corruption

H12 The latter also suggests that a high coverage of Col is not related to public trust

- See H3

Other findings:

- Many member states observe specific challenges in the implementation of revolving door policies
- Many member states face difficulties in the implementation and enforcement of Col because of the complexity of individual issues, the existence of grey zones and high levels of toleration for Col of ministers

Notes:

- Ministers: Trust values not available for Bulgaria and Romania
- Ministers: RoL values not available for Latvia, Luxembourg and Slovakia
- Top-Officials: Trust values not available for Romania
- Top-Officials: RoL values not available for Latvia, Luxembourg and Slovakia

Box 2: Research hypotheses and survey results

Finally, this study had to be accomplished within less than one year. Without a doubt, this requirement represented the biggest challenge. The authors of this study would like to express our gratitude to the various national experts within the Member States for helping us to carry out this study.

The most important challenge when comparing and analysing ethics rules and standards for politicians and top-officials concerns the access to reliable data (or how to obtain honest answers to sensitive questions). Thus, also in this study, not only the availability but also the reliability of data was a sore point in the development of this comparative work. In our survey, this mainly concerned open

questions on the development of conflicts of interests, the introduction of new instruments to prevent conflicts of interest, and about the nature of ethics committees. Despite the intensive work of the OECD in the field, overall, comparative data is scarce, and it is also vulnerable to change and manipulation.

The survey follows partly the tradition of elite studies although our respondents are officials who are supposed to provide official data that does not reflect personal opinions. In many cases, the delivered data was discussed internally and coordinated with a number of other persons, agencies, and ministries. In administrative elite studies, top-officials are members of organizations with expected higher reliability, institutional knowledge, and experience. Putting forward questions to politicians or lower-level civil servants would increase the risk of receiving less “representative” information.

On the other hand, experience shows that official responses to empirical surveys differ according to the choice of the target groups. For example, leaders respond differently than technical staff and official sources differ from academic sources. Generally, government responses are often more positive than individual responses by public employees. Thus, we know the respondents in our survey represent official government sources and that answers to the survey necessarily differ as to if we had collected samples in each country by different employment groups. In this survey, we acknowledge the danger of significant sources of bias when only asking higher-ranking officials to provide official data. These officials may have an interest in reporting favorable outcomes to present a positive and successful image on the international scene. In fact, in this type of comparative surveys, independent datasets do not exist.

In the field of Col, the Member States and EU Institutions have only started to generate data in the field. Overall, no country is generating a sufficient set of data in the field of Col. As already discussed, no country provides for data on the development of Col over time. However, this makes any research difficult and somehow subject of speculation. Therefore, we suggest that valuable further research should address data management issues in the field.

Any honest dialogue about ethics requires an ability to communicate about difficult issues and the courage to air open and sometimes dissenting opinions. It is well known that conflicts of interest are a very serious problem in some countries and at the EU level. This presents one important challenge for a comparative study: many of the issues which are discussed are complex and sensitive. Consequently, governments, organisations, and even national experts shy away from discussing them openly.

We also hope that any debate about this study will generate sufficient scope for all-important viewpoints to be heard to achieve fuller understanding. As this suggests, this fundamental dialogue is necessary to establish what constitutes ethical behaviour, since this is unknown at the outset. Such a notion only emerges from the dialogue itself.

However, as such, the dialogue is difficult, as Col are managed by different authorities, agencies, administrative units, and persons. The institutional landscape is highly fragmented. Therefore, another challenge concerns the need to contact, communicate, and coordinate with various administrative bodies to generate the needed data. In some countries, different institutions are responsible for monitoring different rules and policies for Ministers and Top-officials. Contrary to this, in some countries rules and policies are the same for ministers and top-officials, which is also surprising.

Overall, research into conflicts of interest raises many controversial and sensitive issues. Despite the delicate nature of the issue, our research team decided to ask the Member States about their evidence as regards the most pressing challenges in the field. Most countries responded to these questions, but no country was able to present facts and data as regards the emerging challenges in the field.

In many respects, the issue of conflicts of interest is a highly regulated policy. Some countries responded to our survey by adding long lists of existing rules in the field. Thus, as this study will show, there is no shortage of rules and standards in the field of conflicts of interest. Conflicts of interest are becoming more regulated but not necessarily better managed and enforced in many countries.

Member States face increasing challenges as to the quality of the existing rules, overlapping of rules, legal fragmentation, and a lack of coherence of approaches between the international, national, regional, and local levels. To this should be added (as already mentioned) the existence of different rules and policies for different holders of public office and different public institutions. Differently to other policy areas, no country is applying regulatory impact assessments, nor evaluating the successes and failures in the management of Col. Overall, evaluating the quality of existing rules is a challenge by itself and deserves additional research.

However, all Member States (constantly) introduce new rules. One major cause for the rise of regulation is when political scandals and new conflicts of interests appear, failure is attributed to not enough law or not strict-enough law. "Rarely is the integrity/efficiency trade-off even considered".¹⁰⁶

Calling for new rules and standards is an easy solution to a complex challenge. As this study will show, regulating and managing conflicts of interest requires more than a "compliance-based approach". From an external point of view, often, the existing rules and codes of ethics look good in themselves, but this does not mean that the different institutions and the people take them to heart. Often, the rules are nothing but paper. Therefore, the problem is often not the rules but the shortcomings in their implementation and a lack of capacity and effort in the enforcement process. Also, codes of ethics are essential at certain times and for certain purposes, but more are needed. Codes only work when they encompass people's existing beliefs and practices and are well designed, understood, and supported by those who must apply them in their daily lives. In addition, codes can only be effective in an atmosphere of trust.

Despite these limitations, this survey provides completely new quantitative and qualitative data regarding the implementation of Col. It compares the measures taken, analyses reform effects, and discusses possible future trends. While carrying out this survey, we know the discussion around conflicts of interest also related to many other issues that are political, sensitive, confidential, or even secret. Therefore, some countries were reluctant to release sensitive data which is becoming a subject of comparative research.

As one of the largest comparative public management research projects in the field of Col, this study, therefore, intends to provide a comprehensive picture of the challenges facing public administrations in a turbulent context that was characterized by the ongoing COVID-19 crisis.

In doing this type of work, it became also evident that there can be too little or too much attention on theoretical issues, too little or too much focus on historical explanations, or a too general analysis without taking into consideration the many existing specific features of the national systems, avoidance of different linguistic meanings and definitions, etc. Moreover, the existing national arrangements are in a constant process of change and it seems that change is happening at ever faster speeds. If decades ago, public administration and politics was a synonym for stability, today it is a symbol for hasty change.

In addition to this, there is the added difficulty of comparing and analysing the different (legal, political, organisational, and HR-) instruments in different legal and administrative traditions and in many

¹⁰⁶ Anechiarico & Jacobs, (1996), 12.

languages. Although countries could answer to this study in seven languages, this comparative study was carried out in English. Naturally, many discussion partners and respondents to questionnaires were asked to respond to terminology that may not be understood universally across the EU countries.

Throughout the work on this study, a considerable amount of time was used in comparing and analysing the different national definitions and concepts.

During the period from January to March 2020, a questionnaire was drafted, containing a number of open-ended and closed questions. The questionnaire was provided to the EUPAN network in order to ensure that competent national experts from all EU countries would be consulted as early as possible and be able to respond to the questionnaire.

After internal validation of the survey, the survey was conducted by means of personal email. At the same time, we experienced the outbreak of the COVID-19 pandemic. At the stage, it became very uncertain whether the survey could be carried out at all. Countries like Italy, Ireland, Germany, and others informed us that – due to other emergency issues – it would be not possible anymore to contribute to the survey. Still, 17 countries (excluding Germany which responded to this survey per mail) responded to this survey which demonstrates a huge interest in this study.

After completion of the questionnaire, the research team started with the data cleaning process which took three months from April to June 2020. In this period, we analysed and filtered all answers, and identified those which were either still missing or unclear. In those cases, the respective countries were contacted on a bilateral basis in a “third round”. Throughout the study, the various countries were very supportive and eager to support the research team.

However, during this work, we, again, became increasingly aware of the difficulties and challenges involved in comparative research. Due to the importance of national traditions and contexts, structures, processes, and HR reforms, this study is not in the position to assess which countries or administrations are more successful or better than others. Instead, the study intends to initiate a critical, open, and constructive dialogue on positive and negative developments in the reform of conflicts of interest policies.

We believe that the interest in contributing to this study and its findings – several are very promising and others are surprising in that they contradict some common sense doctrines of conflicts of interest policies – can be interpreted as an indicator of the increasing level of awareness, as well as the growing care and diligence devoted to the implementation and handling of CoI, and of the willingness to engage in such a dialogue.

We conclude from this, that, because of the political nature of the subject matter, research into the world of applied conflicts of interest faces tremendous difficulties. Analysing conflict of interest policies involves some of the greatest challenges and difficulties in legal, political, and administrative science. Again, we wish to highlight the difficulty in comparing and analysing different policies and (legal) instruments in different legal and administrative traditions in different languages. Member States could answer this survey in seven languages, which means that ten countries answered to this survey as non-natives.

2.6.2. The case of Belgium

Because of a lack of space, our empirical discussions will focus on the situation of Ministers and less on top-officials. As is the case with most other countries, Belgium provided data for Ministers and top-officials to this survey. We should, however, highlight that the data is only applicable to the Belgium federal level.

Differently to all other countries, the regulation of Ministers (by laws, laws and codes, codes etc.) differs considerably from the regulation of Top-officials. Whereas most countries show some, or few differences between these two groups, Belgium has regulated Col of top-officials to a high degree. Almost all Col issues are managed by legally binding instruments and/or codes.

La prévention et la gestion des conflits d'intérêts, notamment en ce qui concerne les agents publics et leurs relations avec le secteur privé

Au niveau fédéral belge, la question des conflits d'intérêts dans la fonction publique est principalement réglée par 8 textes réglementaires :

- L'arrêté royal du 2 octobre 1937 (cfr annexe 1) portant le statut des agents de l'Etat (autrement appelé « Statut Camu ») prévoit une série de dispositions relatives aux droits, devoirs et conflits d'intérêts :
 - Ainsi, est prévu à l'article 8 §3 l'interdiction de solliciter, exiger ou recevoir, directement ou indirectement, des dons, gratifications ou avantages.
 - Plus spécifiquement sur le conflit d'intérêt, l'article 9 de l'arrêté royal précité prévoit qu'un agent de l'Etat a le devoir d'éviter de se placer dans une situation de conflit d'intérêt, et qu'à défaut, il doit en informer immédiatement sa hiérarchie qui prendra les mesures adéquates pour y mettre fin. Il est également prévu la possibilité pour un agent qui douterait d'un éventuel conflit d'intérêt dans l'exercice de leur fonction de demander l'avis de l'administration.
 - La question des conflits d'intérêts dans le cadre des fonctions des agents de l'Etat est également réglée dans cet arrêté au travers des mesures reprise à l'article 12 réglementant le cumul. Ainsi, un agent qui souhaite exercer une activité rémunérée en dehors de ses fonctions doit en informer par écrit son administration et obtenir l'autorisation de celle-ci. L'administration est alors chargée de vérifier l'adéquation entre les fonctions de l'agent et les activités qu'il souhaite exercer.
 - L'article 16 §1 5° prévoit l'impossibilité pour une personne d'être nommée comme agent de l'Etat si elle se trouve dans une situation de conflit d'intérêt avec la fonction pour laquelle elle se porte candidate.
- La circulaire n°573 du 27 août 2007 (cfr annexe 2) aussi appelé Cadre déontologique pour les agents de la fonction publique administrative fédérale explicite les valeurs et comportements attendus de la part des agents de l'Etat. Les points 16 à 19 de cette circulaire portent spécifiquement sur la question des conflits d'intérêts et du cumul. Le point 20 prévoit quant à lui une recommandation pour un agent qui quitte la fonction publique fédérale pour une fonction dans le secteur privé d'en avertir son administration si le futur employeur exerce des activités susceptibles de les mettre en relation d'affaire avec le service public d'origine. Enfin, le point 21 interdit aux agents d'accorder des avantages indus à d'anciens collègues ayant quitté la fonction publique.
- L'article 16 de l'Arrêté royal du 16 novembre 2006 (cfr annexe 3) relatif à la désignation et à l'exercice des fonctions de management et d'encadrement dans certains organismes d'intérêt public prévoit également des disposition en matière de conflits d'intérêts pour les titulaires de fonctions de management et d'encadrement dans l'administration fédérale. Ainsi, est interdite toute activité, occupation ou mandat, même gratuit, exercé par le titulaire d'une fonction de management ou d'encadrement lui-même, par personne interposée ou par intermédiaire, dans tout établissement, entreprise, société ou association quelconque et susceptible de donner lieu à un conflit d'intérêt avec les activités de l'organisme ou de porter atteinte à l'indépendance ou à la neutralité du mandataire. Le mandataire est également tenu de déclarer les intérêts qu'il ou les membres de sa famille habitant sous le même toit possède(nt) ou activités qu'il(s) exerce(nt) dans tout établissement, entreprise, société ou association dont les activités sont susceptibles de relever des compétences de l'organisme.
- L'Arrêté royal du 17 août 2007 (cfr annexe 4) relatif aux activités d'audit interne dans certains services du pouvoir exécutif fédéral prévoit dans son article 8 §3 que le responsable des activités d'audit interne et les auditeurs internes déclarent ne pas être dans une situation de conflit d'intérêts et s'engagent à démissionner de ce service dans l'hypothèse où ils viendraient à se trouver dans une situation permanente de conflit d'intérêts. Ce texte prévoit

également la tenue d'un registre des conflits d'intérêts par le Comité d'audit de l'Administration fédérale où chaque responsable d'activités d'audit interne inscrit les éléments qui pourraient compromettre son objectivité.

- L'Arrêté royal du 19 novembre 1998 (cfr annexe 5) relatif aux congés et absences accordées aux membres du personnel des administrations de l'Etat, dans son article 115, prévoit qu'un agent bénéficiant d'une absence de longue durée pour raison personnelle doit avertir son administration s'il souhaite profiter de son congé pour exercer une activité lucrative. Cet article a pour but de lutter contre le « pantouflage », à savoir quitter momentanément la Fonction publique (sans démission et avec réintégration ultérieure possible) pour prester dans le même secteur d'activités ou dans un secteur très proche dans le secteur privé.
- La loi du 17 juin 2016 (cfr annexe 6) relative aux marchés publics prévoit dans son article 6 une série de dispositions pour prévenir, détecter et corriger les conflits d'intérêts survenant lors de la passation et de l'exécution de marchés publics et ce, afin d'éviter toute distorsion de concurrence et d'assurer l'égalité de traitement de tous les opérateurs économiques. L'article 163 § 3 2° stipule qu'un point de contact est chargé d'établir tous les 3 ans un rapport destiné à la Commission Européenne, comportant notamment les résultats d'opérations de contrôle par sondage de l'application des règles relatives à la passation des marchés publics et des informations, notamment sur la prévention, la détection et le signalement adéquat des cas de fraude, de corruption, de conflit d'intérêts et d'autres irrégularités graves dans le cadre de la passation de marchés publics;
- La loi du 6 janvier 2014 (cfr annexe 7) portant création d'une Commission fédérale de déontologie. Cet organe, qui relève de la Chambre des Représentants, a pour mission de rendre des avis, à la demande d'un mandataire public, d'un Ministre ou d'un Secrétaire d'Etat sur une question particulière de déontologie, d'éthique ou de conflits d'intérêts le concernant. Elle a aussi pour mission de formuler des avis ou des recommandations à caractère général en matière de déontologie et d'éthique et de conflits d'intérêts. Cette loi fait l'objet actuellement d'un projet de loi modificatif en vue d'y insérer le projet de Code de déontologie des mandataires publics.

En ce qui concerne la question des conflits d'intérêts concernant les députés et de leurs assistants lorsqu'ils agissent en leur nom, il convient de se référer à l'article 5 du Code de déontologie des membres de la Chambre des représentants (cfr annexe 9)

Outre ces textes normatifs, nous pouvons également citer le manuel relatif à la gestion des conflits d'intérêts dans la fonction publique administrative fédérale belge (cfr annexe 10) rédigé et publié par le Bureau d'éthique et de déontologie administrative.

La mise en place d'un système de déclaration de patrimoine et d'intérêts.

Listes de mandats et déclarations de patrimoine

Les lois ordinaire et spéciale du 2 mai 1995 (cfr annexe 11 et 12) relative à l'obligation de déposer une liste de mandats, fonctions et professions et une déclaration de patrimoine concrétisent le souci de rendre la démocratie plus transparente. La publication des listes de mandats permet au public de vérifier quelle sphère d'influence les mandataires détiennent au sein de la société tandis qu'elle constitue pour les mandataires concernés un moyen d'éviter de susciter l'impression qu'il y a confusion d'intérêts. Quant à la déclaration de patrimoine que les mandataires sont tenus de déposer, elle constitue la garantie que ces personnes n'ont tiré aucun avantage illicite de l'exercice de leurs mandats. Si un déclarant est accusé à tort de s'être enrichi de manière irrégulière, sa déclaration de patrimoine peut être un moyen de prouver son innocence.

Les lois ordinaire et spéciale du 2 mai 1995 obligent un grand nombre de mandataires publics à :

- déposer une liste de leurs mandats, fonctions et professions auprès de la Cour des comptes;
- transmettre sous pli fermé une déclaration de patrimoine à la Cour des comptes, que celle-ci conserve comme telle.

Ces lois sont exécutées par la loi du 26 juin 2004 exécutant et complétant la loi du 2 mai 1995 relative à l'obligation de déposer une liste de mandats, fonctions et professions et une déclaration de patrimoine (cfr annexe 13).

Inventaire des textes

1. Arrêté royal du 2 octobre 1937 portant le statut des agents de l'Etat
2. Circulaire n° 573 du 17 août 2007 relative au cadre déontologique des agents de la fonction publique administrative fédérale

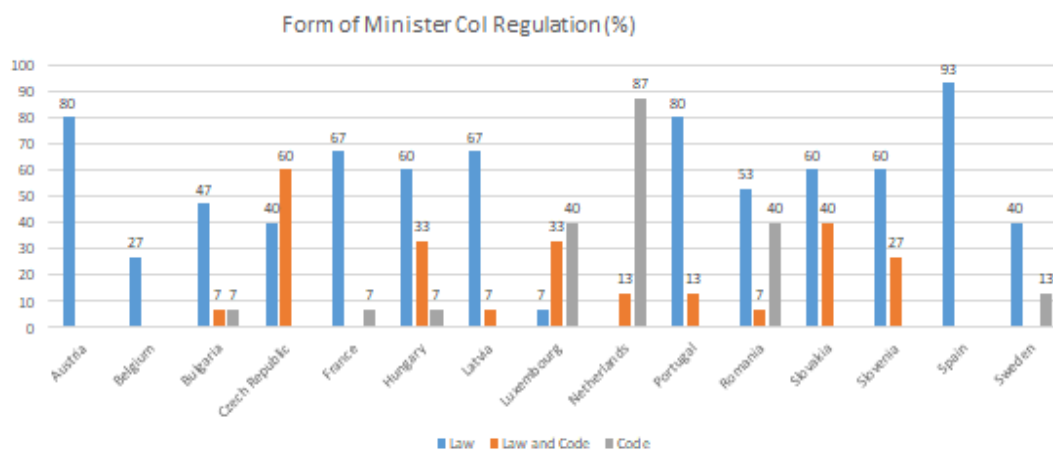
3. Arrêté royal du 16 novembre 2006 relatif à la désignation et à l'exercice des fonctions de management et d'encadrement dans certains organismes d'intérêt public
4. Arrêté royal du 17 août 2007 relatif aux activités d'audit interne dans certains services du pouvoir exécutif fédéral
5. Arrêté royal du 19 novembre 1998 relatif aux congés et absences accordées aux membres du personnel des administrations de l'Etat
6. Loi du 17 juin 2016 relative aux marchés publics
7. Loi du 6 janvier 2014 portant création d'une Commission fédérale de déontologie
8. Circulaire du 21 juin 2010 déontologie, conflit d'intérêts et déclaration sur l'honneur
9. Code de déontologie des membres de la Chambre des représentants
10. Manuel relatif à la gestion des conflits d'intérêts dans la fonction publique administrative fédérale belge
11. Loi du 2 mai 1995 relative à l'obligation de déposer une liste de mandats, fonctions et professions et une déclaration de patrimoine.
12. Loi spéciale du 2 mai 1995 relative à l'obligation de déposer une liste de mandats, fonctions et professions et une déclaration de patrimoine.
13. Loi du 26 juin 2004 exécutant et complétant la loi du 2 mai 1995 relative à l'obligation de déposer une liste de mandats, fonctions et professions et une déclaration de patrimoine
14. Vade-mecum à l'intention des informateurs institutionnels désignés par la loi – Cour des Comptes

Box 3: Rules applicable for top-officials in Belgium

However, in Belgium, Ministers are much less regulated than top-officials. For Ministers, there exist no codes or laws for many Col issues.

Figure 15: Policy Coverage Density of Col by law and/codes in the Member States

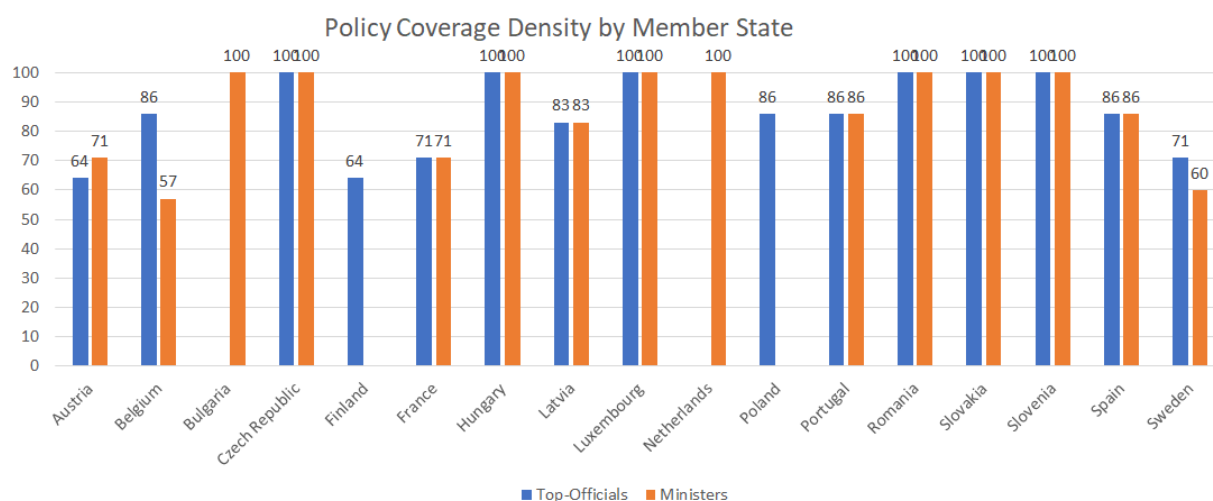
Coverage of Col by law and/codes in the Member States of the EU



Source: Own calculations by the authors based on the information/data received from the Member States of the EU

For example, for 15 Col, 11 issues are not regulated and there also exists no code (question 1 of the questionnaire, see annex). For example, as regards spouse activities, missions, gifts, travels or political activities. By international standards, this situation is very specific. From a statistical point of view, this also means that the Belgium situation for Ministers distorts heavily any comparative analysis in this study. We, therefore, decided to carry out a number of statistical calculations while excluding Belgium. Moreover, when examining the situation of the most important Col issues (Declaration of (financial) interests and assets, HPO's spouse's activities, provisions relating to the declaration of interests, outside activities: honorary positions, accepting gifts, decorations or distinctions, rules on incompatibility of posts and professional activities, revolving door (before, during or after the term of office, restrictions on professional commitments or holding other posts), the situation looks slightly different.

Figure 16: Policy Coverage Density of most important Col per country as regards Ministers



Source: Own calculations by the authors based on the information/data received from the Member States of the EU

When looking at this long list, it is striking to see that most Member States have adopted rules and policies for most of these issues.

2.7. Effectiveness and targets – what to achieve apart from prevention?

Ethics policies, generally, aim to achieve two types of results, immediate and more long-term results.

- Immediate results are about the office holder's ethical conduct, namely the prevention of conflicts of interest.
- Long-term results include increased public confidence in the office (the office holder's institution).

However, as already discussed, a difficulty arises when it comes to assessing the effectiveness of ethics regimes, i.e. measuring whether results are being achieved. Indeed, evidence on whether results are being achieved or not is readily available.

Concerning the immediate results, there is no evidence as to the number of "ethics violations" an ethics regime helped to prevent, or put the other way around, the number of times an office-holder behaved ethically because of the requirements set out in an ethics regime. It is of course possible to count the number of sanctioned infringements of ethics rules; however, this does not tell the full story. Applied to the situation of politicians and top-officials, there is no knowledge about the number of ethical violations the policies in place helped to prevent.

Looking at the long-term results, i.e. increased public trust, there are problems over the availability of data as well as over causality (i.e. to which extent can the politician's ethical behaviour account for improved public confidence in the office). Overall, there exists data on public perceptions/trust levels¹⁰⁷, but it is not possible to relate trust developments to developments as regards conflicts of interest. For the assessment of the effectiveness, this means that there can be no "mathematical" measurement of effectiveness by counting immediate or long-term results. Instead, the assessment of the effectiveness needs to rely on more indirect (and less accurate) tools of measurement:

¹⁰⁷ Edelman Trust Index, 2020. <https://www.edelman.com/trustbarometer>.

Concerning the immediate results, i.e. the number of “ethics violations” that the conflicts of interest policies and mechanisms helped to prevent. In this context, mechanisms are understood as the different instruments applied to prevent conflicts of interests, e.g. the declaration of activities and interests, the notification of political activity, the register of gifts, etc.

In relation to the immediate results, the assessment will also ask to which extent the mechanisms can be considered effective in dealing with conflicts of interest in areas where the provisions are not explicit or leave room for discretion. In areas where no practical cases have arisen (i.e. there is no experience with actual or potential conflicts of interest), the assessment will discuss the likeliness of the policy effectively addressing a (hypothetical) conflict of interest.

Looking at the long-term results, i.e. increased public confidence in elected representatives, an indirect measurement of effectiveness is provided by the extent of negative media coverage. As noted above, existing literature on ethics regimes suggests that politicians and elected representatives not only need to comply with certain ethical requirements, but also appear to do so, and the OECD differentiates between actual and apparent conflicts of interest. Whilst the office-holder does not actually find himself in a conflict of interest, the mere appearance of a conflict of interest can be sufficient to damage public confidence. Having said this, negative media coverage needs to be considered with great attention as the media can of course be politically motivated. However, it is worthwhile to consider this indirect measurement as it might point to areas where relatively simple revisions to the Col provisions could lead to significant gains in public confidence, by creating a barrier to negative media coverage, politically motivated or not.

2.7.1. The effectiveness of tools and instruments

Preconditions for effective implementation of conflicts of interest policies depend on the choice and the design of effective instruments, or tools, for implementation. To be successful, policy instruments require compliance from stakeholders (national politicians, civil servants, citizens, and other stakeholders).

In some countries, this is easier if decision-making processes are more consensual and trust levels in public institutions are higher. In these cases, the government can use relatively soft instruments, such as voluntary agreements, codes, or guidelines. As has been shown elsewhere, countries with high levels of distrust, conflictual decision-making cultures and high levels of corruption often also have a high number of legally binding and detailed rules in the field of Col, whereas this is not so much the case in “high trust” countries e.g. the Scandinavian countries. Thus, the effectiveness of measures in the field of Col does not only depend on the choice of instruments (top-down, command and control, legally binding, direct enforcement, sanctions) but also on the national context and culture. “Where to draw the line between conflicts that should be outlawed per se and those where disclosure is sufficient depends upon the level of public trust in government and the country’s size. Where the level of trust is high, citizens may be willing to accept a rule that permits an agency head to hire his or her relatives so long as the relationship is disclosed in advance. Where the public is suspicious of government, a rule banning the hiring of relatives may be needed”.¹⁰⁸

Normally, governments have a very large choice of tools at their disposal. In the following overview, we have decided to classify these tools in categories such as economic tools, legal tools, persuasive tools, managerial tools, and others.

¹⁰⁸ Messick, in Auby et al, 115.

Table 6: Examples of Policy Tools and Instruments on the National Level

Economic	Legal	Persuasive	Managerial	Control
Grants Subsidies Taxes Expenditures Incentives	Regulation (Laws)	Information	Benchmarking	Monitoring
	Regulations	Nudging	Toolboxes	Enforcing
	Administrative	Naming and	Risk assessment	Sanctioning, e.g.
	Circulars	Shaming	Self-reporting	administrative fines
	Legally binding codes	Listing corrupt actors (prohibition to apply for public procurement projects)	Cooperation with Agencies	Reduction of sanctions due to adherence to
	Relaxed public procurement requirements for top-performers		Data Management	anti-corruption programmes

Other categorizations distinguish between “carrots and sticks” approaches or “soft- and hard law” approaches. Overall, it is widely accepted that it is important to have a broad ‘menu’ of tools and instruments that have effects on various implementation factors:

- Motivation (implementation will be deficient if those who need to implement the policy have no incentives to comply with it);
- Information (effective implementation depends on the quality of information about EU law and information provided to citizens, the public and the private sector);
- Knowledge of the law (implementation actors need to be aware, understand and have knowledge about existing rules and policies);
- Deterrence and threats (violators must be aware that violations will be sanctioned);
- Resources (sufficient technical, personal and financial resources are crucial for sustained success);
- Skills (officials, managers, inspectors, etc. need to be trained and must have sufficient knowledge to fulfill their tasks);
- Efficient management and coordination structures (correct implementation depends on the ability of the various actors and organisations to communicate, cooperate, integrate, and coordinate policy objectives).

Today, discussions about the pros and cons of the right choice of instruments continue in the field of Col. So far, it seems, the increasing interest on Col policies has not necessarily produced more clarity and consensus on the effectiveness of Col policies in different contexts, the right choice of policy instruments within the best-fit organizational design of ethics infrastructures and the question what types of incentives, rewards or penalties work best in which situation. For example, whilst some experts call for the need for more behavioural approaches and more “nudging” in the field of ethics, others believe that there are too little control and monitoring. Again, others point to the need for more intrinsic incentives for doing good and warn against a too strong focus on compliance approaches. Again, others are sceptic as to the effectiveness of value-based approaches and soft-instruments.

However, solid evidence exists to the importance of the overall ethical climate of organizations and committees (see for example Trevino) and the relationship of ethical leadership and follower behaviour. Despite the view that ethical behaviour cannot be taught in each individual case, organizations certainly can design structures, processes, and strategies to encourage and support ethical behaviour. Here the focus shifts from the disposition of individual employees and occasional “bad apples” to the possibility to design sound organizational structures and coherent integrity management systems. Nowadays consensus prevails among scholars that integrity is a responsibility of the organization and management.

2.7.2. The Effectiveness of rules and codes of Ethics

Overall, there is certainly no shortage of rules, but instead a lack of clarity of rules and a high degree of fragmentation of existing rules. In the meantime, rules on conflicts of interests have been promulgated by a variety of international organizations such as the UN, OECD, Council of Europe, and the EU (OLAF). Each international organization provides different rules, standards, (model) codes and guidelines in the field of conflicts of interest. Also, within International Organisations like the EU, rules differ. “For the staff of the EU institutions, the primary sources for the ethical framework are the Treaty on the Functioning of the European Union (TFEU), the Financial Regulation and Title II, “Rights and obligations of officials”, of the Staff Regulations. The requirements are developed further in the institution-specific implementation provisions and guidelines, which provide further clarifications, but which do not create any new substantive obligations”.¹⁰⁹ Also, on the EU level “there is no common EU ethical framework governing the work of the representatives of Member States in the Council and national officials participating in working groups, committees, and parties. Except for the President of the European Council, they are not subject to any common ethical framework at EU level. The work of the representatives of the Member States in the Council is governed by national legislation”¹¹⁰. According to the European Court of Auditors, there is “no overview at the Council of all the national ethical frameworks applicable to its Members and to the other representatives of the Member States. No assurance exists as to whether national requirements cover all the necessary elements and relevant risks with respect to the nature of the position and work, they perform”.¹¹¹

On the national level, different to the situation in the different States in the United States, there exist no comparative overview about the number of laws, regulations, codes and administrative circulars in place in the Member States of the EU on the national, regional and local level. This situation is like the situation in decentralised and federal states and illustrates that Col are prone to fragmented approaches.

For example, in Germany, Col are regulated in many federal rules and by many codes in the field of criminal law, public procurement law, civil service law, anti-corruption law, etc. To this should be added the existing laws, rules, codes, and procedures by the German Länder and the local municipalities. However, precisely the German “legalism” shows that any management approach to Col must fit into the national culture. Despite its legalistic culture and its focus on regulation, Germany fares relatively well with its approach.¹¹²

Also, it is important to note that this overview only takes stock of whether relevant legislation or codes are in place. The overview does neither convey an insight into the detail or density of the integrity

¹⁰⁹ European Court of Auditors, ECA, (2019).

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Federal Ministry of the Interior, Rules on Integrity, Berlin, 2014.

requirements nor on the existence of legislation and rules in different subnational governments. For example, in Germany, each of the 16 Bundesländer has adopted its own legislation on corruption, fraud, and conflicts of interests.

According to the latest existing figures in EU countries (2008), in most EU countries, the “dominant” approach is to address Col based on horizontal legislation covering the entire public administration sector. The relevant legislation is in place in Member States; Member States have adopted codes of conduct, and Member States have a “combined” approach, with both, legislation and codes of conduct to address Col affecting the public administration. To this should be added the existing legislation (and rules and standards) on Col in federal and decentralized countries.

In all countries (with the exception of The Netherlands), the use of law is the predominant form of regulation. Whereas most Member States of the EU have adopted general anti-corruption or anti-fraud laws (which include Col provisions), fewer Member States have also adopted specific Col laws and regulations. Overall, only a few countries have adopted general Col laws which apply to all institutions. Instead, most countries have different and separate rules for different institutions. The same can be said for codes. In almost all countries, regions and local administration codes of ethics are designed for the individual institutions. Only rarely (as in the case of the “Seven Principles of Public Life” in the UK) do they apply to the whole governmental sector.

This legal fragmentation is translated in institutional fragmentation. As regards the distribution of administrative responsibilities, these are distributed amongst HR departments, ombudsmen/women, audit bodies, ethics inspectorates, ethics commissioners, anti-corruption agencies, integrity officers, special courts and institutional arrangements for whistleblowing. In the meantime, countries have an impressive arsenal of legal and administrative instruments and bodies. However, this does not suggest that these instruments are also effective.

3. PRACTICAL PART

KEY FINDINGS

In the field of regulating Col, we note processes of expanding (definitions and issues) and deepening the concept of Col. For example, the definition of what constitutes an “interest” seems to become ever more subjective.¹¹³ Overall, we also note an expansion of the concept of Col and the introduction of ever more financial- and non-financial issues that are being defined as (potential) Col.

As regards the expansion of the concept, trends are towards more ethics rules and standards per country and per Col issue, an “ethicalization of rules” (more rules include references to ethics and ethical standards), a broader applicability of ethical definitions (e.g. the term spouse) and stricter standards within rules

Existing rules and policies can only be effective if EU Institutions and Member States are willing to invest in the implementation, monitoring and enforcement of rules. However, if in the past there were seen to be regulatory gaps and a lack of enforcement, the more recent concern is that some governments have gone overboard in building an elaborate ethics apparatus that reflects the prevailing negative assumptions about the motivations and capabilities of both politicians and public servants. Today, trying to pursue absolute individual integrity in every sense of the word, could mean that public institutions, organizations and their leaders end up pleasing no one. Current developments generate ever more administrative and bureaucratic burdens but are not necessarily effective.

These findings apply to the EU and the national level. To this end, the study makes a number of practical recommendations how to improve the current situation.

3.1. What evidence – are conflicts of interest increasing?

Like corruption, conflicts of interests are notoriously difficult to measure. Consequently, there is still very little evidence of whether conflicts of interest and corruption are increasing or decreasing. A study by Mackenzie came to the following conclusion: “Worry about the ethics of public officials greatly exceeds formal evidence of ethical violations.”¹¹⁴

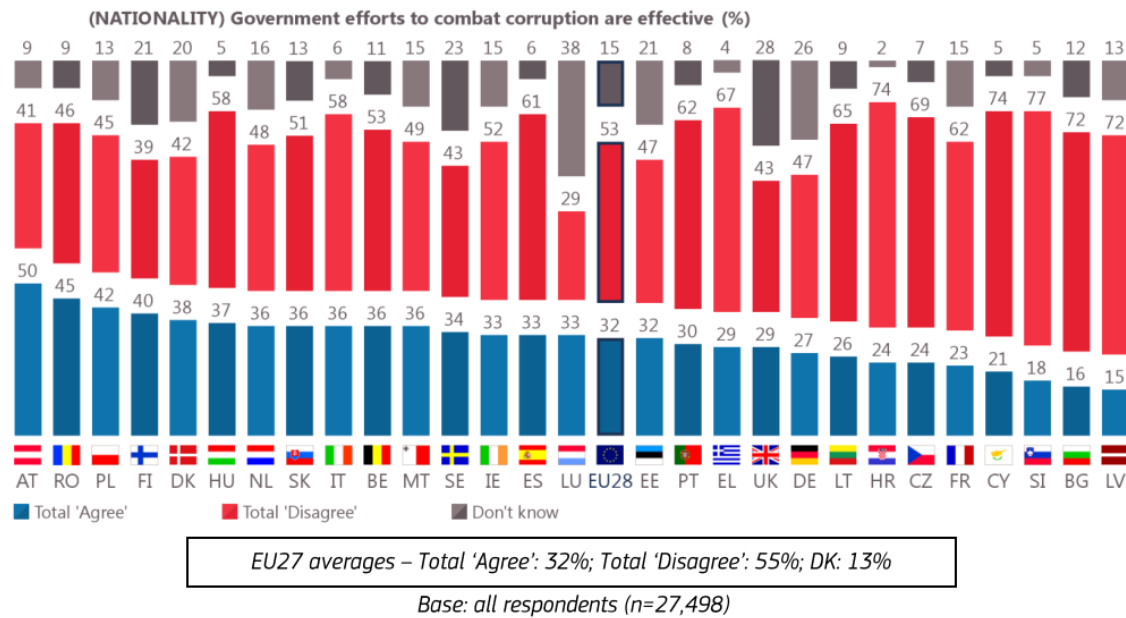
For example, in the field of corruption, citizens in most EU countries¹¹⁵ do not believe that government’s efforts to combat corruption are very effective.

¹¹³ Peters & Handschin, (2012), 363.

¹¹⁴ Mackenzie, (2002), 98.

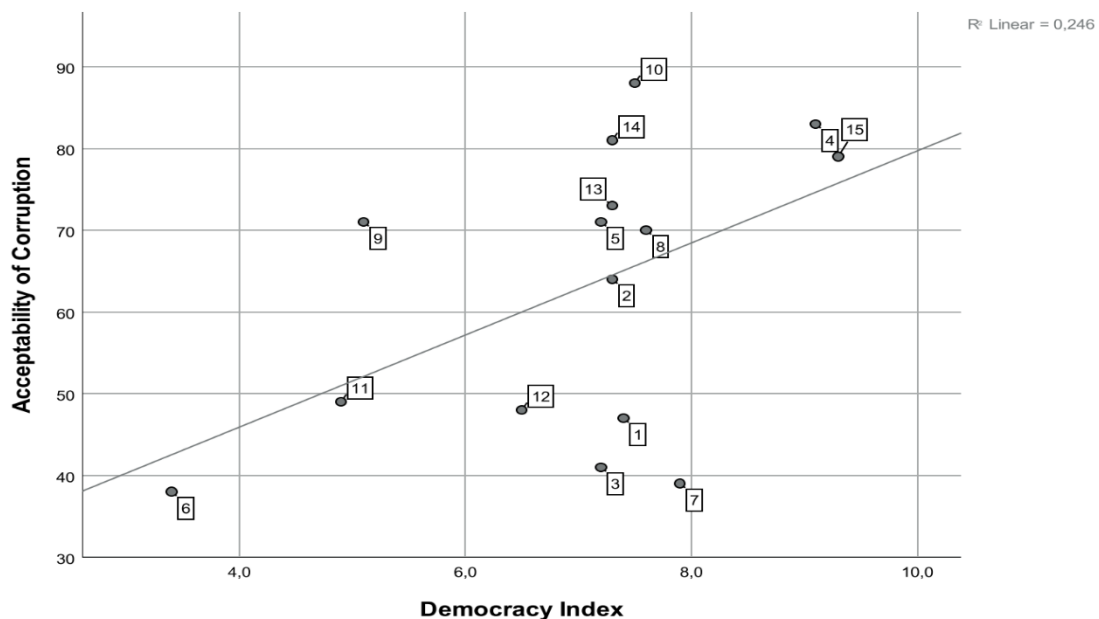
¹¹⁵ Eurobarometer, (2020), Special Report 502 on Corruption.

Figure 17: Attitudes regarding government efforts in combating corruption in Member States



We also note a relationship between Good Governance and the acceptability of corruption. As such, in countries with a higher democracy index, there is also less acceptance for corruption. Or, vice versa: In countries where the democracy index is lower, the acceptance for corruption is also higher. These findings are important because they allow for the conclusion that the acceptance of conflicts of interests is higher in countries with a lower democracy index and lower in countries with a higher democracy index. Thus, if countries want to take the fight against unethical behaviour and corruption seriously, an important precondition for this is to – simultaneously – maintain or strengthen systems of good governance.

Figure 18: Relationship between acceptability of corruption and state of democracy (Top-officials)

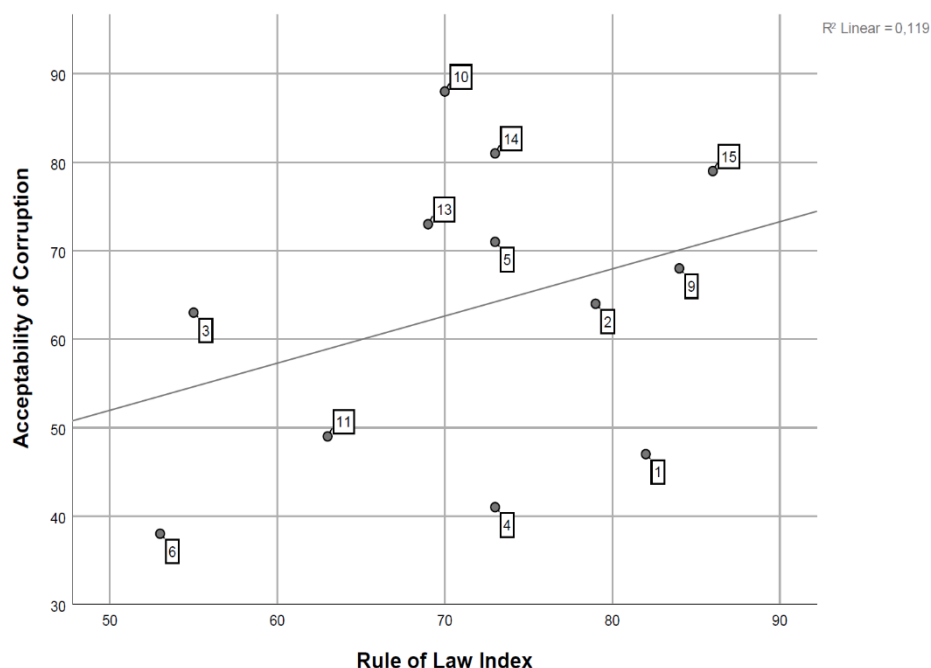


Source: Own calculations by the authors based on the information/data received from the Member States of the EU

Explanation: 1: Austria, 2: Belgium, 3: Czech Republic, 4: Finland, 5: France, 6: Hungary, 7: Latvia, 8: Luxemburg, 9: Poland, 10: Portugal, 11: Romania, 12: Slovakia, 13: Slovenia, 14: Spain, 15: Sweden

We also note the same logic as regards the situation of the rule of law. The higher the rule of law index of a country, the less acceptance for corruption. Or vice versa: The lower the rule of law index in a country, the higher is the acceptance for corruption.

Figure 19: Relationship between acceptability of corruption and state of rule of law



Source: Own calculations by the authors based on the information/data received from the Member States of the EU

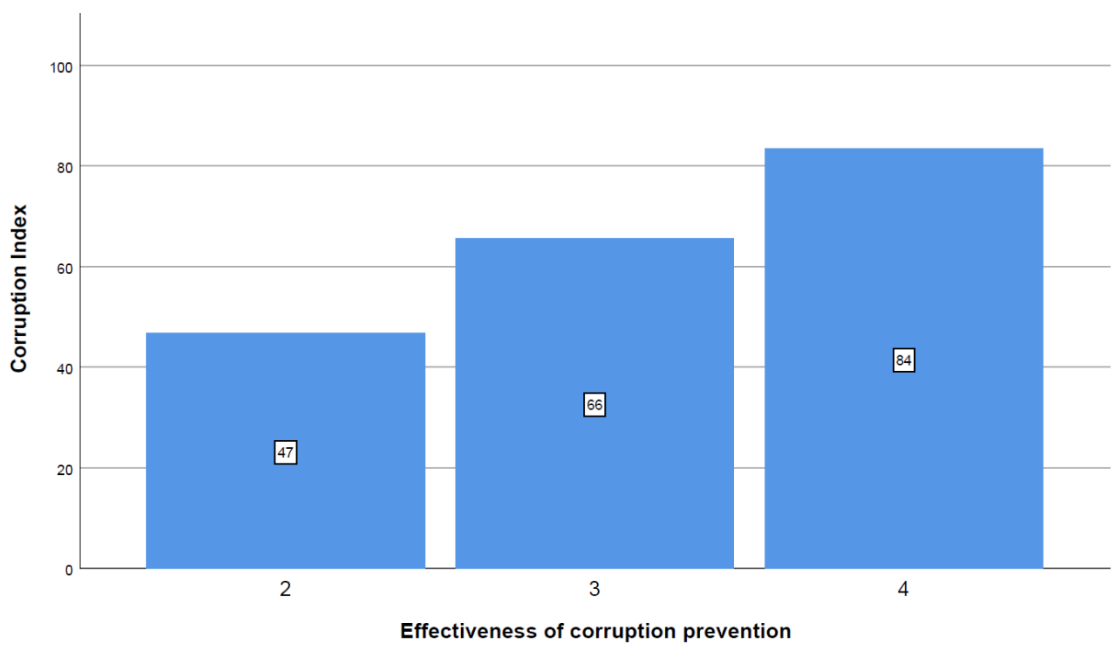
Explanation: 1: Austria, 2: Belgium, 3: Bulgaria, 4: Czech Republic, 5: France, 6: Hungary, 9: Netherlands, 10: Portugal, 11: Romania, 13: Slovakia, 14: Spain, 15: Sweden

Thus, we note a positive, although not statistically significant, relationship between Government Integrity and unacceptability of corruption. As such, this confirms the hypotheses that Good Governance and “ethics pay off”. Moreover, the institutionalisation of ethics policies can be expected to lower tolerance for unethical conduct.

From this, we also draw the conclusion that adoption rules and policies are not enough. Instead, it is important to invest in integrity policies and good governance policies. Of course, these findings are not new. More important is the (empirical) confirmation that effective integrity policies pay off in terms of satisfaction with the functioning of the democratic system. If people trust in the effectiveness of ethics policies, they are also likely to trust the public institutions and the political system, which is based on Good Governance principles.

Additionally, the empirical evidence suggests that countries with more effective integrity policies score better on the corruption index. For the countries included in our survey we observe higher scores on the corruption index, the better the safeguards against corruption are. This underpins the necessity to focus not solely on implementing more rules, but rather making sure that the measures in place work effectively.

Figure 20: Relationship level of corruption and effectiveness of corruption prevention



Source: Own calculations by the authors based on the information/data received from the Member States of the EU

Apparently, there is a trade-off between the growing complexity of our societies, the need for more, better, clearer, and stricter rules and the increasing number of violations. "There are many more laws to be broken nowadays, prosecutors have become more zealous, and resources at their disposal have become more plentiful."¹¹⁶

Moral and ethical standards are also changing more rapidly than before. What was legal a generation ago is considered corrupt today.¹¹⁷ As discussed, regulation in the field of conflict of interests also takes a stronger prophylactic approach. Prohibitions are regulated for an increasing variety of circumstances. Requirements for disclosure of interests have shifted from an (original) concentration on financial issues into other non-pecuniary commitments. Also, public opinion has shifted towards an objective conception of conflict and a subjective conception of personal interests. Finally, media coverage about scandals has dramatically increased and, thus, supports views that unethical behaviour is increasing. Also, in the academic field, most experts believe that new governance trends generate more opportunities for conflicts of interest. These trends concern:

- More and easier communication, more contacts through digitalisation, decrease of distance;
- More state capture through powerful private actors ("Dieselgate");
- Change of governance styles: less top-down approaches, interconnectedness, instead more cooperation, networking, compromising, involvement of more actors through PPP, outsourcing, co-production, more interaction, more participative decision-making;
- More mobility within the administration, amongst administration and between the public and private sector, more flexible and limited work contracts causing incentives to switch jobs and sectors, better and more possibility for unpaid leave, incentives for exchanges, twinning's, and other work opportunities.

¹¹⁶ Rosenthal in Saint-Martin & Thompson, 2006, 163.

¹¹⁷ Ibid.

- Faster change of governments and politicians, politicians leaving in and out, into and out of the private sector, revolving door of politicians;
- Impartiality and independence at risk – increase of corruption, politicisation;
- Memberships and side-activities of politicians;
- Increase of value conflicts leading to conflicts of interests;
- Increase of conflicting interests and blurring of boundaries between CI and Col;
- Public management reforms and critical effects on Col;
- Increase of loyalty conflicts (double nationalities; national vs. EU interest; spouse and work; private income through assets and stocks);
- Declining acceptance of moral in international politics, decreasing acceptance of international and EU law and (rule of) law as such;
- Higher potential for Col through abuse of data and insider dealing;
- High levels of tolerance towards corruption and Col of top-politicians (lack of leadership);
- Individualisation, increase of decision-making discretion and job autonomy;
- Overall, trends towards more ethical conflicts.

Still, as such, there is no statistical evidence on trends. There exists also no longitudinal empirical research on the development of Col during the last decades.

In our survey, we asked the Member States about their perceptions as regards the development of Col in their countries. Basically, national answers confirm what has been said: No country knows about the development of precise numbers. The field as such remains a field of speculation. For example, Poland replied to the survey question whether Col are increasing, or decreasing (Question 9)? *“By intuition – yes”*

Luxemburg replied to our survey: *“There are many arguments, which speak for an increase of COI such as the risks linked to artificial intelligence (...) before the background of a more complex, and highly specialized economic, financial and technological context, the public service will in future be even more dependent on the knowledge of the private sector. Such a development not only increases the dependency from the private sector, but multiplies at the same time opportunities for COI (...). Moreover, more autonomy and responsibility of individual civil servants can also entail potential risks of COI ...”.*

3.2. General trends in the field of Col

3.2.1. Ever more “sophisticated” – the regulation of Col

We note that most countries have moved from a focus on regulating Col policies to managing conflicts of interests and from top-down approaches (prohibitions, restrictions, criminal and administrative sanctions) to more complex value based approaches including education, training, disclosure requirements and the nomination of various bodies in order to better monitor Col.

Consequently, modern conflict of interest systems are no longer based purely on law, compliance, and penalizing wrongdoing. In fact, they are oriented towards preventing Col from happening and encouraging proper behaviour. Consequently, all countries – to different degrees – offer a wide range of instruments in the fight against unethical behaviour and the emergence of conflicts of interest.

Therefore, nowadays the common standards in the field of conflicts of interests comprise:

- i. A body of rules, and principles. Mostly these instruments enumerate many prohibitions and restrictions (e.g. not receiving gifts of over 250 euros). Here, important differences exist as to the number of prohibitions, restrictions, and obligations.
- ii. Four possible ways to mitigate conflicts of interest: recusal, divestiture, disclosure, and incompatibility. Three of them are preventive measures ... Recusal means excluding oneself

- from participating in a decision. (...) Divestiture means that the official sells off the conflicting interest (...). Disclosure means different ways of informing the institution, superior and/or the public on own financial, personal, and/or professional "interests".
- iii. The design of codes of ethics and codes of conduct (here, important differences exist as regards the decision-making of codes and the involvement of staff (representative), the detailedness of codes, whether and how violations of codes can be sanctioned, whether codes contain expectations as to concrete workplace behaviour, etc.).
 - iv. Disclosure policies and registers of interests that require to register potential conflicts of interests and other interests. Here, differences exist as to transparency requirements, the level of detail of reporting obligations, and specific obligations (e.g. whether spouse's activities should be registered or not), etc.
 - v. Monitoring and enforcement mechanisms. Here important differences exist regarding powers and resources of ethics committees and ethics commissions that have the task to advise on ethical questions and/or to monitor and control the development of conflicts of interests within their organisations. Also, important differences exist as to (criminal and administrative) sanctions in cases of ethical misconduct.
 - vi. Training, awareness raising and education requirements (e.g. differences range from the question whether training on Col should be obligatory or not, offered to all civil servants, or only for top-officials, only once or regularly, whether training should only inform on rules and policies, but also include dilemma training, etc.).
 - vii. Managerial and value based systems. Awareness has grown that issues like ethical leadership, organisational culture, and organisational fairness and justice are closely related to unethical behaviour.

In the field of regulating Col, we note processes of expanding (definitions and issues) and deepening the concept of Col. For example, the definition of what constitutes an "interest" seems to become ever more subjective.¹¹⁸ Overall, we also note an expansion of the concept of Col and the introduction of ever more financial- and non-financial issues that are being defined as (potential) Col.

As regards the expansion of the concept, nowadays potential conflicts of interest concern the following issues:

- Violating general administrative principles while exercising public office
- Col because of private economic and financial interests
- Col because of different political interests, e.g. as Minister and as MP
- Col and receiving gifts or other benefits
- Col because of pressure, state capture and lobbyism
- Col because of providing services to relatives (nepotism) and friends (favoritism)
- Col because of honorary memberships in boards, NGOs, companies, and non-profit organizations
- Col because of memberships creating loyalty conflicts (in professional, community, ethnic, family, or religious associations)
- Col because of affiliations with trade unions or professional organizations
- Col because of family member's (financial/professional) interests
- Col because of paid side-activities, secondary employment, additional jobs and interests
- Col because of political loyalty conflicts - acting for foreign countries
- Col because of the possession of important information and data
- Col because of opportunities to misuse own position for private gain
- Col because of opportunities to misuse of public procurement contracts and government property

¹¹⁸ Peters & Handschin, (2012), 363.

- Col because of revolving door conflicts
 - Post-employment affecting Col
 - Col arising from previous employment
 - Secondary professional activities
- Col (powerful) philanthropic activities and interests
- Col and invitations for holidays, to dinners, speeches, participation in events
- Col because of increasing networks, access to information and communication through digitization

Overall, trends are towards

- A) more ethics rules and standards per country and per Col issue
- B) an “ethicalization of rules” (more rules include references to ethics and ethical standards).
- C) a broader applicability of ethical definitions (e.g. the term spouse)
- D) stricter standards within rules

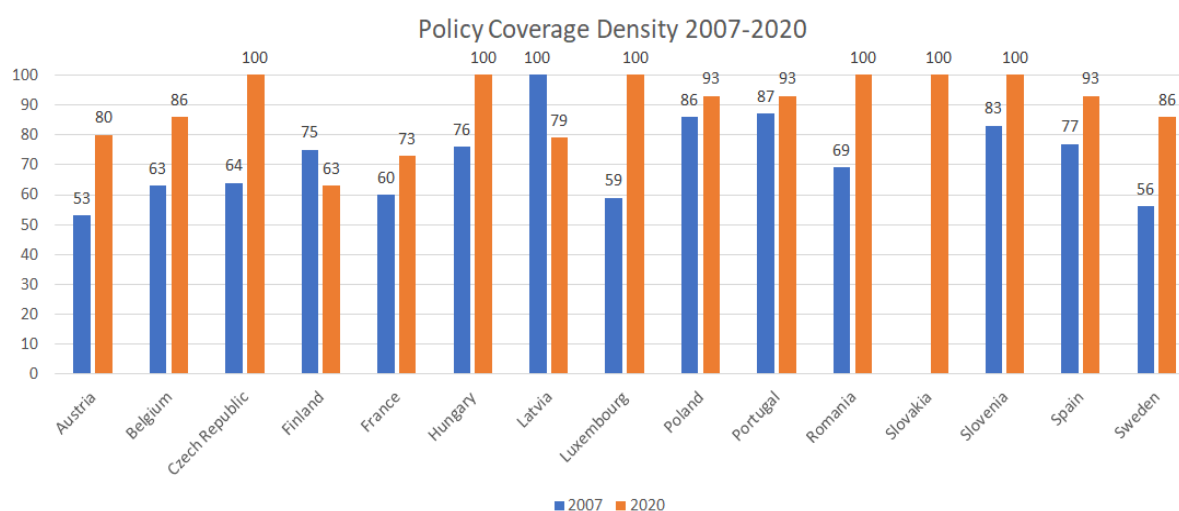
A) More rules and higher policy coverage

In our survey, we asked the Member States whether and how they have regulations in place for the various potential Col issues. To this end, we put forward a list of 15 different issues ranging from post-employment to receiving gifts. This listing of issues was also similar to a study carried out in 2007 for the European Commission. The purpose was to generate long-term evidence as regards the regulation of Col in the Member States of the EU.

The results of the 2020 survey concerned responses from 17 Member States (amongst 15 countries responded for Ministers).

Most interestingly, the answers revealed that most countries have a higher policy coverage in the field of Col than in 2007.

Figure 21: Policy Coverage Density of Top-Officials per country in 2007 and 2020

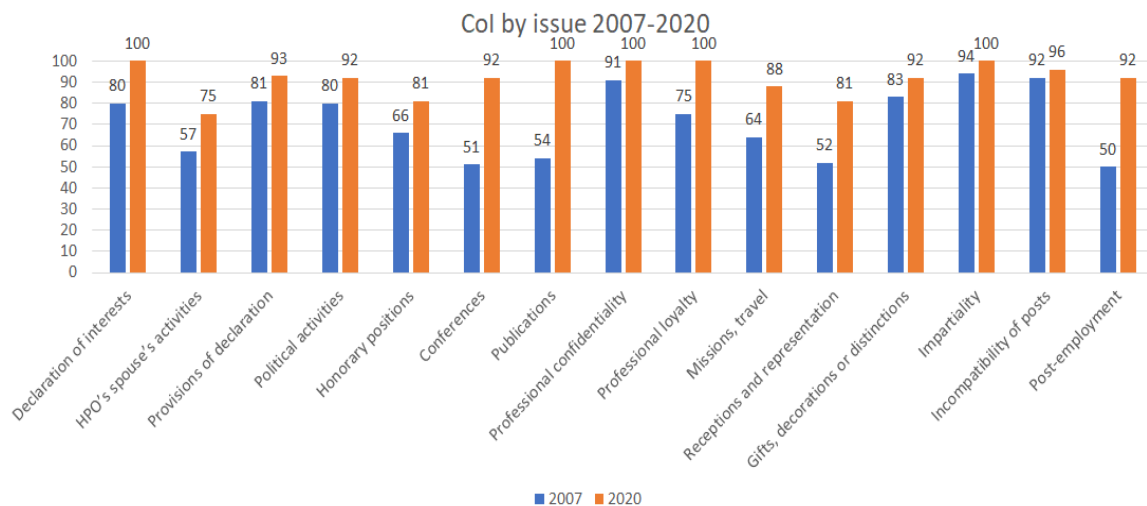


Source: Own calculations by the authors based on the information/data received from the Member States of the EU

For example, when comparing the coverage density of the most important Col, we compared the situation for Government (Ministers) in 2007¹¹⁹ with the situation for Ministers in 2020. With some exceptions (for example Bulgaria and Latvia), almost all countries have further expanded the coverage of Col issues by laws, regulations and/or codes.

Moreover, trends are also towards a higher policy coverage of Col policies. Most striking is the increase in policy-coverage in the field of post-employment since 2007. This is important because most countries evaluate the effectiveness of post-employment policies is rather low (see our discussion in the chapters about implementing and monitoring Col policies).

Figure 22: Policy Coverage density of Col policies for Ministers in 2007 and 2020 (without Belgium)



Source: Own calculations by the authors based on the information/data received from the Member States of the EU

B) Ethicalization of rules and standards

Also, the EU level is no exception to this trend. For a long time, ethics and morality have not explicitly accompanied the EU-Integration process. However, in the meantime, ever more policies and rules (especially in the field of health, employment, financial reporting and digitalisation) refer to ethical standards and requirements.¹²⁰ We also note that countries regulate and manage more Col issues.

C) Broadening of definitions and wider applicability of terms

Next to this process of “ethicalization” of rules and standards, we can also observe a broadening and differentiation of standards and definitions. Take the discussion around the concept of “spouse”. In the meantime, many countries require that spouses of top-officials and/or ministers declare their financial interests. This can be easily justified by the fact that the spouse also works, has income and other professional and financial interests. However, the term “spouse” is subject to vivid discussions and

¹¹⁹ see Demmke et al., (2008).

¹²⁰ Frischhut, (2019), 9.

interpretations. The term spouse is complicated in times of changing definitions of marriage, partnership, family, relationships, definitions of nationality, citizenship, etc. Increasingly, Col regimes require the disclosure of assets held by relatives, close friends, or (former) partner, with whom the official may have a financial association.¹²¹

Broadening the definition of the term spouse and requiring disclosure obligations to friends and other partners also raises questions about the “right to privacy” and other freedoms and rights.

Overall, this discussion about the term “spouse” illustrates the expansion of our understanding of conflicts of interest.

As already discussed, the discussions around the term spouse only illustrate that trends towards a broadening of the definition of Col also exist elsewhere: There are two broad types of conflicts of interest: a) conflicts because of financial, or self-interests and b) conflicts resulting from divided loyalties, dual roles or conflicting roles. Mostly, the latter is subject of expansion and includes country loyalties, religious, personal, or political rivalry, institutional relationships, reputation issues, access to power and data etc.

Ideally, this should be followed by a discussion on how to effectively manage and monitor expanding requirements. However, this is rarely the case.

E) Stricter standards and requirements

Finally, all of these processes are followed by the strengthening of ethical standards in ethics policies.

Take the case of the resolution of the European Parliament of 16 January 2020 on institutions and bodies of the Economic and Monetary Union: preventing post-public employment conflicts of interest (2019/2950(RSP)). In this resolution the EP

“(12) Calls on the Commission to assess current practice in the area of post-public employment at EU and national level with a view to **identifying stronger measures** for the prevention of conflicts of interest that arise when senior officials of EU bodies leave their posts to take up private-sector employment or when individuals coming from the private sector are appointed to senior positions in an EU body, and to take into account its findings in the consideration of a harmonised legal framework for the prevention of post-public employment conflicts of interest”

“(14) Calls on the Commission to define in its review of the post-public employment framework specific risk areas which might **require strengthening**, including the **expansion** of the possibility to block professional moves, and to consider a possible **extension** of cooling-off periods of senior officials...”

“(15) Calls on the Commission to extend this review to pre-public employment conflicts of interest and **to consider strengthening existing measures (...)**”

This call for “more”, “broader” and “stricter” is not limited to the situation on the EU level. Instead, this is a universal trend. Take the case of developments in the field of disclosure policies: In 2019, GRECO recommended to all parties reviewed “to consider widening the scope of declarations of interests to include information on spouses and dependent family members”.¹²²

The discussed combination of “ethicalization”, “more”, “broader” and “stricter” makes only sense when it is credible e.g. followed by effective tools for implementation and enforcement. The expansion of the

¹²¹ see A., (2000), Conflict of Interest in American life, Harvard University Press, Cambridge, 179.

¹²² Council of Europe, GRECO, 2019.

concept of conflict of interest towards non-financial issues (such as revolving door issues, or loyalty conflicts leading to Col) is important because it is linked to the question of how this trend relates to implementation and monitoring challenges.

This is important because – when examining the various legal “arsenals” in place – the legal situation looks like a continuous development towards “legal perfection”: towards ever more rules, towards detailed rules, towards improved legal certainty and legal coverage of ever more Col issues. Take the case of Austria which (according to the official answer to this survey) provides for an impressive system of regulative absolute legal integrity.

Col and regulatory framework for Ministers in Austria

1. Bundes-Verfassungsgesetz (B-VG):
2. Bundesverfassungsgesetz über die Begrenzung von Bezügen öffentlicher Funktionäre (BezBegrBVG):
3. Bundesgesetz über die Bezüge der obersten Organe des Bundes, der Mitglieder des Nationalrates und des Bundesrates (Bundesbezügegesetz – BBezG):

Bundesgesetz über die Transparenz und Unvereinbarkeiten für oberste Organe und sonstige öffentliche Funktionäre (Unvereinbarkeits- und Transparenz-Gesetz (Unv-Transparenz-G)):
4. Bundesgesetz über die Zahl, den Wirkungsbereich und die Einrichtung der Bundesministerien (Bundesministeriengesetz 1986 – BMG):
5. Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen (Strafgesetzbuch – StGB):
6. Bundesgesetz vom 27. Juni 1979 über das Dienstrecht der Beamten (Beamten-
7. Bundesgesetz vom 17. März 1948 über das Dienst- und Besoldungsrecht der Vertragsbediensteten des Bundes (Vertragsbedienstetengesetz 1948 – VBG):
8. Verordnung der Bundesregierung vom 29. März 1955, betreffend die Gebühren bei Dienstreisen, Dienstverrichtungen im Dienstort, Dienstzuteilungen und Versetzungen (Reisegebührenvorschrift 1955):
9. Allgemeines Verwaltungsverfahrensgesetz 1991 – AVG

Standards and rules for the various Col issues

- a) declaration of financial interests and assets (vgl. § 3a Abs. 1 und 2 Unv-Transparenz-G)
- b) spouse's activities (vgl. § 3 Unv-Transparenz-G)
- c) provisions relating to the declaration of interests (vgl. § 3a Abs. 3 Unv-Transparenz-G)
- d) outside activities: political activities (vgl. §§ 1a, 2 und 3 Unv-Transparenz-G, vgl. § 9 Abs. 2 BezBegrBVG iVm § 2 Abs. 3a Unv-Transparenz-G)
- e) outside activities: honorary positions see.d)
- f) outside activities: conferences see.d)
- g) outside activities: publications see d)

<p>h) professional confidentiality (Art. 20 Abs. 3 B-VG)</p> <p>i) professional loyalty (Art. 72 Abs. 1 B-VG)</p> <p>j) missions, travels (§§ 9 („Dienstwagen“) und 11 („Vergütung für Dienstreisen“) BBezG</p> <p>k) rules on receptions and representation (Art. 69 B-VG) §§ 304 („Bestechlichkeit“), 305 („Vorteilsannahme“) und 306 („Vorteilsannahme zur Beeinflussung“) StGB §§ 7 bis 12 BMG</p> <p>l) accepting gifts, decorations or distinctions (§§ 304 („Bestechlichkeit“), 305 („Vorteilsannahme“) und 306 („Vorteilsannahme zur Beeinflussung“) StGB</p> <p>m) general rules on impartiality and conflicts of interest (Art. 72 Abs. 1 B-VG)</p> <p>n) specific rules on incompatibility of posts and professional activities before or during the term of office (§§ 1a, 2 und 3 Unv-Transparenz-G)</p> <p>o) restrictions on professional commitments or holding other posts (after leaving office)</p> <p>Various codes of conducts in different institutions such as the code „The Responsibility rests with me“ http://oeffentlicherdienst.intra.gv.at/moderner_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexEnglish_2012_druck.pdf?4ppzt1</p>
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Box 4: Regulatory framework in Austria

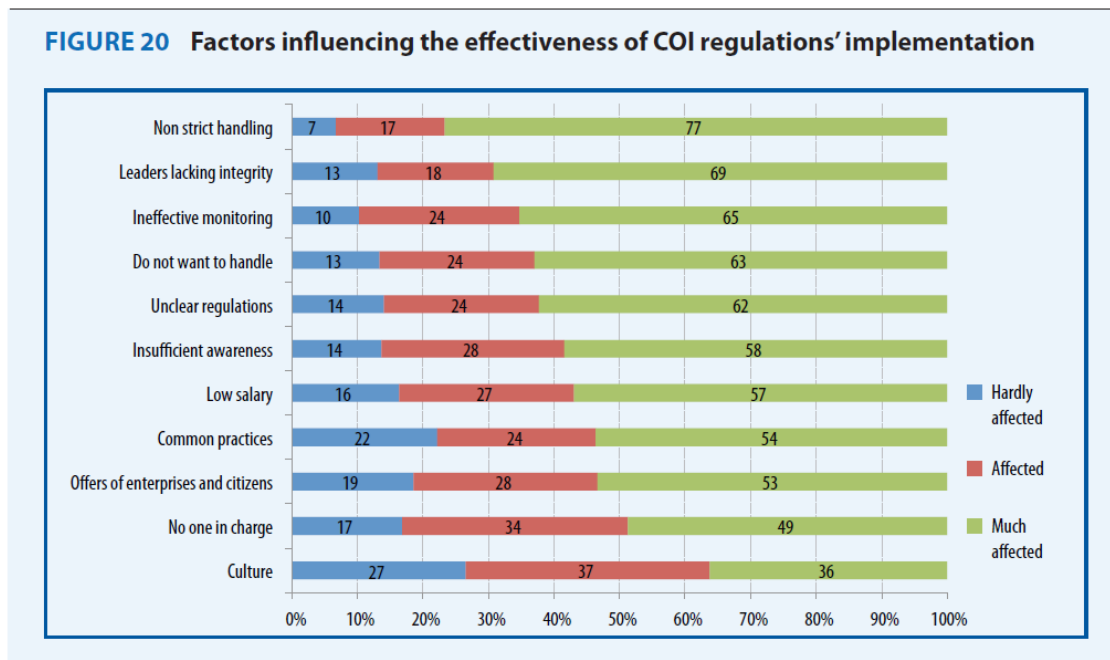
Regulating conflicts of interest could easily be justified if it were clear that rules are needed in order to deter individuals and prevent individuals from entering into a Col situation. However, it is far from clear whether a conflicted state of the mind always leads to wrong decisions. In fact, it can hardly be verified from the outside whether a decision-maker has in fact been conflicted, whether that conflict had a decisive impact on the decision-making process, and whether it was a causal factor for the resulting decision. Therefore, regulators all over the world seeking to manage conflict of interest must pay attention to decision-making motives and processes than to outcomes. This again requires that managing and monitoring conflicts of interest “require increasingly sophisticated excursions into their (and often our own) moral psychologies”. However, can mental Col and the appearance of potential Col be prevented by law?

Highly regulated countries and institutions also face higher challenges as regards the need to design understandable and enforceable laws, to avoid overlapping rules (since the existing (inter-) national and regional rules are mostly not codified into one document but fragmented over several documents). The need for different rules for different institutions leads to a fragmentation of existing rules and codes. Therefore, GRECO recommends adopting or consolidating the various rules and standards in a single document, “providing clear guidance on conflicts of interest and other integrity related matters, coupled with an effective supervision mechanism (in some cases sanctions)”.¹²³

Overall, also other factors influence the effectiveness of the implementation of rules such as the lax handling of Col issues in daily practice, ineffective monitoring or the lack of interest of leaders to get engaged in the monitoring of Col issues.

¹²³ Council of Europe, GRECO, 2019

Figure 23: Factors Influencing the Effectiveness of Col Regulations' Implementation



As it seems, often, instruments are perceived as more effective when they are existing, known, and applied in the administration. For example, newer soft instruments are often considered to be less effective simply because they are also less known. Often, positive perceptions about the effectiveness of an instrument can only increase if the instrument is applied in practice. For example, if ethics training on Col is offered it is also considered to be more effective. If a risk analysis is carried out its effectiveness is considered to be much higher as if the effectiveness of this instrument is only considered in theory. One should also mention that judgments on whether instruments are effective, depend very much on the group of respondents and the organizational culture. For example, politicians judge the effectiveness of instruments differently than administrators, and a police administration may have a different perspective than a Ministry, Agency, Inspectorate, or academic. In the future, it will be an important task to further define the effects of different instruments and policies in different contexts. Only then will it be possible to further progress as regards the question of whether or not ethics policies and instruments are effective, or not. Therefore, we recommend continuing work as only this will allow for a fine-tuned analysis as regards the effectiveness of different instruments in different contexts and help to bring in a more rational, non-ideological discourse.

3.3. Comparative observations – the policy coverage of Col in the Member States

In all countries worldwide (up until the middle of the 1960s), the type of interest that the conflict-of-interest discourse addressed remained largely pecuniary – hence “objective”. Thus, the types of private interests that were addressed were hard, objective, and measurable. Today, conflicts of interests can be pecuniary, ideological, related to the interests of the spouse-, relatives- and relationships, emotional, linked to different moral constraints, loyalties, concerns, prejudgments, biases, and affiliations.

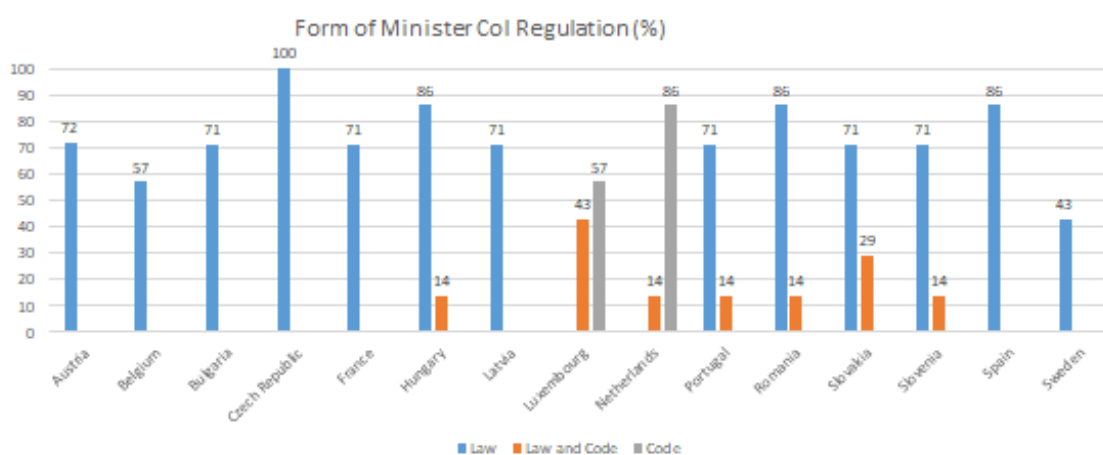
According to Stark, “we have moved well beyond the objective and the pecuniary to embrace a huge range of subjective and psychological traits”.¹²⁴ Or to put it differently: “Over the past thirty years something transforming has indeed happened to our understanding of conflicts of interest. In fact, two things have happened – one to our conception of “conflict”, the other to our notion of “interest”.¹²⁵ We have come to take a distinctly objective approach to conflict. And we have evolved a deeply subjective understanding of interest (according to Stark).

As already discussed, we confirm these observations. Today, the Member States do not only regulate financial Col issues, but also a wide array of non-financial Col issues, some of which are very difficult to monitor. Differently to the field of political ethics, in the field of medicine, experts discuss since years the existing difficulties in managing non-financial conflicts of interests (Tsai, 2011). Because of the existing silo-thinking amongst the different disciplines, political and managerial ethics in the public sector have themselves (so far) closed off from these discussions. In public service ethics, the focus of attention is still on financial conflicts of interests and the effectiveness of compliance based approaches.

Indeed, it is striking to note that the “newer Member States” (Member States who entered the EU in 2005 and afterwards) have more rules in place than the older Member States (accession to the EU before 2005). Another distinction can be made between the regulatory instruments: here, it is important to note the differences between most of the countries who regulate Col by general and/or specific sectoral laws and regulations (and codes) and, for example, the Netherlands, which regulates Col almost exclusively, by means of codes.

Figure 24: Coverage of most important Col Issues – use of law

Coverage of most important Col issues – use of law



Source: Own calculations by the authors based on the information/data received from the Member States of the EU

¹²⁴ Stark, (2000), 203.

¹²⁵ Ibid.

Most interestingly, our survey confirms the findings of the 2007 study¹²⁶ in the sense that also the new data shows that – structurally – the Central- and Eastern European countries have higher regulated systems (and also more centralized ethics committees) than, for example, the Scandinavian countries. Overall, Sweden stands out as the least regulated system.

Again, this is interesting because countries with higher regulated systems do not necessarily have lower levels of conflicts of interest.

This allows for the conclusion that the design of the regulatory system is linked to the national context. Of course, it is also a response to needs, but also to scandals and trust levels. If trust is higher, there may also be less need for regulation. Ultimately, it would either be wrong to recommend de-regulation to one group of countries, or more regulation to another group of countries.

Overall, countries differ widely as to the degree of transparency policies, powers of the different ethic commissions and committees, training (obligatory or non-obligatory), and disclosure requirements (e.g. declaration of personal income, declaration of family income, declaration of personal and family assets, etc.). "In practice, regulators have addressed typical conflicts of interest constellations, notably accepting benefits (gifts etc.), outside employment or other outside activities, post-employment, self-dealing, influence peddling, using government property and using confidential information".¹²⁷

In addition, important differences exist as to rules and standards in the field of post-employment policies (existence of cooling-off periods, strict, flexible or no restrictions and control of post-employment activities), complete or only partial restrictions and control of gifts and other forms of benefits, personal and family restrictions on property and divestment requirements.

Despite the developments to ever more international standards, the promulgation of ever more international, national and regional law, guidelines, toolboxes and existing subsidies in the field of capacity building, transposition, implementation and enforcement of ethical standards also poses barriers in the European fight against conflicts of interest. For example, in those cases, where rules become more numerous, but ministers and officials are not aware of these rules. Or, in cases, where rules overlap each other. Or, when rules exist in (fragmented) different documents and are laid down in different codes.

Of course, the various international monitoring mechanisms are generally considered to have contributed to the compliance at national, regional, and local level. However, there is also an increasing lack of horizontal and vertical integration in terms of consistency with related monitoring and enforcement mechanisms and the rule of law more generally, as well as between international, EU, national, regional and local governance levels.

In this way, it is surprising that there is no country, institution, or parliamentarian assembly that calls for the deregulation of ethics policies. Instead, all countries and international organizations continue to enlarge their toolboxes on the international, national, regional, and local level on a regular basis.

The downside of many rules is that conflicts of interest laws have also become a political instrument. According to Stark Col policies have become a moral minefield¹²⁸. Especially in times of fake news, ever new scandals and media interest. Perceptions of (un-) fairness can be easily manipulated if conflict-of-

¹²⁶ Demmke et al., (2008).

¹²⁷ Peters & Handschin, (2012), 18.

¹²⁸ Stark, (2000).

interests become a moral stigmatizer, political weapon and moral measurement of persons, when, “in reality it is just law”.¹²⁹

Johnston (2005) argues that legal regulations ignore essential aspects of morality and justice perceptions in society as a whole, ignoring vital components of leadership and accountability in public administration. Also, Heywood & Rose¹³⁰ emphasize that purely legal approaches disregard the importance of organizational culture and the need for trust.

On the other hand, systems that focus on rules, compliance, and sanctions have the advantage that they are easier to implement (than value based approaches), unambiguous, and represents a useful tool for policymakers to respond to public demands after individual corruption scandals. In addition, compliance management does provide senior managers with legal shields, following Johnston's¹³¹ argumentation that they can make use of legal provisions to blame the act of breaching the law instead of systematic organizational malfunctions in e.g. leadership and lack of accountability.

Unfortunately, the regulation of conflicts of interests shows that all suggestions which legal advisors offer in order to design acceptable and high-quality legal acts, such as “unambiguity”, “clearness” and simplicity – to name but a few examples – are themselves abstract and not very appropriate to be used as a standard of examination.

Therefore, particularly highly regulated countries and institutions face the challenge of poor quality of rules, overlapping rules, and a low level of awareness of the existing rules and standards (which are mostly not codified into one document but fragmented over several documents).

Thus, there is no shortage of rules and standards in the field of conflicts of interest. In fact, conflicts of interest are becoming more regulated but not necessarily better managed and enforced in many countries. Because of the fragmentation of rules, there is also no understanding of the definition of CoI, as too many definitions overlap. The (still) existing focus on regulation instead of implementation can be explained as follows. In contemporary societies, it seems that when political scandals and new conflicts of interests appear “...failure is attributed to poor drafting and not enough law; typically, the solution is ‘smarter’ legal interventions...In the aftermath of serious scandal, concerns about guaranteeing integrity and about the appearance of integrity trumps efficiency. Rarely is the integrity/efficiency trade-off even considered”.¹³²

Therefore, the adoption of more regulations and policies has little effect on integrity, for example in the field of corruption. Our data suggests that countries with worse scores in the corruption index also have a higher policy coverage density.

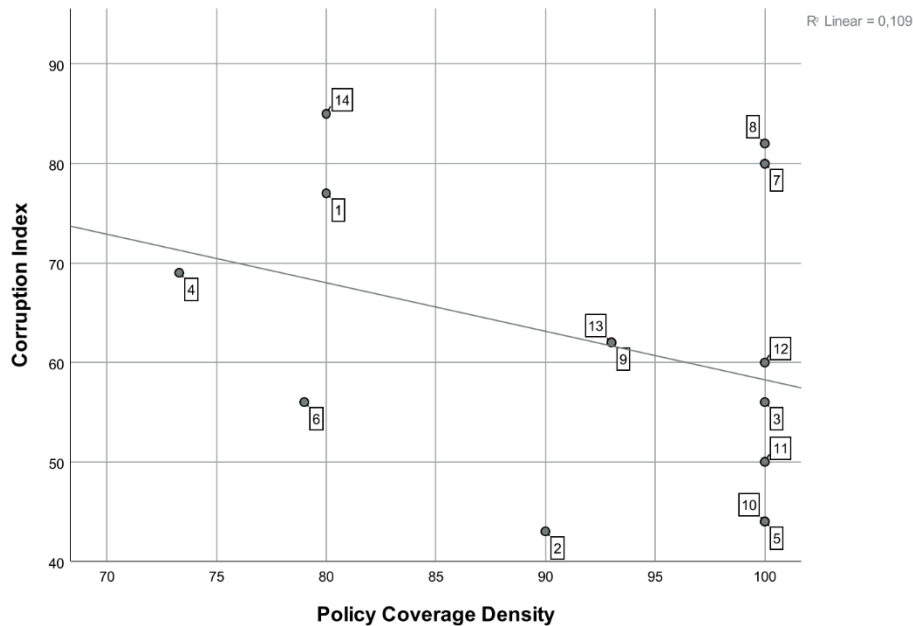
¹²⁹ Stark, (2000), 266.

¹³⁰ Heywood, P. & Rose, J., (2016), *The Limits of Rule Governance*, In: Alan Lawton, Zeger van der Wal, Leo Huberts, *Ethics in Public Policy and Management: A global research companion*, Routledge, New York and London, pp. 181-197.

¹³¹ Johnston, M., (2005), *Syndromes of Corruption*, Cambridge University Press, Cambridge.

¹³² Anechiarico & Jacobs, (1996).

Figure 25: Policy Coverage Density for Ministers and Corruption Index (without Belgium)



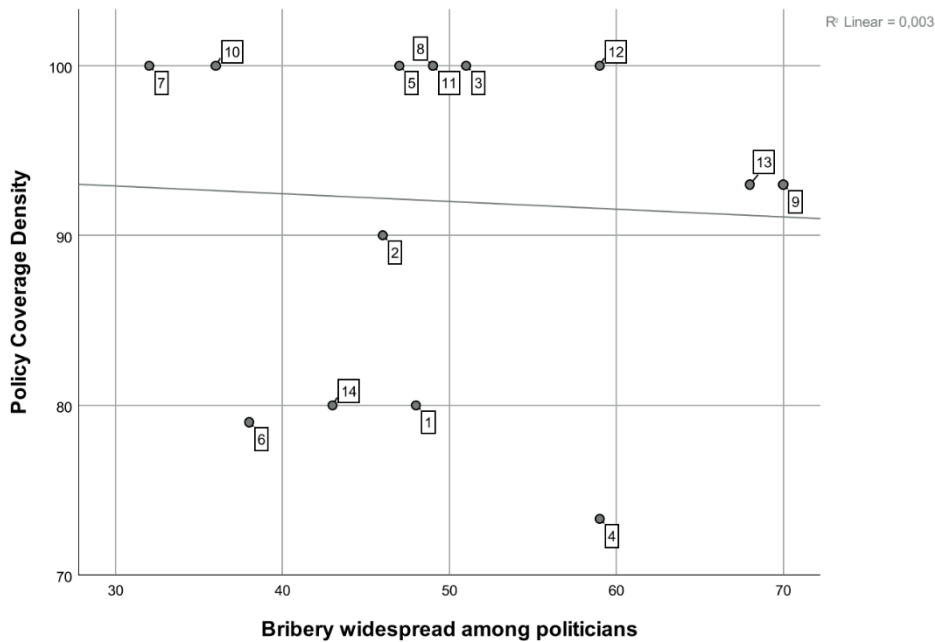
Source: Own calculations by the authors based on the information/data received from the Member States of the EU

Explanation: 1: Austria, 2: Bulgaria, 3: Czech Republic, 4: France, 5: Hungary, 6: Latvia, 7: Luxemburg, 8: Netherlands, 9: Portugal, 10: Romania, 11: Slovakia, 12: Slovenia, 13: Spain, 14: Sweden

It is also doubtful whether more regulation is required in countries where high levels of public trust exist. In these cases, too many ethics measures can damage the public interest instead of enhancing it. For example, our study found that in countries with lower levels of policy coverage density, citizens think slightly more that bribery and abuse of power are widespread among politicians in their country. This is the case if the introduction of more rules supports the perception that these rules were introduced because of the existing high level of corruption and conflicts of interest. The problem is that subjective perceptions of increasing levels of conflicts of interest “risk to reflect citizens’ general predispositions towards government, rather than actual experienced corruption.”¹³³

¹³³ Van de Walle (2005), 16.

Figure 26: Policy Coverage Density for Ministers and perceptions of bribery (without Belgium)

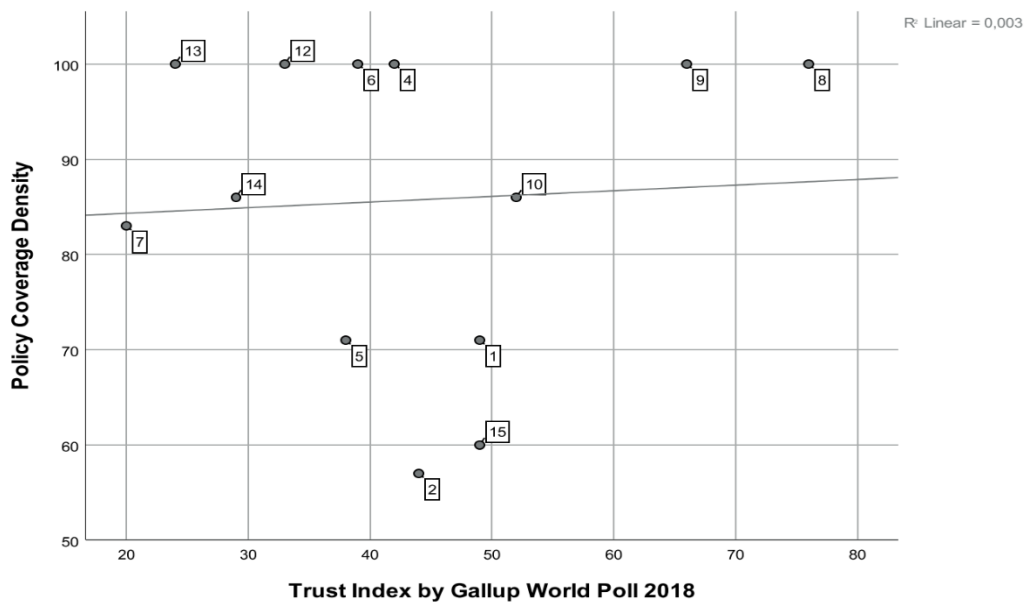


Source: Own calculations by the authors based on the information/data received from the Member States of the EU

Explanation: 1: Austria, 2: Bulgaria, 3: Czech Republic, 4: France, 5: Hungary, 6: Latvia, 7: Luxemburg, 8: Netherlands, 9: Portugal, 10: Romania, 11: Slovakia, 12: Slovenia, 13: Spain, 14: Sweden

However, this is not to say that countries with a high level of corruption and conflicts of interests should have fewer rules and policies in place. In addition, lower policy coverage will most likely not enhance trust in countries with low trust levels either. Countries with higher policy coverage density only show very slightly higher trust levels.

Figure 27: Policy Coverage Density and relationship with trust index (for Ministers for most important Col)



Source: Own calculations by the authors based on the information/data received from the Member States of the EU

Explanation: 1: Austria, 2: Belgium, 4: Czech Republic, 5: France, 6: Hungary, 7: Latvia, 8: Luxemburg, 9: Netherlands, 10: Portugal, 12: Slovakia, 13: Slovenia, 14: Spain, 15: Sweden

However, all of this does not suggest that de-regulating Col policies is the right way to go. Contrary to this, our discussions suggest that the use of legal instruments must fit into the national regulatory culture. Introducing a new law into a legalistic system is less problematic and more effective than introducing new rules in countries that work well with soft-instruments and value-based approaches. The same applies to the EU Institutions which have a more legalistic and compliance-based culture than, say, Sweden and the Netherlands.

3.3.1. Col rules as effective instruments in the fight against corruption?

Still, one of the most important questions is what causes integrity violations and corruption. The question as such is difficult as it tends to raise other important questions on what exactly constitutes a cause.¹³⁴ Research has shown that factors at the micro, meso, and macro level are manifold and that factors may be grouped into individual, organizational, and system level factors. Other factors that influence integrity violations may be cultural factors and values, economic factors, political and administrative factors, legal factors, and injustice in general.¹³⁵ In *“Why Government Fails so often”*, Schuck¹³⁶ concludes that even “the most rationally designed policies may run aground when they confront political, institutional, economic, and other complicating factors in the field”. This also seems to be the case in the field of Col.

Also, from this overview, it becomes clear that a pure focus on rules, standards, and enforcement mechanisms only has a limited impact.

On the other hand, laws, regulations, and legal standards are as old as mankind. There exists no comparable instrument with such a long history and experience. However, because of this long-established experience, evidence also shows that rules and standards have other negative or positive side-effects, such as improved societal outcomes, but also more bureaucracy, red-tape, and administrative burdens. Col rules may either conflict with other rights, are unworkable, counter-productive in practice, or may create impediments to bringing experienced people into public office. For example, the OECD¹³⁷ has warned over decades that too strict approaches, excessive prohibitions, and restrictions have perverse effects. Therefore, a modern conflict of interest policy should strike a balance between the need to regulate Col issues and guaranteeing individual and organisational freedom and flexibility.

From these considerations, it becomes clearer that, in defining the legal requirements to be set with respect to Col rules, there are always two overlapping problem areas: on the one hand, the meaning of the term used in a concrete situation, which is often highly “elastic”, therefore providing no precise content; and, on the other hand, the conflict of aims, which arise when quality characteristics of a good legal act – such as the need to be clear, simple, concise and unambiguous – are actually in conflict to each other.

There is no way out of this as the many relatively unsuccessful attempts to reduce bureaucracy, red tape, and to improve the quality of EU- and national law have shown during the last decades. Thus, obviously, the existence of strict rules and standards is no guarantee of an ethical government. As discussed, the situation in some of the central European states (like Romania) is in interesting contrast

¹³⁴ Huberts, L., (2014), *The Integrity of Governance*, IIAS Series. London: Palgrave MacMillan.

¹³⁵ Ibid.

¹³⁶ Schuck, P.H., (2014), *Why Government Fails so often*, Princeton, Princeton University Press.

¹³⁷ OECD, 2006, 8

with the situation in most Scandinavian countries which have much fewer rules and standards in place but at the same time relatively low levels of corruption and bribery.

3.3.2. Positive aspects of rules and standards¹³⁸

One may argue that the rise in regulations and expectations in the field of ethics and conflicts of ethics is to be welcomed since it reflects more critical and more mature citizen attitudes towards authorities. In fact, citizens tolerate unethical behaviour less than ever before. For good reasons: people expect public officials to have very high standards of integrity because they have considerable power, influence, and decision-making discretion. Because of this, standards of integrity must be set at high levels. The same relates to enforcement officers. According to GRECO “the management of law enforcement personnel should be driven by the principles of transparent and merit-based recruitment, promotion and dismissal, offering an objective appeal procedure, having clear criteria for motivating staff and striving for gender balance. In a few instances, GRECO recommended to build or enhance these principles, stressing that vacancies in the police should be advertised, rather than candidates being ‘hand-picked’ by means of transfers from the civil service. GRECO also pointed out that selection should be based on clear objective criteria as opposed to subjective preferences, that no-one should unduly influence the process and that the highest superiors should not be above this rule. Moreover, GRECO stressed the importance of security checks at regular intervals throughout the careers of law enforcement staff as their personal circumstances are likely to change over time and, on occasion, make them more vulnerable to possible corruption risks (financial problems arising for example as a result of a mortgage or consumer loan, divorce, the illness of a relative, the bankruptcy of a spouse, radicalisation, etc.)”.¹³⁹

The higher the prestige and the position of a holder of public office, the more companies and organizations seek to establish contacts and to offer board memberships to them. Accordingly, top-politicians, top-civil servants, or top-managers frequently assume new and important positions or functions in companies and organizations after they have left office. In recognizing this, it seems appropriate that specific rules and standards should regulate the behaviour of holders of public office and of top public servants. Also, supporters of more and better ethics rules in the field of registering financial assets claim that rules and standards are important because holders of public office and top-officials hold positions of high importance and responsibility

Other experts claim that strict rules, standards, and management instruments in the field of conflicts of interest bring many benefits for public sector organizations. First and foremost, opportunities for corruption and fraud will also be cut down. Detailed policies and procedures for identifying, disclosing, and managing conflicts of interest mean that accusations of bias can be dealt with more easily and efficiently. Detailed prohibitions can be highly effective. “Some authors suggest that ethics laws that had a major impact on legislative process are those that ban or limit gifts (...) from lobbyists or their principals, or laws that simply require their disclosure. In most states, these laws have reduced gift giving and gift taking”.¹⁴⁰

Evaluations of whether rules are effective or not are also linked to national tradition and culture. For example, in a legalistic system like in German, civil servants place high trust in the effectiveness of rules.

Civil servants themselves believe that regulation is effective and opportunities for corruption or improper conduct are reduced. Second, effective policies and procedures for identifying, disclosing,

¹³⁸ See also Demmke et al., (2008), 117-121.

¹³⁹ Council of Europe, GRECO, 2019.

¹⁴⁰ Saint-Martin & Thompson, (2006), 172.

and managing conflicts of interest mean that unfounded accusations of bias can be dealt with more easily and efficiently. Third, the organisation can demonstrate its commitment to good governance by addressing an issue that is commonly associated with corruption and misconduct. Fourth, a transparent system that is observed by everyone in an organisation as a matter, of course, will also demonstrate to members of the public and others who deal with the organisation that its proper role is performed in a way that is fair and unaffected by improper considerations.

Organisations can demonstrate their commitment to good governance by addressing an issue that is commonly associated with corruption and misconduct. For example, the process of accessions of the Member States to the EU in 2004 and 2007 had the positive effect that all new Member States reformed their laws on ethics, corruption, and conflicts of interest. In the meantime, most of the countries that entered the EU in 2005/2007 have introduced more and stricter rules for all governmental institutions.¹⁴¹ Despite all the problems in implementing and enforcing these rules, this can be considered as a positive process.

A transparent system that is observed by everyone in an organization as a matter, of course, will also demonstrate to members of the public and others who deal with the organization that its proper role is performed in a way that is fair and unaffected by improper considerations. Especially, the often-cumbersome requirements for transparency and declaration of information reveal important information to the public. The existence of strict transparency requirements and monitoring mechanisms may not automatically improve public trust. However, unclear and no rules and ethical standards may raise suspicion and rather lead to higher levels of distrust. Thus, integrity, openness, and loyalty to the public interest are a necessary condition in increasing public trust.¹⁴² Partisans in favour of more or better rules do not always pretend that more rules and standards will decrease corruption and conflicts of interest. However, additional standards may deter public officials and holders of public office from questionable behaviour. Feldheim and Wang also demonstrate that ethical behaviour of public officials improves public trust. The authors find higher levels of public trust in cities where managers have higher perceptions of ethical behaviour. Furthermore, "integrity, openness, and loyalty to the public interest (...) are crucial in increasing public trust."¹⁴³

A stronger focus on ethics policies may also raise awareness for the importance of ethical rules and policies amongst public officials. A study¹⁴⁴ indicated that many public employees in the European Union believe ethics rules are better known than before. On the other hand, public employees believe that the national public services have become more transparent, customer and citizen-oriented, people are dealt with in friendlier ways, etc. even more, many public employees believe that ethical violations are decreasing and ethical attitudes have improved. Rules and standards also contribute to transforming cultures. One example is the British code of ethics, Seven Principles of Public Life, which has become a well-known ethics code also on the international level. The popularity of these principles may have also convinced other countries to adopt centralized codes of ethics.

3.3.3. Debating the Effectiveness of Codes of Conduct

Despite existing research on the effectiveness of codes, it is still not clear how and whether codes of conduct fulfil their objectives. This uncertainty can be explained by the variety of existing types of

¹⁴¹ Demmke et al., (2008).

¹⁴² Feldheim, M.A. & Wang, X., (2004), Ethics and Public Trust, in: Public Integrity, 2003-2004, Vol. 6, pp. 73.

¹⁴³ Ibid, 73.

¹⁴⁴ Demmke, C. & Moilanen, T., (2012), Effectiveness of Public – Service Ethics and Good Governance in the Central Administrations of the EU Member States, Peter Lang: Frankfurt/M.

codes, the differences of institutional, political, and legal contexts and the difficulties to define codes as such.

In academic literature, according to a survey¹⁴⁵ regarding the impact of codes, only two studies show that codes of conduct might have a positive impact on employee's attitudes and behaviours, whereas most studies conclude that codes have a limited impact. "The results (...) revealed no significant effects on ethical attitude or behavior. Nor did codes of conduct exert a direct effect on organizational attitude".¹⁴⁶ Positive effects are only reported if codes are combined with other elements that encourage ethical local cultures. Overall, the literature reveals a broad range of determinants and outcomes of codes of conduct such as the relevance of different content elements such as the frequency of communication, and managerial support for the code¹⁴⁷. The mere presence of a code of conduct as a formal cultural artefact has been compared to personal reinforcement of a code's content.¹⁴⁸ The existing studies reveal a positive impact of codes on conduct on ethical perceptions, such as awareness and understanding of ethical issues, support for ethical behaviours, perceived freedom to behave ethically, and actual ethical behaviour.¹⁴⁹ However, other studies reveal no or little positive impacts of codes of conduct, and a review of empirical studies indicate mixed results¹⁵⁰. Overall, according to Thaler & Helmig, the impact of codes of conduct on employee attitudes and behaviour in public administration needs further investigation".¹⁵¹

Moreover, codes may be only useful for those people who want guidance because they want to act ethically. If a Holder of Public Office wants to act unethically, it is very unlikely that a code will stand in the way. "If the moral reward of doing the right thing is not sufficient to stop someone acting corruptly, why would the existence of a code do so?...One answer might be that in reality, few individuals have no moral sense, but many have underdeveloped ones."¹⁵² Consequently, codes should have an educational effect. "However, once written down, significant problems arise". For example, codes without an effective institutional implementation strategy and support from the top are likely to be relatively useless. The same is true if no enforcement and no sanctions for misconduct exist. According to Gilman, "Successful codes rely on an environment ready to nurture them."¹⁵³

Another side effect is presented by Anechiarico & Jacobs.¹⁵⁴ In their "anti-corruption project analysis" conducted in the city administration of New York, the authors concluded that codes of conduct can facilitate a stigmatizing corrupt image of public officials, resulting in lower working motivation and higher pressure to conform with diffuse values. Hereby, the caution and fear of ethical misbehaviour can lead to slower decision-making, involving the consultation of several instances counteracting to the efficiency paradigm behind the decentralization of management discretion and blurring

¹⁴⁵ Thaler, J. & Helmig, B. (2016), Do Codes of Conduct and Ethical Leadership influence Public Employees Attitudes and Behaviours, in: *Public Management Review*, vol. 18, 9, 1365-1399.

¹⁴⁶ Thaler & Helmig, (2016), 1378.

¹⁴⁷ Kaptein, (2011), 99.

¹⁴⁸ Schwartz, M.S., (2004), Effective corporate codes of ethics: Perceptions of code users. *Journal of Business Ethics*, 55: 323-34.

¹⁴⁹ Stevens, B., (2008), Corporate ethical codes: Effective instruments for influencing behavior. *Journal of Business Ethics*, 78: 601-609.

¹⁵⁰ Kaptein, M. & Schwartz, M., (2008), The effectiveness of business codes: A critical examination of existing studies and the development of an integrated research model. *Journal of Business Ethics*, 77: 111-127.

¹⁵¹ Thaler & Helmig, (2016).

¹⁵² Hine, Codes of Conduct,, in: Saint-Martin/Thompson, op cit, p.45.

¹⁵³ Gilman, S. (2005), *Ethics Codes and Codes of Conduct as Tools for Promoting an Ethical and Professional Public Service: Comparative Successes and Lessons*, Washington, DC, 2005.

¹⁵⁴ Anechiarico & Jacobs, (1996).

boundaries between public and private sectors.¹⁵⁵ Additionally, some scholars argue that codes do not cover the whole range of ethical principles, and the principles covered are too broadly defined to offer specific guidance. In addition, the enforcement of codes is highly unlikely in e.g. avoiding CoI when general crucial ethical issues are ignored, especially in cases of systematic corruption.

According to Nieuwenbourg¹⁵⁶, even though codes have to be seen as instruments to restore the trust in public administration amongst citizens by showing efforts for ethical guidance, the instrumentalization of an ethics discussion debating the role of integrity in administration can seriously backfire if the policies are meant as responsive post-scandal action. In such a scenario, the implementation of a code of conduct can be seen as an indication of lacks of integrity in the first place, resulting in more public distrust than before. Following the Kantian argument that ethics are not meant to play a role themselves in political decision-making, Nieuwenbourg¹⁵⁷ doubts whether a discussion on the need for integrity is even justified, as the role of integrity in public administration should be self-explanatory.

One of the main weaknesses of codes of conduct is that in most cases, they are characterised by weak enforcement mechanisms compared to other instruments. This means that, on the one hand, they are very vulnerable to non-observance and violations, and, on the other hand, their successful implementation depends to a large extent on the existence of an environment of trust and an ability to ensure organisational adherence to a code”.

In this context, a significant factor to consider is the consultation with all key stakeholders in the development phase, or in a more general way the involvement of all key persons in the drafting of such a code. Consequently, an effective code and its objectives must be formulated in an inclusive bottom-up process that is more likely to have better outcomes, because employees were faced with its development and are hence more attracted to comply.

In this process, a further prerequisite for an effective code of conduct is fulfilled. Due to the bottom-up inclusive drafting process, it can be ensured that the code’s content is expressed in such a way that it can easily be understood and implemented.

Also, it is important that a code is drafted in a clear, consistent and comprehensive manner, realistic for its practical application. Consistency means that it harmonises with existing legislation and procedures, while clarity should aim to minimise ambiguity. However, the objective of more clarity is just as difficult to achieve as the requirement for less bureaucracy in the Member States or better regulation at EU and national level.

A further significant factor for guaranteeing an effective functioning of codes relates to the implementation phase. Quite often, drafting and adopting codes of conduct is looked upon as being an end in itself. Once adopted, they are often forgotten and not further implemented. However, this is only the first step, and to make the code a viable document and part of the organisational culture, training and raising awareness of the content of the codes should be an ongoing task. Moreover, as regards communicating the various codes, many administrations focus on the distribution via the Internet and intranet. It is therefore unlikely that public officials and members of monitoring committees are regularly reminded in their daily lives of the existence of codes. One may also doubt whether these are the most effective communication channels.

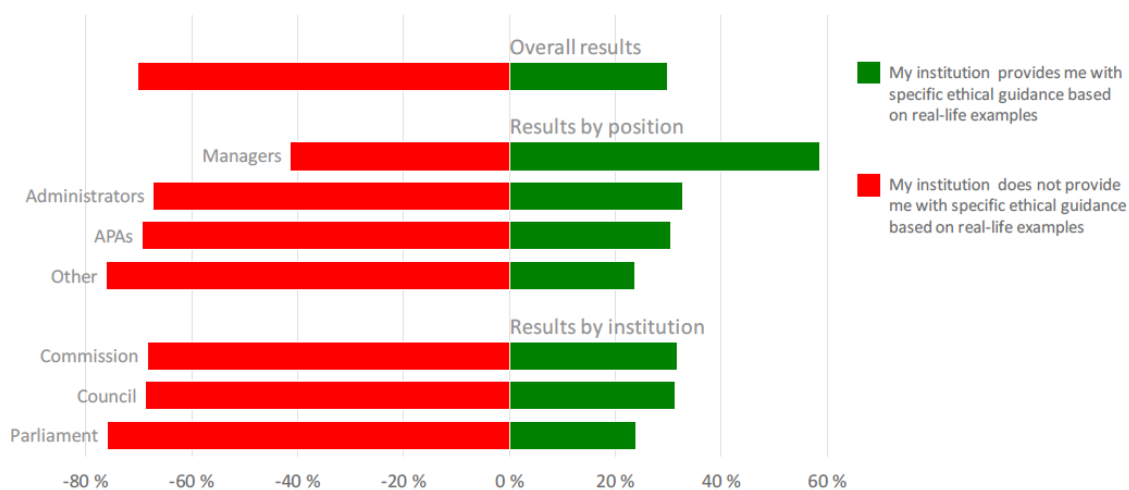
¹⁵⁵ Anechiarico & Jacobs, (1996), 174.

¹⁵⁶ Nieuwenburg, (2007), 221.

¹⁵⁷ Nieuwenburg, (2007), 220.

For example, according to the European Court of Auditors, about half of the EU staff claim to have a good knowledge of the ethical framework, less than half of the staff have received training on ethics and more than two-thirds of the staff states that the ethics guidance received was specific and based on real life examples.¹⁵⁸

Figure 28: Statements of EU staff members as regards guidance received on ethics #1

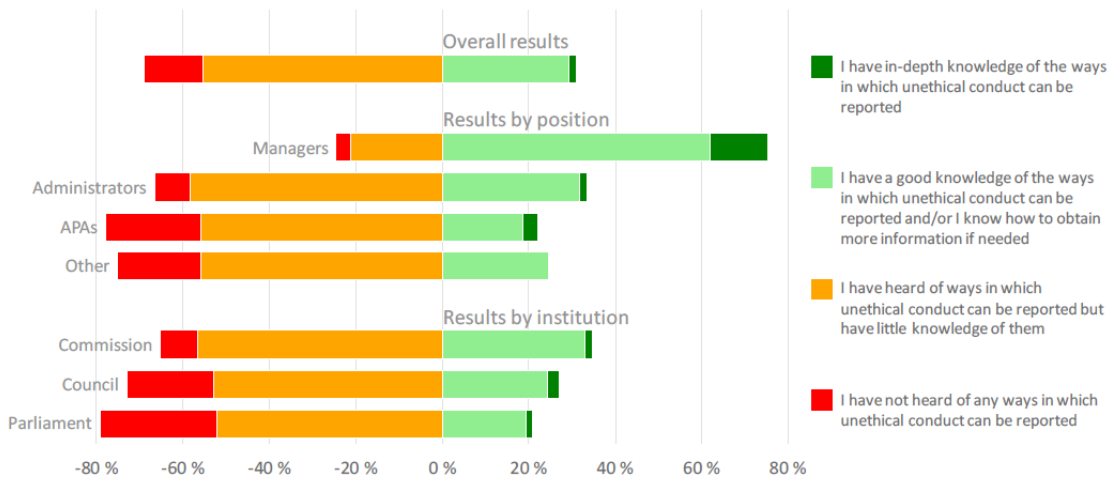


Source: ECA, extrapolated results of the survey of staff of three EU institutions: answers to question 9 (see [Annex II — Results of the survey](#)).

Overall, staff members who receive more training and guidance feel more confident about their ethical competence. However, overall, more than 70% of staff have little or no knowledge of how to report unethical conduct.

¹⁵⁸ European Court of Auditors, ECA, (2019).

Figure 29: Statements of EU staff members as regards guidance received on ethics #2



Source: ECA, extrapolated results of the survey of staff of three EU institutions: answers to question 3 (see [Annex II – Results of the survey](#)).

Also, in many countries, the existing policies, rules and codes of ethics look good in themselves, but this does not mean that the different institutions and the people take them to heart. Often, the rules are nothing but paper. Therefore, the problem is often not the rules but the shortcomings in their implementation and a lack of capacity and effort in the enforcement process. Also, codes are essential at certain times and for certain purposes, but more is needed. Codes only work when they encompass people’s existing beliefs and practices and are well designed, understood and supported by those who have to apply them in their daily lives.

3.4. Measuring and Monitoring Col

In 2020, the OECD published the “OECD Public Integrity Handbook” (OECD, 2020), which suggests that it is possible to assess a national integrity system against 13 different elements of an effective integrity system. This so-called maturity model allows a government (national or subnational) or a public sector organisation to assess the elements of their integrity systems and identify where they are situated in relation to good practice across four categories: nascent, emerging, established and leading. Like this, this model is not only a typical good-practice model. In fact, it also suggests that setting up effective systems is possible if only governments are willing to adopt a rational plan/strategy and adopt these elements.

The problem with this type of universally applicable good-practice model is that it neglects that integrity policies cannot be planned in a vacuum and without taking into consideration the interest of other governance logics and systems. For example, it is easy to agree on the importance of ethical leadership, openness, merit-based approaches, investments in oversight and enforcement, whole-of-society approaches etc. All of these are indeed important preconditions for integrity. However, all these elements are confronted with conflicting interests, strategies, influence, policy-capture, shortcomings in capacity – building, budgetary constraints and diverging political priorities.

Still, countries and institutions also book progress in the field of monitoring (and also in the auditing) of ethics policies. The best examples are the regular assessments by GRECO or the latest auditing report of the European Court of Auditors which evaluates the ethical framework of the EU Institutions (ECA, 2019). The ECA report illustrates how ethics policies can be monitored. However, the report also

illustrates the still existing difficulties and challenges. For example, how to measure and evaluate ethical leadership? Despite progress in the field of managing and institutionalising ethics policies, there is still no consensus regarding which mechanism, policies and instruments impact outcomes in different sectors, institutions and different budgetary contexts. Therefore, we argue that more empirical studies and more non-ideological deliberations in the field of ethics are badly needed if we are to better understand ethical promises, challenges and limitations.

Monitoring and measuring the effectiveness of Conflicts of Interest policies pose additional challenges. Strictly speaking, it is impossible to monitor each individual Col.

A key step in moving things forward would be to disaggregate conflicts of interests according to many different dimensions: what kind of potential Col is it, where is it taking place, who is involved, what are their motivations, who/what is needed to allow it to take place, what level does it operate at (international, national, regional, local), what sectors are implicated, what are the key interdependencies, what are possible incentives, what is the impact on the organisation and the society, etc. Without clear answers to these kinds of questions, it is impossible to identify what needs to be in place to support specific political, legal and administrative interventions. However, this identification requires a high level of expertise, time and considerable resources.

In order to illustrate this, we have taken, as an example, the case of the European Commission and sketched what is needed to implement and enforce the various existing rules and policies and their impact on officials and on the administration.

Table 7: Col Issues with respect to managerial and monitoring tasks

Conflict of Interest Issue	Practical organizational and managerial tasks in the monitoring process (example of EU Commission)
<p>General Col issues</p> <p>Col and Patronage, Nepotism</p>	<p>General duties</p> <p>Taking into account of EU staff regulation of officials; taking into account specific rules and codes of different EU Institutions; merit principle, rule of law, openness, access to information, principle of impartiality, paying due regard to proportionality of Col policies</p> <p>Managerial and HR duties</p> <p>Providing and distributing information on Col, explaining Col policies, documentation of Col, drafting new codes of ethics, drafting and updating new law, enhancing knowledge of law and codes amongst staff, providing training on Col, managing Col and disclosure policies for responsible officials, retaining staff, attracting new staff, enhancing flexibility and mobility in HR policies</p> <p>Recruiting new people (Revolving door):</p>
<p>Col and recruitment policies new people (Revolving door)</p>	<p>Case by case checking conflicts of Interest of candidates (prior job; activities, income, positions)</p>

Col and occupational activities	Col and occupational activities: Defining occupational activity, case by case analysis, granting permission, prohibiting activity (depending on nature of occupational activity) according to Art. 2, Art. 4, 5, 6 and 7 of COM (2018) 4048 final; possible need to check income
Col and post-employment (Revolving door)	Col and post-employment (Revolving door): Case by Case analysis, requesting information according to notification requirements, managing cooling-off periods, granting, imposing restrictions or prohibiting according to COM (2018) 4048 final
Col and part-time work	Col and part-time work: Case by case analysis, Granting except for paid work in a conflict of interest situation according to COM (2018) 4048 final
Col and unpaid leave	Col and unpaid leave: Case by case analysis, Granting except for paid work in a conflict of interest situation within unpaid leave period according to COM (2018) 4048 final
Col and gifts	Col and gifts: Notification requirements, respecting thresholds
Col and secondment of national experts or experts from other countries; Col and conflicting loyalties	Col and secondment of national experts or experts from other countries: Checking that SNE come from public sector; monitoring art. 7 of COM 2008 6866; Checking duties and conduct only in the Interest of the EU
Col as to Income and Assets of Member and Spouse	Management of Disclosure Policies:
Col and spouse activities	Designing responsible authority, creating and Updating a List of Filers; deciding who must disclose and how often (defining notion of spouse), updating filing, deciding what information to include, verification process I: what to do when Information is

Col and additional activities, memberships, invitations	inadequate/missing/wrong, Ensuring Interagency Cooperation, verification process II: checking information as to Col; deciding which information to make public, enforcing, deciding when to impose sanctions, managing legal issues and court cases
Abuse and Use of Information and data	Possibility to control, monitor- or supervise individual electronic devices (need to check with privacy rights and employment conditions, consultation duties)
Abuse of power/authority	
Political Conflicting Interests (Conflicting Interests of Constituencies, Dirty Hands) and Col	Not possible to monitor Not possible to monitor

So far, no country is actively monitoring the development of Col, nor whether the policies introduced, achieved the objectives. It is therefore even difficult to know whether certain Col policies are effective, or not and what are the costs and benefits of ethics laws.¹⁵⁹ The latter is surprising because, elsewhere, EU Institutions and the Member States of the EU are very eager to evaluate the costs of bureaucracy and administrative burdens.

Still, it is popular to categorize situations and policies in green, orange or red flag situations.¹⁶⁰ This is useful in order to “roughly” illustrate developments in the field of corruption. However, conflicts of interest situations are rarely possible to categorize like food, books, cars or other products.

Still, this does not mean that there exist no promising developments in the field. International evaluations use a variety of sources to assess and compare public integrity, such as expert assessments, surveys of citizens, risk assessments, and data on legal proceedings, sanctions, fines.¹⁶¹

However, the relations in this model are not straightforward. Registered misconduct typically increases as ethical standards are being raised. More infringements will be recognized as misconduct when tolerance for misconduct decreases. Furthermore, there may be feedback loops within the model. Reducing misconduct may improve the ethical climate, which in turn influences the attitudes and

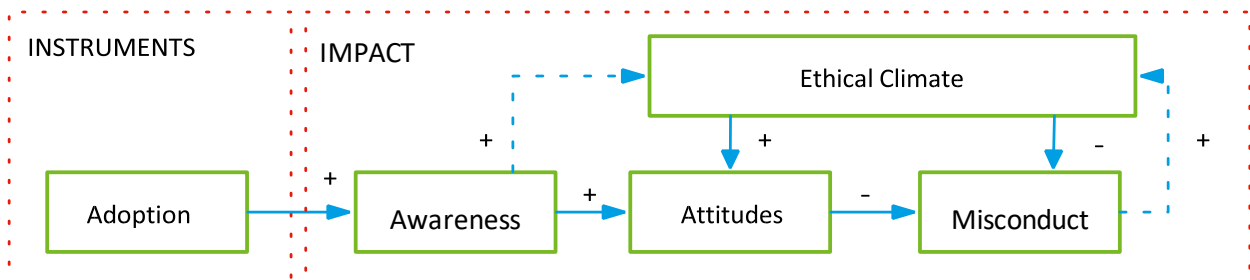
¹⁵⁹ Rosenson, in Saint-Martin/D.Thompson, 2006, 135-155.

¹⁶⁰ See for example GRECO, 2019.

¹⁶¹ Lamboo, T., van Dooren, W. & Heywood P.M., Prime Witnesses?, (2015), Case studies of staff assessments for monitoring integrity in the European Union, Ministry of the Interior and Kingdom Relations, Den Hague. Huberts, The Integrity of Governance, op cit.

behaviour of employees resulting in lower tolerance of misconduct and recognition of previously unnoticed minor infractions.

Figure 30: A Simplified Model of Integrity Policy



Source: Lamboo, Van Dooren & Heywood, Prime Witnesses, 2015

This model illustrates that monitoring and measurement models are also being introduced in the field of ethics policies (while taking performance measurement models as examples). For example, van Dooren et al.¹⁶² shows in a report to the Dutch EU Presidency that more countries invest in staff assessments and evaluate staff attitudes about the development of the ethical climate in organizations. "Staff assessments are one of many sources for monitoring integrity, but potentially a very strong one. In the first place, the staff knows best what is happening within the back office. They are prime witnesses of improvements or decline in integrity or the integrity climate. As a result, staff assessments can provide more valid indicators of real integrity compared to assessments of outsiders that often (but not always) have no direct experiences with misconduct. Their judgement is not reputational or based on hearsay, but instead based on what they see in their daily job".¹⁶³

Also, OECD data shows that countries have started to implement and employ more diagnostic tools to measure the impact of the different policies. Whereas in 2012 only 27% of all countries applied different evaluation measures in the field of conflict of interest, figures increased to 55% in 2014 (and included an increasing number of EU Member States).¹⁶⁴

Thus, whatever will be the right conclusion to these challenges, at least, we derive from this discussion that any request to expand and strengthen CoI policies should also be followed by considerations on effective implementation and monitoring strategies and evidence as regards the effectiveness of implementation measures.

In the meantime, countries have also started to evaluate the effectiveness of various implementation measures and instruments.

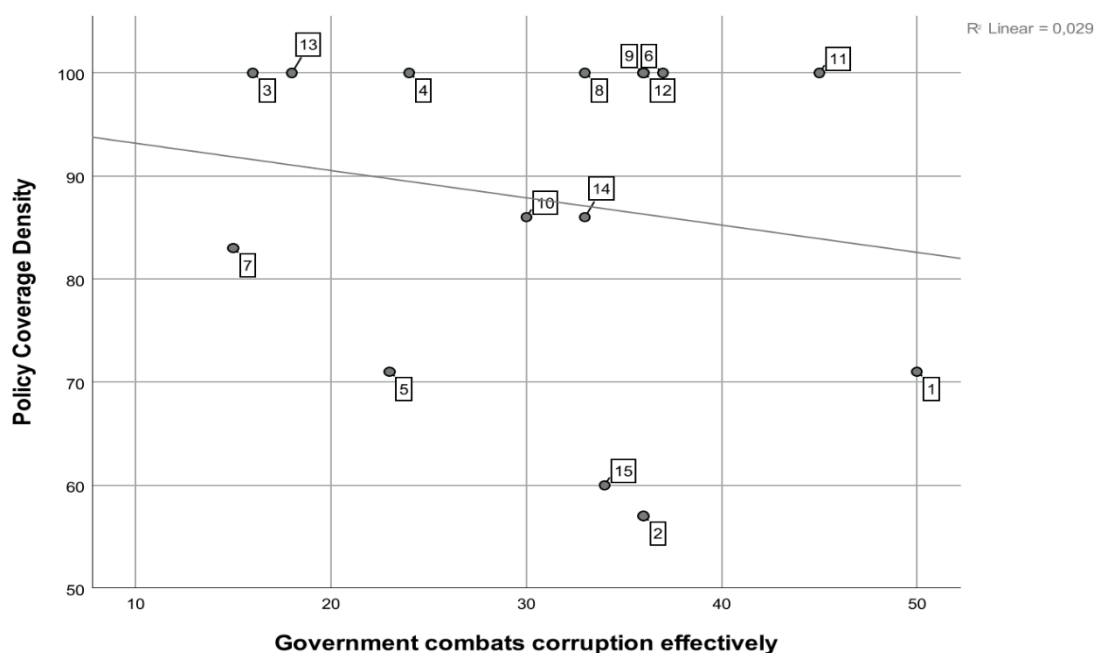
To begin with, rules and policies (policy coverage) are a necessary pre-condition for effective policies.

¹⁶² Van Dooren et al., (2016).

¹⁶³ Ibid.

¹⁶⁴ OECD, Survey on Managing Conflict of Interest in the Executive Branch and Whistleblower Protection, OECD, Paris OECD, Managing Conflicts of Interests, OECD Publisher, Paris, 2014. Julio Bacio Terracino, OECD, Deputy Head of Public Sector Integrity Division, Public Governance and Territorial Development Directorate, Preventing and Managing Conflict of Interest in the Public Sector, Powerpoint Presentation.

Figure 31: Policy Coverage Density and perceptions that Governments combat corruption effectively (for most important Col)



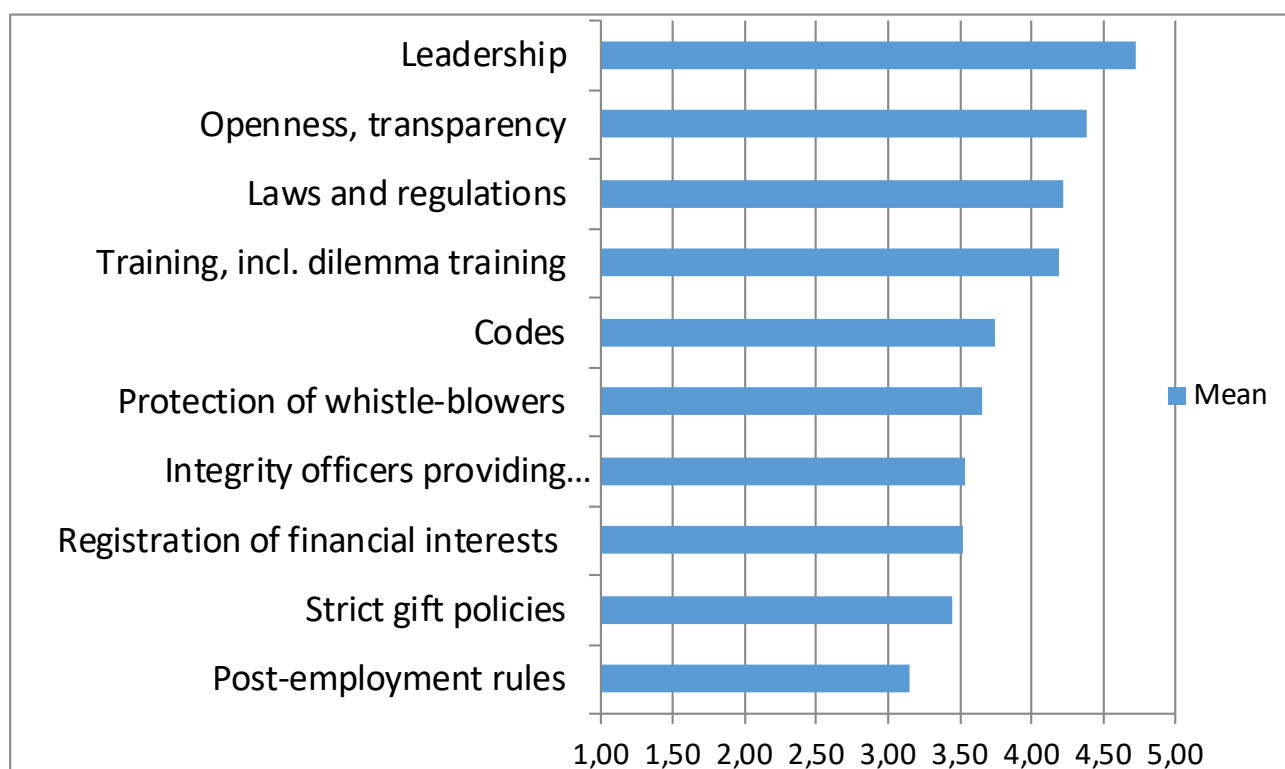
Source: Own calculations by the authors based on the information/data received from the Member States of the EU

Explanation: 1: Austria, 2: Belgium, 3: Bulgaria, 4: Czech Republic, 5: France, 6: Hungary, 7: Latvia, 8: Luxemburg, 9: Netherlands, 10: Portugal, 11: Romania, 12: Slovakia, 13: Slovenia, 14: Spain, 15: Sweden

However, this is not enough. In an EU-wide study,¹⁶⁵ countries were asked about the effectiveness of various instruments and measures. In their responses, countries rated role modelling and ethical leadership on the top of all measures. Contrary to this, post-employment measures were rated as the least effective policy instruments.

¹⁶⁵ Demmke & Moilanen, (2012).

Table 8: Effectiveness of various Ethics Instruments



Source: Demmke & Moilanen, 2012

These findings need interpretation. Obviously, post-employment rules as such are considered to be not ineffective by many Member States. In the following, we will discuss possible reasons for this.

Moreover, countries have become much more active in raising awareness and enhancing understanding of conflict of interest policies. According to the OECD, in 2014 77% of all countries provided for training on conflicts of interests to public officials. 68% of all countries provided for official advice when public officials have doubts about the legality of incidences, procedures and policies.¹⁶⁶

¹⁶⁶ OECD, (2014), Survey on Managing Conflict of Interest in the Executive Branch and Whistleblower Protection, OECD, Paris.

Table 9: Col Practices in OECD Countries

	Initial dissemination of rules/guidelines to public officials upon taking office	Proactive updates regarding changes to Col rules / guidelines	Publish the Col policy online or on the intranet of the organization	Give regular reminders of what a Col is, and the responsibility of public officials to resolve these	Provide training	Provide regular guidance and assistance	Advise line or help desk where officials can receive guidance on filing requirements or Col identification or management
Australia	●	●	●	●	●	●	●
Austria	●	●	○	●	●	●	○
Belgium	●	○	●	●	●	●	●
Canada	●	●	●	●	●	●	●
Chile	●	○	●	○	●	●	○
Czech Republic	○	○	○	○	○	○	○
Estonia	○	●	●	○	●	●	●
Finland	●	○	●	○	●	○	○
France	○	○	○	●	●	○	●
Germany	●	●	●	●	●	●	●
Greece	●	●	●	○	○	○	○
Hungary	●	●	○	○	○	○	●
Iceland	○	○	○	○	○	○	○
Ireland	●	●	●	○	○	○	●
Israel	●	○	○	○	○	●	○
Italy	○	○	●	●	○	●	○
Japan	●	●	●	○	●	○	○
Korea	●	○	●	●	●	●	●
Mexico	●	●	○	○	○	○	○
Netherlands	●	●	●	●	●	●	●
New Zealand	●	●	●	●	●	●	●
Norway	●	●	●	○	●	●	●
Poland	○	○	○	○	○	○	○
Portugal	●	○	○	●	●	○	○
Slovak Republic	○	○	○	○	○	○	○
Slovenia	●	○	○	○	●	●	●
Spain	●	●	●	●	●	●	●
Sweden	●	●	●	●	●	○	○
Switzerland	●	●	●	●	●	●	●
Turkey	●	○	○	○	○	○	○
United Kingdom	●	●	●	●	●	●	●
United States	●	●	●	●	●	●	●
Yes ●	25	18	20	16	22	18	17
No ○	6	13	11	15	9	13	14

Source: OECD, 2015, Janos Bertok, Conflict of Interest and Corruption, Lessons learned from the OECD Countries Source: OECD (2014), Survey on Managing Conflict of Interest in the Executive Branch and Whistle-blower Protection, OECD, Paris.

However, despite these trends, in most countries, the lack of knowledge and training on conflicts of interests are main reasons why civil servants are not prepared to anticipate potential conflicts of interests.¹⁶⁷ For example, as a Polish study shows, most of the staff in the ministries and other central offices have insufficient knowledge and preparation to properly react to conflict of interest situations.¹⁶⁸

Overall, “there are huge institutional differences in approaches to conflicts of interests. Some ministries have relatively well prepared and developed systems to counteract corruption, including the risks related to the conflict of interest (e.g. the Ministry of National Defense). Others seem to have some infrastructure in this field, but it is not properly used (e.g. the Ministry of Agriculture and Rural Development or the Ministry of Economy). In still other ministries, as we already mentioned, the awareness of the conflict of interest is so low that even the most basic solutions that are available are not recognized as tools to counteract the problem”.¹⁶⁹

¹⁶⁷ Stefan Batory Foundation, (2014), The Conflict of Interest in the Polish Government Administration, Warsaw.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid, 3.

3.4.1. Oversight, monitoring and ethics committees – structural features, powers, functions and resources

“External scrutiny and oversight are essential parts of an integrity system. Public organisations and officials are accountable for their decisions, actions and expenditures. Oversight contributes to the public integrity system’s effectiveness, notably by means of adequate responses of public organisations to oversight bodies’ recommendations; effective handling of complaints and allegations, through both oversight bodies’ own procedures and those of public organisations; and the impartial enforcement of laws and regulations throughout the public sector. Beyond creating specific mechanisms to establish and strengthen public accountability, oversight can foster learning through evaluation and highlighting bad and good practices”.¹⁷⁰

In most countries, oversight and control is the responsibility of many bodies and actors. As such, it is extremely fragmented and decentralised.

In most cases, responsibilities are shared amongst various actors:

- Court of Auditors with responsibilities in auditing ethics policies.
- Ombud officers with responsibilities in managing maladministration.
- HR departments with ethical responsibilities as regards recruitment- and disclosure policies.
- Integrity Officers, Ethics Commissioners, or Presidents with various advisory and supervisory functions.
- Decentralised ethics committees/Centralised Ethics Committees with various responsibilities for one or several institutions.
- Specific Recruitment and Appointment Bodies with responsibilities to avoid Col in the process.
- Specific Revolving-Door Bodies.
- Courts with legal- and disciplinary control- and sanction responsibilities.

Often, tasks and responsibilities overlap. Looking at this fragmented “scene”, it is tempting to plea for the introduction of strong and independent ethics bodies. Overall, arguments for these external and independent ethics committees are focusing on the following arguments:

1. Only an independent outside body would “be likely to reach more objective, independent judgments. It could more credibly protect Members’ rights and enforce institutional obligations without regard to political or personal loyalties. It would provide more effective accountability and help restore the confidence of the public in the ethics process. An additional advantage that should appeal to all Members: an outside body would reduce the time that any Member would have to spend on the chores of ethics regulation.”¹⁷¹
2. A move toward a more external form of ethics regulation in order to enhance public trust and confidence and in order to depoliticise the process of ethics regulation (Saint-Martin).
3. Jeremy Bentham commented, as follows: “Is it objected against the régime of publicity, that it is a system of distrust? This is true; and every good political institution is founded upon this base. Whom ought we to distrust, if not those to whom is committed great authority, with great temptations to abuse it? (...) What remains, then, to overcome all these dangerous motives? What has created an interest of superior force? And what can this interest be, if it be not respect for public opinion—dread of its judgments—desire of glory?—in one word, everything which results from publicity?”¹⁷²

¹⁷⁰ OECD, (2020).

¹⁷¹ Thompson, D., (2007), *Overcoming the Conflict of Interest in Congressional Ethics*, Paper for the Panel on “Congressional Ethics Enforcement”, Woodrow Wilson International Center, Washington, D.C., January 16, 2007, 18.

¹⁷² Jeremy Bentham, J., (1843), *Essays on Political Tactics*.

However, as always, the devil lies in the details:

To start with, oversight of Col is particularly complicated for ministers and top-officials because independent and outside control is rare (or Presidents/Prime Ministers carry out these oversight duties). Current practice is also difficult because oversight bodies have few resources and face difficulties to monitor ethics rules and standards in a professional and impartial way. However, also the opposite may be the case: For example, Romania provides for a powerful, centralised integrity body: The National Integrity Agency. According to the answer from Romania to our survey: "The National Integrity Agency (NIA) is an autonomous administrative authority with legal personality, operating nationally as a single structure, the institution in Romania with exclusive competence in managing the system of asset and interest disclosures and identifying, preventing and combating cases of conflicts of interest, incompatibilities and unjustified wealth". As such, this institutional set-up in Romania is more "powerful" than in most other countries. Yet, politicisation, corruption and conflicts of interests are neither lower nor is the fight against Col more effective in Romania than elsewhere.

Contrary to the Romanian case, the Latvian answer looks almost like the opposite: In Latvia, no "ethics or advisory committee exists, but there are trusted persons in ethical issues at each institution charged to advise and guide colleagues". In Poland, too, there is no ethics committee as such. Instead, in 2017 the Head of Civil Service appointed a network of ethics and integrity advisors in order to enforce building a culture of integrity in the civil service and to encourage heads of offices to appoint the ethical advisors in their offices" (Polish answer to our survey). Thus, we derive from this case that a strong role is given to a top-official (Head of Civil Service), who then may decide on the institutionalisation of ethics policies.

The Romanian, Polish and Latvian answers reflect the existing institutional landscape in the Member States of the EU: From centralised and powerful bodies to individualised and fragmented structures.

In Europe, for a long time, the best known centralised ethics committee was the Committee on Standards in Public Life and Privileges in the UK. However, the British case also shows that structure and nature of ethics bodies are closely linked to the political- and administrative context.

Whereas, for example, the commonwealth countries provide for powerful ethics committees or ethics commissioners, countries with a more legalistic tradition and bureaucratic administrative culture like Germany trust in the power of (disciplinary) rules, public service ethos and advice from internal bodies.

However, great variation exists also among comparable administrative traditions: In a survey by Saint-Martin the author shows that "Ethics commissions in the US are generally more powerful than in the Canadian provinces and in Britain. Their mandate is broader and covers thousands of government employees. And as a rule, they have the power to conduct investigations at their own instigation".¹⁷³ Key differences between ethics commission in the US and those in Westminster concern the fact that the US commission covers officials in the executive branch whereas most commissions in the Westminster system focus on the legislative branch. The main role of the British Committee on Standards and Privileges is investigating cases that have been recommended by the Parliamentary Commissioner for Standards. The Committee can also recommend penalties to be voted on by Parliament.

Take again the British case: In 2017, the British House of Commons¹⁷⁴ made headlines when publishing a report about "Managing Ministers and officials conflict of interest: time for clearer values, principles

¹⁷³ Saint Martin, (2003), 202.

¹⁷⁴ United Kingdom, House of Commons, (2017), Public Administration and Constitutional Affairs Committee, Managing Minister's and officials conflicts of interest: time, for clearer values, principles and action, 13th report 2016-2017, London.

and action". In this report, it was criticised that the "regulatory system for scrutinising the post public employment of former Ministers and civil servants is ineffectual and does not inspire public confidence or respect. (...). The failures of governments in this regard have damaged public trust in politics and public institutions and led to repeated scandals. Consequently, we are recommending major reform".

A study by Philipps¹⁷⁵ in Australia concluded about various advantages and disadvantages of the "commonwealth system" of Integrity Commissioner. According to this the most important advantageous are:

- Ministers and Members are annually reminded of their individual sources of potential conflicts of interest;
- The public and media have access to a resume of each Member's pecuniary interests and associations and can be confident that procedures are in place to monitor the interests of parliamentarians on an on-going basis;
- Ministers and Members have access to the informed guidance of the Commissioner (senior judges or experienced politicians) on the range of ethical conundrums that can arise;
- A set of sanctions is prescribed with the emphasis being upon prevention rather than cure;
- The Commissioners can contribute to the parliamentary and public awareness of integrity matters.

Disadvantages are seen because:

- The institution can be seen to reduce the primacy of parliament;
- The respective Commissioners have been reluctant to make adverse judgements/decisions in their reports;
- The Disclosure Statements when made available to the public do not contain specific details. Critics believe these Statements are inadequate;
- Enforcement provisions could easily become 'another battleground';
- Unlike a court of law there is no appeal mechanism despite the discretionary nature of the various Ethic Commissioners' opinions.

Overall, evidence about ethics committees can be summarized, as follows:

1. Until today, little is known about the opaque operation of ethics committees and mostly s regards appointment procedures of top-officials and how ministers deal with Conflicts Interest in the appointment also promotion process).
2. Most countries and the different institutions are willing to establish various forms of control. In fact, Member States often agree on the establishment of internal reporting obligations and monitoring mechanisms.
3. Obviously, the choice of an institutional design is path-dependent and must fit with the local context.
4. Most countries are much more reluctant to go beyond forms of institutional self-control.
5. Most systems are failing to address public concerns about the development of Col and how committees address Col of ministers and top-officials, especially as regards post-employment issues.

Still, despite the fact that little is known as to Ethics Commissions and Ethics Committees in general, there seems to be a trend towards the introduction of more of these bodies. In most cases, these committees are sectoral bodies and neither independent bodies nor do they have important

¹⁷⁵ Phillips, H., (2004), The Canadian Provincial Integrity Commissioner: An assessment for adoption, Australian Parliamentary Review, Spring 2004, Vol. 19, No. 1, pp. 125–38.

monitoring and enforcement powers. Most institutions in the Member States of the EU are of the opinion that any form of self-regulation has the advantage that it is simpler, easier and less conflictual. The problem with this practice is that the public increasingly tends to question practices where public institutions regulate their own ethical conduct. More and more it seems that any form of self-regulation causes suspicion and distrust.

On the other hand, arguments against and in favour of the creation of an independent ethics watchdog are still more based on faith than on empirical evidence. There is also much confusion and exaggeration linked to independent watchdogs. In particular the challenge facing legislative ethics committees is how to ensure their credibility with the press or the public. Most professions – including doctors, lawyers and teachers – discipline their own members through internal committees without facing accusations of attempts to protect their own. However, legislators who intend to discipline their fellow members face a higher level of scrutiny, one resulting from a commitment to public service.

Table 10: Self-regulation or Independent Forms of Ethical Committees – Main Differences

Self-regulation committees	Independent ethics committees
Members are internal experts, officials or elected/nominated Holders of public office	Members are independent experts
Internal oversight. Committee Members oversee their peer’s compliance with ethics rules	External oversight. External/independent members oversee compliance with ethics rules
Can be an office, Parliamentary Committee, presidential office within own organisation	Independent with own budget, but mostly controlled by Parliament
Duties can include: Advising colleagues on Col Creating awareness for violations of rules of ethics	Duties can include: providing ethics training, investigating ethics complaints own inquiry determining penalties issuing advisory opinions receiving financial disclosure and monitoring reporting statements
Exist in most EU countries and in EU institutions	Pure models do not exist: US, Canada, Australia, to a lesser extent IRL and UK

Slightly different to ethics committees, most Member States have also established a horizontal, internal body that oversees the conduct of the members of the institution, or several institutions. This may take the form of an audit body and/or Ombudsman/woman. Note, for example, that throughout the last years, national court of auditors (and also the ECA) have become ever more interested in monitoring ethics on the EU level. The European Court of Auditors is also member of a European network of

national audit bodies who work on auditing ethics, the so-called EUROSATask Force on Audit & Ethics.¹⁷⁶

On the EU level, the European Ombudswoman is also investigating Col as long as these are related to maladministration and other misconduct in the EU administration. Although the Ombudswoman made headlines in autumn 2018 when she criticised the controversial promotion of Mr Selmayr to Secretary-General of the European Commission, the institution of the European Ombudsman lacks resources to become fully operational in monitoring Col at the EU level and for all institutions.

Institutional models take the form of specific ethics committees or a Parliamentary committee composed of members, combined with an independent Parliamentary commissioner. As already mentioned, this model exists (albeit not in the same way) in some commonwealth-countries but also in Ireland.

Finally, we should note that more countries seem to consider the introduction of specific revolving door committees (like the Advisory Committee on Business Appointments (ACOPA) in the UK). According to our data, this (certainly) interesting option is still an exception in other EU Member States. The fact that ACOPA receives many critical comments should not be interpreted as a rejection of this model. In fact, the introduction of this body was a reaction to the growing problem of dealing with revolving door cases.

However, the case of ACOPA shows that it makes sense to remain cautious when suggesting best-practices. Another reason is that Member States provide for very different roles for external oversight, control and enforcement bodies such as centralized or decentralised ethics committees (or related ethics bodies), powerful or weak enforcement agencies, ombudsmen with either general and specialised mandates; supreme audit institutions (SAI) having (no) mandate in auditing ethics; administrative courts (or specialised administrative courts and courts of general jurisdiction providing independent and impartial judicial review of administrative actions and omissions) and regulatory enforcement agencies.

3.4.2. Effectiveness of disclosure policies¹⁷⁷

Next to the institutionalisation of ethics policies, the design of new instruments, the broadening of approaches, adoption of more rules and stricter standards and the call for ethical leadership, disclosure policies have become important instruments in monitoring conflict of interest policies. The principle of proactive disclosure, i.e. that information must be publicly available prior to public request, is important in achieving greater accountability, transparency and openness in government.

The trend towards ever more disclosure requirements is an intriguing and popular issue at the same time. The public availability of information disclosed by top decision makers is also seen as important to reinforce trust in government. Public disclosure is popular because it is a soft-instrument and looks easy to implement. It also sends the clear message that government is accountable and supports transparency in government¹⁷⁸.

In addition, obligations to declare personal interests in public will contribute to establishing a more open and transparent political sector, which is vital if legitimacy and citizen's trust is to be increased. At present, more countries apply the principle of disclosure in the field of conflicts of interests. Differences still exist between voluntary and obligatory approaches, the question of what needs to be

¹⁷⁶ <http://www.eurosai-tfae.tcontas.pt/default.aspx>

¹⁷⁷ Demmke et al., (2008).

¹⁷⁸ Stark, (2000), 250.

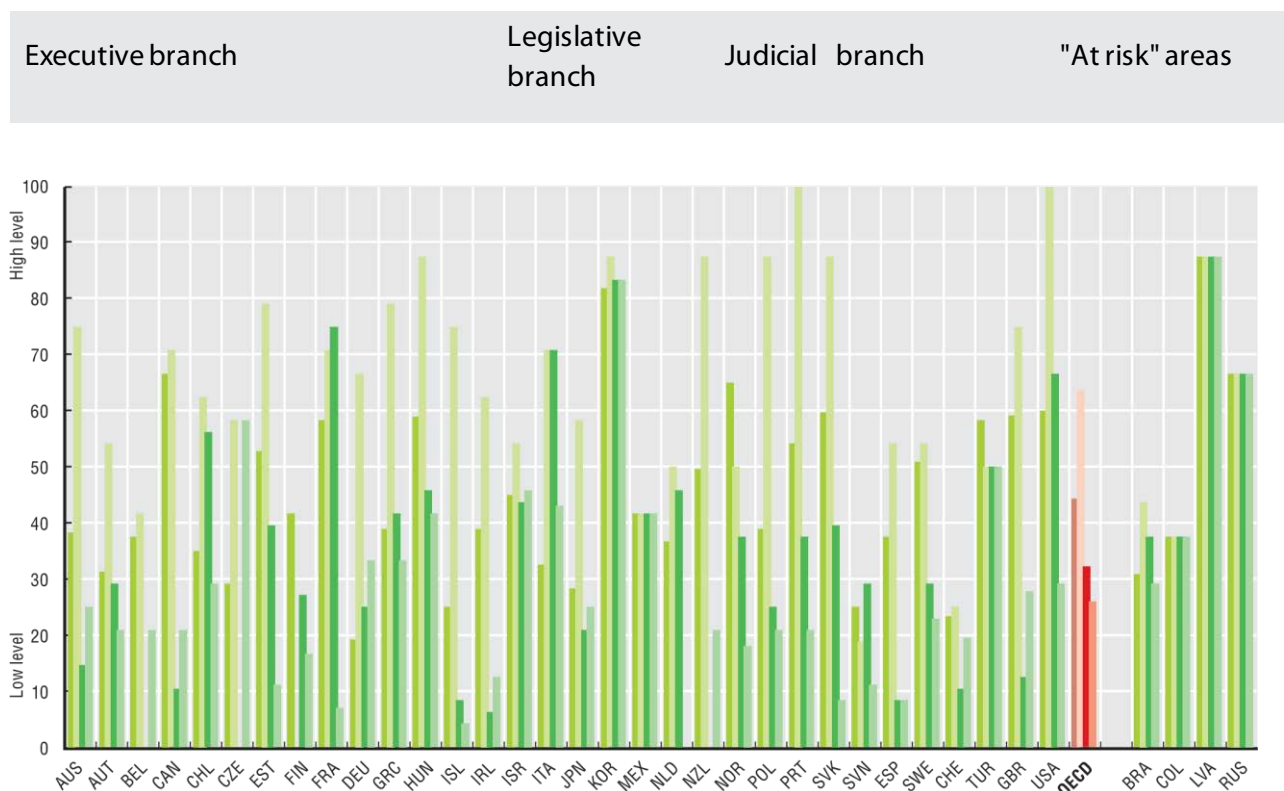
disclosed, how the disclosed information will be monitored and what are the consequence of disclosure is lacking, or insufficient.

The trend in most countries is clearly to strive for more transparency and disclosure requirements about the private lives of elected representatives. For example, new requirements include an obligation to register additional jobs, private income or shares, or an obligation to provide information about the jobs/activities of his/her partner, which may conflict with his/her public position. There are also rules which refer to the acceptance of gifts and invitations in order to prevent unwanted external influence on decision-making. This may include a dinner offered by a private firm or accepting a gift which can involve a holiday to an attractive place offered by an applicant in a public procurement procedure. Moreover, another observation is that the higher the position the stricter the policy, regulations and codes and the more transparency is required. According to OECD, paid outside positions are the most regulated private interests across the three branches of government.¹⁷⁹

Insights into the density of integrity requirements are also available from the data collection¹⁸⁰ on approaches to ensuring integrity in the executive branch of government and in the civil service in the form of a composite indicator of levels of disclosure and public availability of private interests.

Countries increasingly require disclosure of private interests (mostly as regards outside positions and gifts) by officials in at-risk areas, such as tax and customs officials, procurement officers and financial authorities. Yet, nearly all OECD member countries make disclosed information public.

Figure 32: Level of Disclosure and Public Availability of Private Interests Across Branches of Government, 2014



Source: OECD (2014), Survey on Managing Conflict of Interest in the Executive Branch and Whistleblower Protection, OECD, Paris.

¹⁷⁹ OECD, (2015), Government at a Glance, OECD Publisher, Paris, 209.

¹⁸⁰ Ibid.

Differences concern the degree of openness (public disclosure or internal disclosure), and questions of sanctioning if members do not disclose or disclose too late. According to Demmke et al. 2008, especially those Member states that entered the EU in 2005/2007, in particular, have very detailed disclosure requirements. There are bans on honoraria, limits on outside earned income, and restrictions on the acceptance of gifts.

Whereas in some cases public officials have obligations to declare only their financial interests, in most cases they must also declare other issues such as professional activities, honorary memberships and presentations in registers of interest. Thus, the most important questions concern what should be declared, whether (or not) the declarations should be made public, whether (or not) independent bodies should have the power to monitor the registers and whether (or not) there should be sanctions for noncompliance.

OECD data shows that levels of integrity requirements tend to be proportional to seniority, i.e. the higher the level of the civil servant, the higher the level of the integrity requirements. It is also interesting to note that integrity requirements for senior civil servants and civil servants are on average lower for the 'old' Member States (26 out of 100 points) than for the 'new' Member States (32 out of 100 points). The countries with the highest levels of integrity requirements for senior civil servants and civil servants (calculating the average of the two categories) include Latvia (88), Estonia (39), France, Sweden and the United Kingdom (all 38); the countries with the lowest levels include the Slovak Republic (4), Portugal (8), Poland (17), Italy (19) and Slovenia (23).

Table 11: OECD Data on Level of Disclosure and Public Availability of Private Interests by the Level of Public Officials in the Executive Branch (0/low to 100/high)

	Head of the executive	Ministers members cabinet or of	Political advisors / appointees	Senior civil servants	Civil servants	Average (all 5 categories) 157
AT	37.5	37.5	25	25	25	30
BE	41.67	41.67	41.67	41.67	20.83	38
CZ	58.33	58.33	0	58.33	0	35
EE	79.17	79.17	0	70.83	8.33	48
FI	87.5	87.5	..	25	8.33	52
FR	62.5	75	75	75	0	58
DE	16.67	16.67	..	25	25	21
GR	79.17	79.17	25	25	25	47
HU	87.5	87.5	41.67	41.67	12.5	54

IE	62.5	66.67	58.33	33.33	12.5	47
IT	50	50	25	25	12,5	33
LV	87,5	87,5	87,5	87,5	87,5	88
NL	62,5	62,5	16,67	25	16,67	37
NO	75	75	58,33	58,33	58,33	65
PL	56,25	87,5	0	16,67	16,67	35
PT	100	100	8,33	8,33	8,33	45
SK	87,5	87,5	87,5	4,17	4,17	54
SI	29,17	29,17	16,67	29,17	16,67	24
ES	62,5	62,5	0	62,5	0	38
SE	70,83	70,83	37,5	37,5	37,5	51
UK	87,5	91,67	41,67	41,67	33,33	59
OECD	64,78	64,84	32,5	39,45	19,48	44

Calculated by Demmke/Blomeyer, 2018,

Finally, whilst these overviews suggest that most countries have dedicated substantial efforts to addressing Col as affecting public administration, the overviews do not provide information on the managerial aspects, actual levels of compliance and enforcement issues.

3.5. Critical developments in the field of disclosure

From a managerial point of view, the daily management of disclosure policies requires to split the process of disclosing information into various phases and duties:

- A decision who should disclose (only top-level officials, spouse, family, friends?)
- A decision how often to file information (upon recruitment, promotion, appointment, once a year?)
- What to declare (what type of data and information?)
- Clearness easiness (clarity about the comparability of the information/data)
- Managing the process (who is responsible, when to monitor, which steps to follow?)
- Verifying information (checking the completeness and validity)
- Providing access to information (decisions on transparency, who has access to the information, right to know for the public or press?)
- Linking collecting, managing and enforcement (who is taking decisions in cases of violations, according to which criteria?)

When looking at these managerial aspects, we find that disclosure systems are indeed powerful tools, but they are also prone to disappointing results and setbacks if they are launched with overly ambitious mandates, are not supported by adequate resources, or are not underpinned by political commitment. according to GRECO¹⁸¹: “Despite multiple attempts to introduce financial disclosure obligations as a tool of transparency, a number of deficiencies remain with regard to the scope of persons covered by this requirement, the timely publication of declarations and most importantly, with regard to their depth and independent and systematic monitoring. Some countries were recommended to require political advisers associated with a minister’s decision-making to fill in declarations of assets, income, liabilities and interests, while others were recommended to define more specifically which interests were to be declared”.

According to the European Court of Auditors, the ethical framework surrounding CoIs is largely based on self-declarations made by individual staff members. Such declarations often rely on the judgement of the staff member and on staff members’ knowledge of the applicable requirements. Specific details of case only need to be provided when a staff member judges that a case has arisen”.¹⁸²

Thus, the systems rely on individual motivation, integrity and professional self-regulation. It is, however, doubtful whether the ethical framework can be effective without appropriate control systems. “The level of control should reflect the level of risks and take into account the administrative burden created by such controls”.¹⁸³ Although the responsible “institutions indicated that any other available information is also examined and considered, procedures and workflows do not describe which other information coming from internal (e.g. personal files or other existing declarations) or external (e.g. websites) sources is verified and cross-checked”.

This situation is typical also for many national practices and illustrates that the devil lies in the details. Take the case of the European Parliament:

“Members of the European Parliament (MEPs) are also required to submit a declaration of interests covering matters such as their professional activity during the three-year period before taking office in the Parliament, regular and occasional remunerated activity (outside activities), and any other financial interests which might influence them in performing their duties. MEPs’ declarations are checked for general plausibility: in other words, to ensure that they contain no manifestly erroneous, illegible or incomprehensible information. The declarations are subject to the scrutiny under the authority of the President. Such scrutiny covers obvious editing errors, discrepancies between one declaration and another, and respect of the deadline. If the President receives information that the declaration is substantially incorrect or out of date, the President may consult the Advisory Committee on the Conduct of Members and, where appropriate, must request the Member to correct his or her declaration. If there is an alleged breach of the code of conduct, the President must refer the case to the Advisory Committee. No other checks on the accuracy and completeness and/or assessment of the MEP’s declarations¹⁰ are set out in the Parliament’s procedures. For the President of the European Council, there is no procedure for the verification or the assessment of the declaration”.¹⁸⁴

Most countries with disclosure laws require officials to submit information not only for themselves but also for their family members. The definition of “family members” or “spouse” and the information

¹⁸¹ Council of Europe, GRECO, (2019).

¹⁸² European Court of Auditors, ECA, (2019), 40-42.

¹⁸³ Ibid, 40.

¹⁸⁴ Ibid.

requested from them varies from country to country. In our survey, we have noted that particularly northern EU Member States are reluctant to require disclosure information of spouses.

Thus, a country's cultural and legal context may restrict or broaden the definition of who or not to include as regards other relatives, dependents living in the same household, or domestic partners who are not legally married, to name just a few alternatives. Moreover, also here the devil lies in the details if (legal) requirements are not clear or the language used invites for broad interpretations: Take the case of the European Parliament: "The code of conduct for MEPs requires them to submit a declaration of their personal financial interests and activities. The financial interests of their family members have to be included in declarations **only in cases** where MEPs consider that such interests **might influence the performance of their duties**, and that **they cannot resolve the conflict of interests in any other way**. The same applies to declarations about the professional activity of MEPs' family members".¹⁸⁵

These possibilities to interpret texts broadly and – often – the poor quality of law is, by no means, an exception. In fact, no evidence exists whether and how countries monitor information about spouses, even if provisions require to do so. According to the European Court of Auditor: "The quality of the information and the assessment criteria are crucial to adequately manage the risks related to ethics. There are no written standard procedures and workflows for checking this information".¹⁸⁶

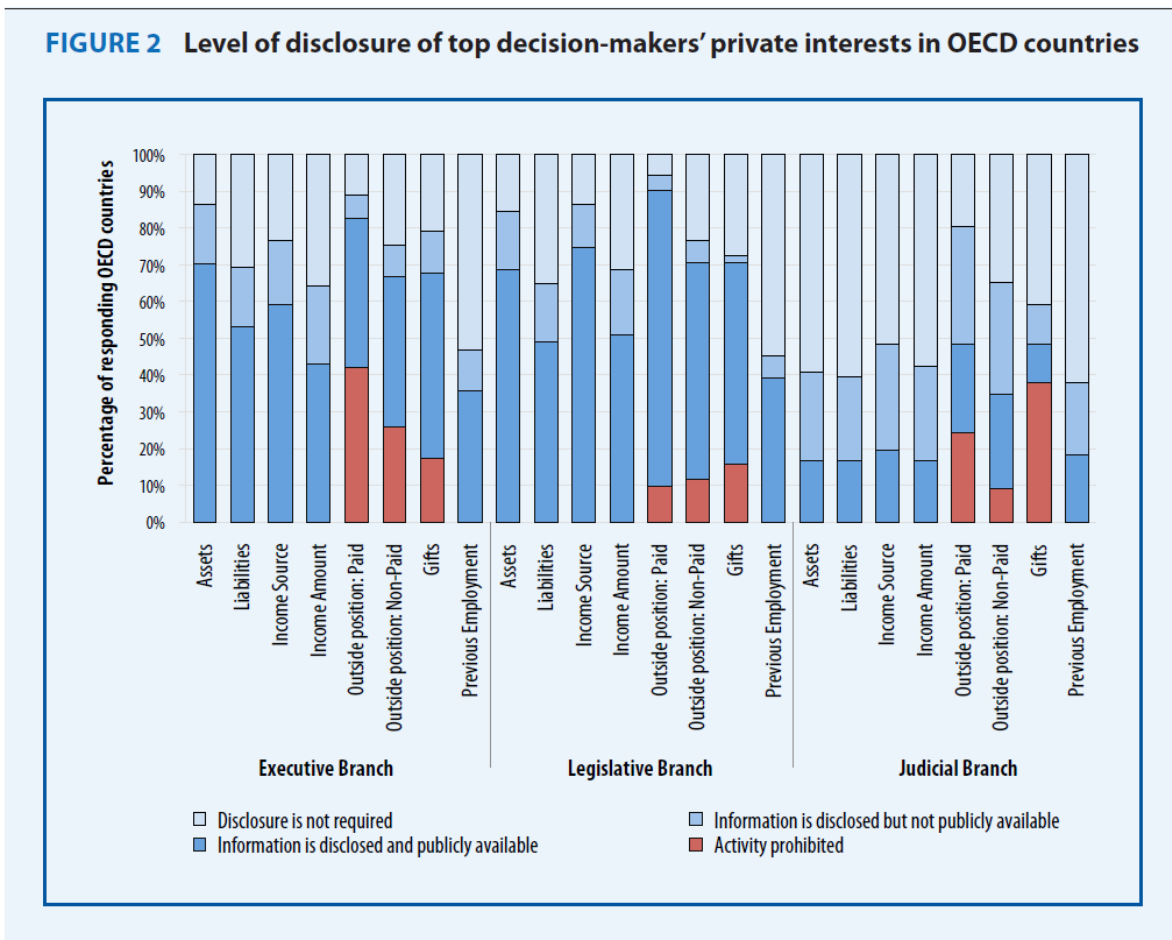
Overall, the lack of credible and independent monitoring and oversight procedures creates a risk of obligations being interpreted inconsistently and means that the institution is less likely to identify inaccuracies and other issues before they attract public attention, potentially jeopardising public trust.¹⁸⁷

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

Figure 33: Level of Disclosure of Top Decision-makers' Private Interests in OECD Countries



Sources: OECD Survey on Integrity (2010).

Note: Based on 35 OECD countries excluding Luxemburg. For the Executive branch, the data refers to the President, Prime Minister and Ministers or cabinet members. For the Legislative branch, the data refers to legislators in both the lower and upper houses. For the Judicial branch, the data refers to judges and prosecutors.

As previously discussed, another important challenge for most countries is finding the right balance between the need to check nepotism and favouritism of family members and not overstressing the own monitoring capability and resources. Collecting more information on family members affects this balance negatively. More filers will significantly increase the amount of information that the agency must process for each filer.

At a minimum, therefore, it is important that the management of disclosure forms focuses on the main "target" – the person in question. At the same time, disclosure requirements should be user friendly, ask for relevant information, but also be understandable, short and clear – avoiding an excess of bureaucracy.

The verification process should be designed to identify inconsistencies and inaccurate data, which can ultimately lead to the detection of the following:

- False statements (including both omitted information and over-disclosure of assets or income);
- Statements that are difficult to justify;
- Illicit enrichment;
- Incompatibilities between an official's mandate and other positions;

- Information relevant for corruption/tax crime/money-laundering investigations.

According to the Worldbank: "We have yet to encounter a disclosure system that manages to carry out verification in order to detect all of the above. Some verification systems have as a sole objective the identification of actual or potential conflicts of interest. Others focus on a combination of identification of false statements, unjustified variations of wealth, conflict of interest situations, incompatibilities, and information relevant for corruption investigations".

Because of these trends, we expect that discussions on the pros and cons of requiring people to declare Col will most likely become more ideological.

On the one hand, there will be those who claim that, despite all weaknesses, disclosure remains an important and effective tool. With full disclosure (...), the public can come to its own judgment as to whether any given official is in conflict. Knowing this, officials will comport themselves properly".¹⁸⁸

On the other hand, there will be another group that criticises this instrument: "Pure disclosure casts the public in the role of both legislator and adjudicator and as legal arbiters of right and wrong."¹⁸⁹ In fact, what is often overseen is the fact that disclosure policies mean that administrative bodies, ethics committees, public officials and citizens are given statistics, numbers, facts, raw data and then we trust that these bodies and/or the public will take the right judgment. Thus, public disclosure is a strange form of public policing and public accusation. Does this really work?

Even among those who favor a public disclosure system, there are very different opinions about the items of information that filers should be required to disclose. For example, some believe that filers should be required to report the identities of their assets, but not their values, under the theory that the magnitude of the financial interest is irrelevant to the question of whether it creates an actual conflict of interest. Others believe that the value of an asset is a critical predictor of whether it will cause a conflict of interest. Moreover, differences should be must be considered between public officials who exercise important state functions and other public officials.¹⁹⁰ The call to regulate post-employment issues more strongly for Members of the Government and not for ordinary public officials also stems from these differences.

Another criticism against declaration of interests is that the reporting systems can also work into the opposite direction: They are too simplistic, as they merely require a person to report in a very general way.

Thus, disclosure policies must be proportionate, but still, be effective. Declarations and registers also work only if requirements (as to what must be declared) are clear and known. There must also be a means to monitor these declarations and registers effectively and independently and there must be credible sanctions for non-compliance. If all of this does not exist, it will be difficult to detect wrong, misleading or partial information.

The introduction of a declaration of interests may cause important bureaucratic workload in terms of management, update, protection of data and there is no additional guarantee for a better fight against conflict of interests. Another problem is the legal challenge: whereas in some countries people are required to declare detailed information (e.g., also the income and assets of their family) in a register, in other countries detailed requirements to register are not easily accepted because they may be in

¹⁸⁸ Stark, (2003), 250.

¹⁸⁹ Stark, (2003), 251.

¹⁹⁰ Fleming, J. & Holland, I., (2000), Motivating ethical conduct in government ministers, International Institute for Public Ethics Conference, Ottawa, September 2000, No 1.

breach with data protection laws and privacy rights. In some countries registers may also be in conflict with fundamental rights (personal rights, family rights, etc.). Because of the different attitudes towards registers and financial declarations, some countries require very detailed disclosure requirements, whereas others ask for no or much less information.

In a survey about managing conflicts of interests the OECD¹⁹¹ concludes that, following the collection of disclosure forms, only in 32% of cases the accuracy of the information was audited and verified.

From a more practical issue, there must be a realistic amount of working time and manpower needed to manage disclosure forms correctly (including the time needed to check them and to propose and enforce measures to prevent conflicts of interest). Evidence in the United States shows that Holders of Public Office who have been caught violating only disclosure rules rarely suffer any serious sanctions from their colleagues, let alone voters. Another deficiency of disclosure is that disclosure reveals too little. Serious violations often come to light only after careful investigation of complex financial relationships.

About these steps, the OECD reports some progress as disclosure systems are increasingly administered electronically.¹⁹² Still, this trend towards more efficient ways of managing disclosure policies does not put aside questions about the usefulness of extended disclosure requirements. As Mackenzie¹⁹³ shows, the immense quantity of publicly available data on financial interests is abused by the rainbow press. Such a use of the register information, however, is not very helpful for the image of the public service and the whole political system.

Thus, seeing from a practical point of view and given the limited resources available in the field of Col management, there seems to be a point where too many Col requirements become ineffective and inefficient.

Thus, even if disclosure policies are important, they mostly reveal conflicts of interest without providing any guidance for resolving them. To offer possible suggestions one option could be the one proposed by Thompson: "Independent ethics committees could regularly review the financial activity of members, identify potential problems, and recommend measures to correct them. They would publicize information only if members failed to correct the problems. Committees could ask for much more information than is now disclosed, but most members would have to make much less public. As always, leaks would be a risk, but both ethics committees have unusually good records in protecting confidential information. Furthermore, the information could be targeted more specifically to the problems that particular members may have. More relevant than the range of amounts of members' holdings is their history of relationships and patterns of investments."¹⁹⁴

3.6. Managing the "revolving door" – the greatest challenge of all Col issues

People have the right to choose any type of employment. During the last three decades, almost all countries supported the exchange of persons between the public and the private sector. Even more, countries introduced measures in order to enhance mobility between both sectors, abolished rigid career systems, obstacles for recruitment in the public sector, and aligned public and private pension

¹⁹¹ OECD, (2014).

¹⁹² Ibid.

¹⁹³ Mackenzie, (2002).

¹⁹⁴ Thompson, op cit., 7

systems. On the EU level, the EU Institutions and the ECJ removed obstacles to the free movement of persons working in the public sector.

Overall, mobility has also increased for top-civil servants because differences between public- and private sector employment features and values are less pronounced. A study by Lapuente and van de Walle¹⁹⁵ concludes: "Yet, unexpectedly, the amount of private sector experience generally does not have a significant negative effect on the importance public managers give to impartiality and equity, except among managers with more than 20 years as a manager in the private sector. That is, previous experience in the private sector is linked to more managerial values among public managers, but not to lower support for core public values. Interestingly, results also suggest a positive impact of the years of public sector experience on core public values. Controlling for significant factors such as age, educational level, organizational type, level of politicization of the organization, and policy area, we find that the years of public sector experience are associated with public managers' emphasis on impartiality and equity. In sum, public values such as equity and impartiality do not seem to be harmed by the length of time managers spend in the private sector, but they seem to be boosted by the experience in the public sector". It should be noted that mobility between the sectors is relatively low, but mostly if working conditions in the public sector are very attractive for top-officials.

During the past years, the focus of attention has mostly been on post-employment issues (persons leaving office and moving into the private sector (like former President Barroso who moved to Goldman Sachs). During 2007 and 2020 – countries were particularly active in adopting more rules and policies in the field of post-employment.

However, in reality, conflicts of interest also arise in related situations that have been defined as "revolving door" issues.

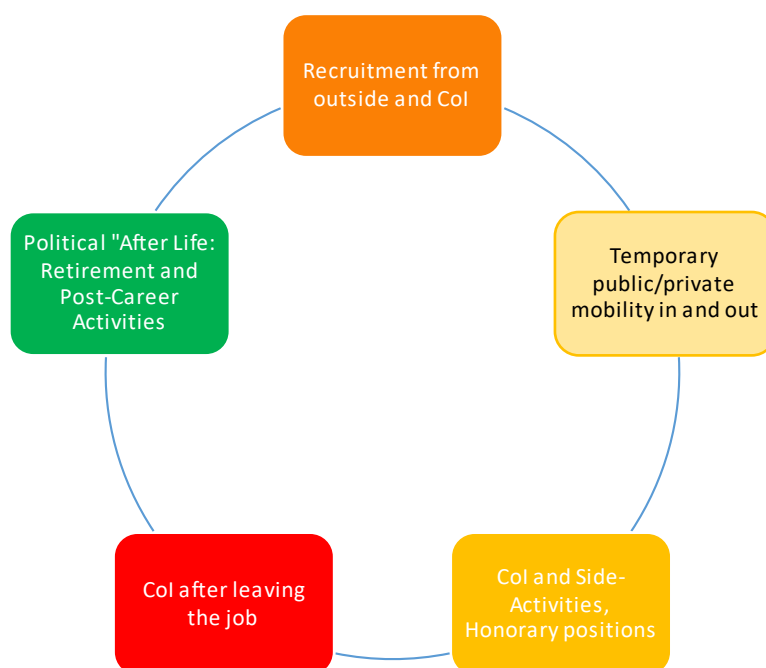
More precisely, the "revolving door" describes potential Col arising because professional roles are performed in sequence or at the same time. For example, because of the movement of personnel between the public and private sector, enhanced mobility within the sectors, or because of Col arising as a consequence of leaving a sector (in the case of retirement or "leaving office").

Next, the term also applies to potential Col when carrying out (professional) side-activities next to the public duties. For example, in 2020, 215 German Members of Parliament earned more than 25 Million Euros with side-activities (from which 11 Million Euro were unaccounted, SPIEGEL, 7 August 2020). However, this form of revolving door is a major problem for parliamentarians but to a lesser degree to Holders of Public Office because of stricter prohibitions to continue with side-activities once in power.

Thus, revolving door denotes potential Col arising as regards the recruitment of new staff from outside the organisation or sector, as a consequence of temporary exchange programmes, mobility policies, as a result of side-activities during services, or simply after leaving office and taking up a new job or Col during times of retirement.

¹⁹⁵ Lapuente, V. & Van de Walle, S., (2020), The effects of new public management on the quality of public services, *Governance*, Vol. 33, No. 3, pp. 461-475.

Figure 34: Dimensions of the revolving door



As already mentioned, in the media, most attention is being devoted to Col after leaving the job and moving into the private sector (post-employment). Take the case of former EU-President Barroso. Overall, post-employment has also increased attention because labour mobility has increased and opportunities for post-political professional lives have dramatically changed. As a consequence, today, former office holders are strongly exposed to conflict of interest (Col) because of generally active post office occupation. Never before had former office holders so many opportunities for activities, employment, visibility and influence. However, no country has evidence on numbers of Ministers and top-officials who are switching sectors. There is only wide (speculative) agreement that numbers are rising. One of the few existing statistics in the United Kingdom reports that “between 2000 and 2014, 600 former Ministers and top level civil servants were appointed to over 1,000 different business roles”. Meanwhile, (...) the problem has escalated, with increased numbers of ministers and public servants moving between the public and private sectors, and a number of very high profile cases resulting in declining public confidence”¹⁹⁶.

Overall, only little attention has been given to Col arising from recruiting new people and Col arising after leaving and going into retirement. As regards the latter, more politicians continue with public/political activities, even after leaving the political system and retiring. As such, the quality of democratic systems depends on politicians entering and exiting office. Surprisingly, there is considerable interest in who stands for and going into office, but curiously little about what politicians do after leaving of political office. In fact, today, globalisation, media, networks, communication channels, and digitalisation trends allow former office holders unprecedented opportunities to be innovative in their professional roles. The relative ease of travel and communication, make representation, consultancy, conferences, and academic roles, excellent fora for former office holders.

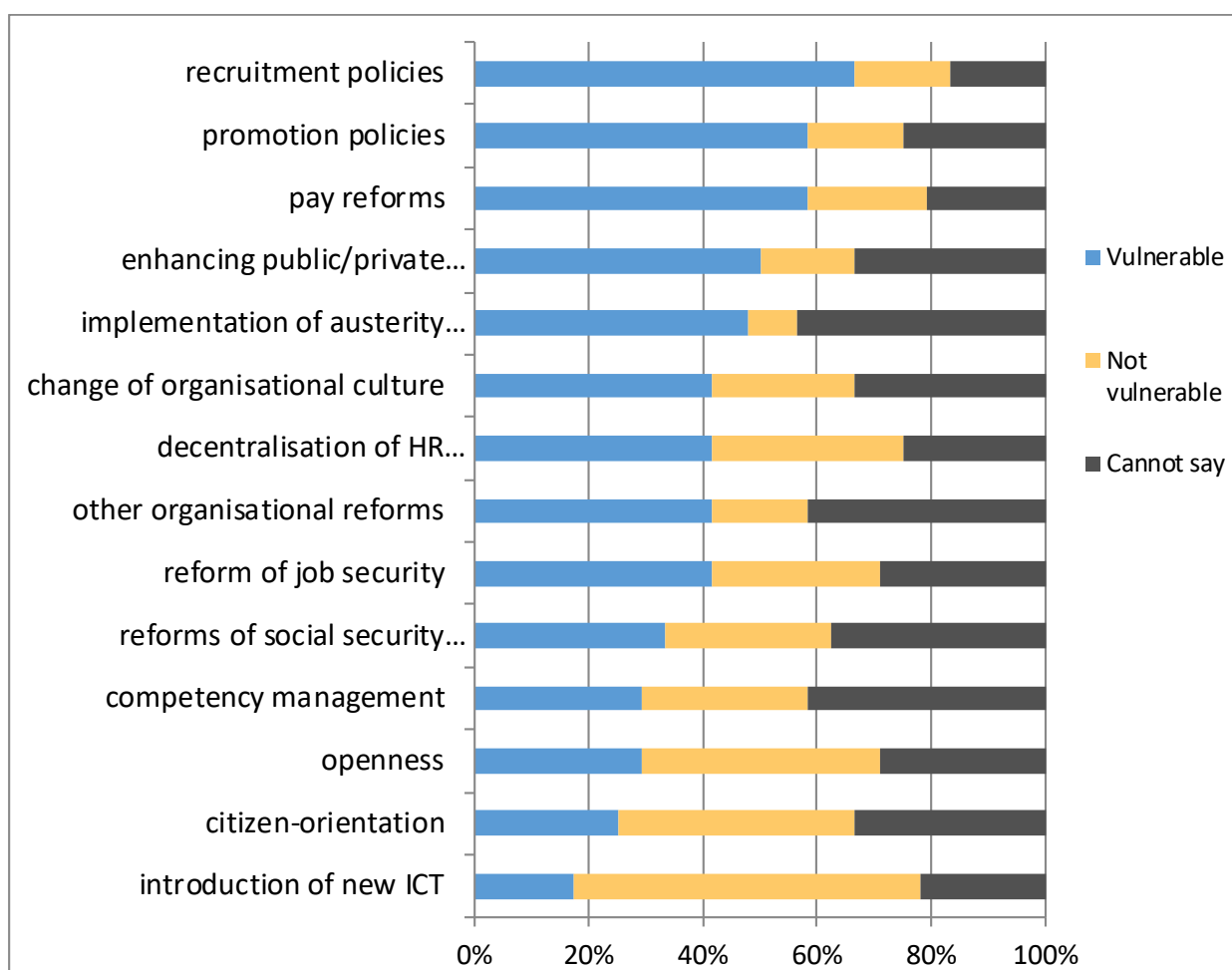
¹⁹⁶ UK Parliament, Public Administration Select Committee. 2017. Managing Ministers’ and officials’ conflicts of interest: time for clearer values, principles and action, <https://publications.parliament.uk/pa/cm201617/cmselect/cmpublicadm/252/25207.htm>

Never before had office holders so many opportunities for employment, visibility, and influence. Overall, opportunities for mobility and for post-political lives have changed. Because they are looking at longer periods of retirement than ever before, “politicians are also preoccupied with their historical reputes, and thus they write memoirs, teach at universities, and search out awards and prizes”¹⁹⁷. Therefore, revolving door policies cover an ever-broader spectrum of issues and activities. Only decades ago, nobody would have discussed the need to manage potential Col of politicians who run powerful foundations after leaving service.

The same applies to the challenge of managing Col in the recruitment phase. Whereas in the past, most people recruited were young “recruits” who had passed their exams at Universities, today, enhanced mobility amongst the workforce also means that more people apply for jobs also during their careers and switch more frequently between the public and private sector. Therefore, identifying and managing Col during the recruitment phase has also received more attention.

Not surprisingly, in the above mentioned 2012 study for the European Presidency¹⁹⁸, the Member States also identified recruitment policies as very vulnerable to integrity violations.

Figure 35: Vulnerability of HR reform trends (n-14)



Source: Demmke & Moilanen, 2012

¹⁹⁷ Anderson, (2010).

¹⁹⁸ Demmke & Moilanen, (2012).

Overall, we note that there are five potential types of problem or “pathologies” that could arise as a result of former ministers and civil servants taking up positions in the private sector

- i. Abuse of office – Ministers and civil servants giving a company preferential treatment while still in post, in the hope of securing future employment.
- ii. Undue influence over public policy – former policymakers use their knowledge of government to gain input into government decisions that are not available to competing interests.
- iii. Undue influence over contractual negotiations – former policymakers use knowledge, contacts, and commercially confidential information in a way that subverts fair and open tendering processes for government contracts strengthening the influence of a corporate elite which recruits political elites and captures governmental processes at the expense of the public interest.
- iv. Undermining trust in government and the democratic process – public trust is undermined by the perception that ministers and civil servants put personal gain over the public interest. In 2010, a Transparency International survey found ‘that the revolving door between government and business comes a close second in the public’s ranking of potentially corrupt activities
- v. Consolidating the influence of the corporate elite.

To sum up: It is widely accepted that the issue of revolving door leads to Col because of possibilities for officials for ingratiation, undue influence, and self – profiting.

- i. Inglatiation: The possibility that an official could favour a future private employer while in office in order to reap personal gain afterwards.
- ii. Influence: The possibility that the official, now out of office, would be favoured by his/her former colleagues when he/she acts to the public authority on behalf of the new employer.
- iii. Profiting: The possibility to profit from public services, because of having worked there decades ago, revolving doors were not regulated at all, today. Also, the term “cooling off” periods is still relatively new.

Most empirical studies about the “revolving door” show that career paths and career concerns of policy-makers matter. For example, a study by (Wirshing, 2018) shows that “central bank governors with past experience in the financial sector deregulate significantly more than governors without a background in finance....Finance ministers (...) are more likely to be hired by financial entities in the future if they please their future employers through deregulatory policies during their time in office” (Wirshing, 2018).

Like this, the problem of revolving doors is important as such as thousands of officials and ministers move between the public and private sector, or into new activities. However, it is very difficult to manage and to enforce the revolving-door, especially if other governance logics promote the public-private interchange, esp. mobility, flexible employment contracts, new mechanisms and instruments to deliver public services and new opportunities to be active, influential and visible. Moreover, growing political instability and ever-faster changes of governments also lead to more post-employment and revolving door challenges. Moreover, in many countries there seem to be “an increasing trend in former Ministers accepting employment in sectors where they were previously responsible for policy”.¹⁹⁹

Not surprisingly, “the problem has escalated, with increased numbers of public servants moving between the public and private sectors, and a number of very high profile cases resulting in declining public confidence in a system that was set up to command trust by mitigating any breaches of the Rules.”²⁰⁰ A case in point is the situation in the United Kingdom: “The regulatory system for

¹⁹⁹ House of Commons, (2017).

²⁰⁰ Ibid.

scrutinising the post public employment of former Ministers and civil servants is ineffectual and does not inspire public confidence or respect. Our inquiry has revealed numerous gaps in ACoBA's monitoring process with insufficient attention paid to the principles that should govern business appointments. The failures of governments in this regard have damaged public trust in politics and public institutions and led to repeated scandals. Consequently, we are recommending major reform".²⁰¹

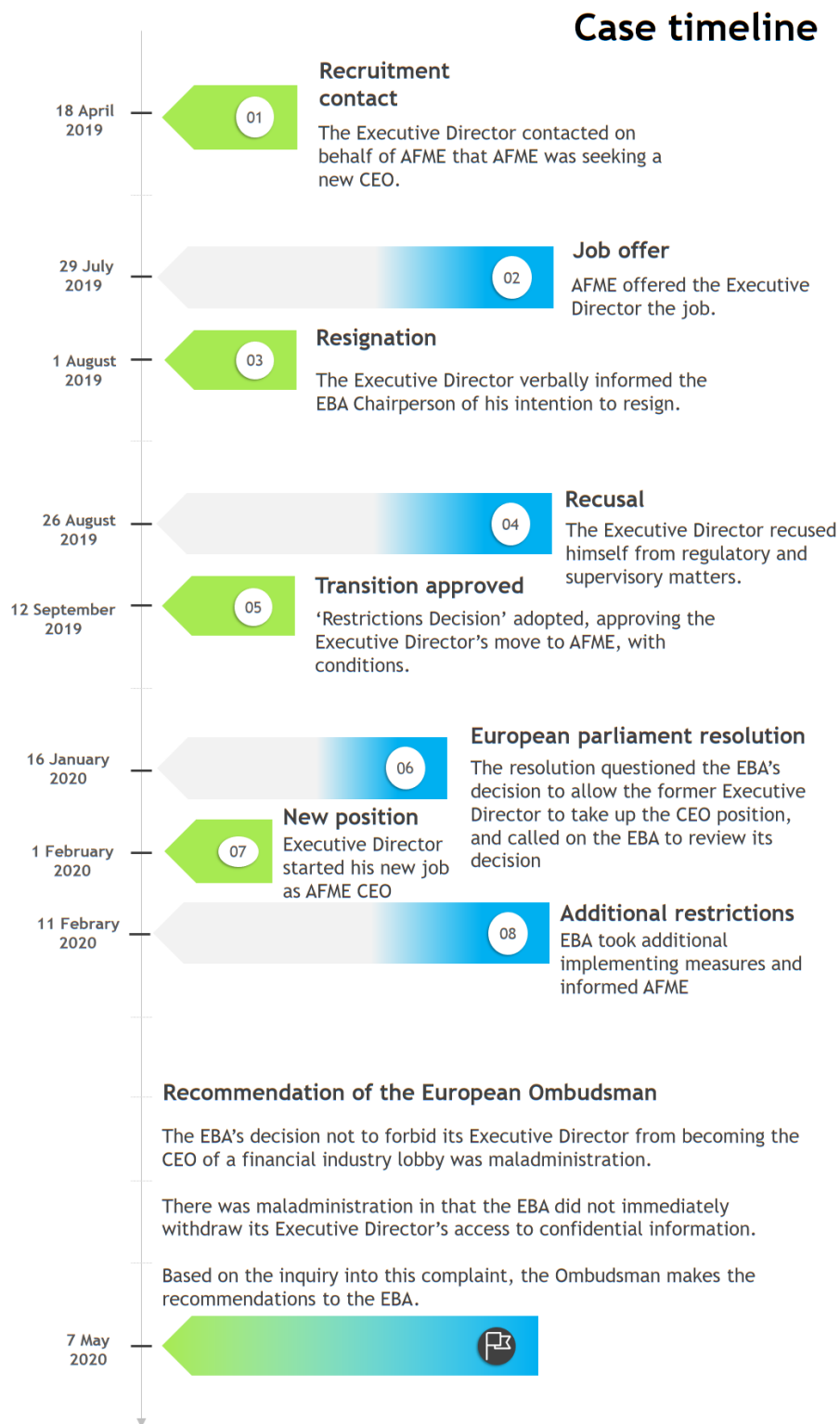
These findings also indicate that EU Institutions and Member States are advised not to focus exclusively on technical issues, e.g. managing post-employment, but also on the impact of broader societal changes and how these affect Col policies.

3.6.1. Revolving doors case study

This case study investigates the transition of **Ádám Farkas** ("Executive Director") from his former position of Executive Director of the **European Banking Authority** ("EBA"), a regulatory agency of the European Union tasked with the regulation of the financial institutions, to the new position of CEO of the **Association for Financial Markets in Europe** ("AFME"), an association representing banks. Among other activities, the AFME lobbies the EBA.

²⁰¹ Ibid.

Figure 36: Case study timeline



a. Mapping the transition

The transition process²⁰² started on the 18th of April 2019, when a recruitment firm contacted the Executive Director, on behalf of AFME, to inform him that AFME was seeking a new CEO. After the 3 months of interviews, AFME offered the Executive Director the job on 29 July 2019. On August 1, the Executive Director verbally informed the EBA Chairperson of his intention to resign. The next day he submitted a formal resignation letter and asked the EBA to authorise his move to become CEO of AFME. In the period from August, 3rd to August, 25th the EBA assessed the Executive Director's request for authorisation to become CEO of AFME and prepared a draft authorisation decision. Starting on August 26, The Executive Director recused himself from regulatory and supervisory matters. The Executive Director remained involved in administrative matters including finance, human resources, procurement, and finalisation of the 2020 work programme and budget. On 30 August, the EBA Board of Supervisors launched the written procedure to allow its members to comment on draft restriction decisions. In this process, the European Commission argued for a stricter approach than had been proposed in the draft. On 12 September 2019, the Board of Supervisors adopted its **"Restrictions Decision"**, approving the Executive Director's move to AFME, with conditions. These restrictions included:

- The Executive Director ceased to have access to privileged EBA information as of 23 September 2019;
- For the remainder of his time at the EBA, the Executive Director no longer participated in policy and supervisory work. He had only "organisational" tasks;
- On 31 October, he went on leave until his contract at the EBA ended on 31 January 2020;
- From the end of October until his departure on 31 January 2020, all his functions at the EBA were delegated to other EBA staff;
- He is banned from lobbying and contacting (in a professional capacity) EBA staff for a period of two years after he joined AFME;
- He is required to refrain from assisting AFME members and otherwise contributing to AFME's activities on topics directly linked to work carried out by him during the last three years at the EBA. This obligation applies for 18 months after he left the EBA;
- He is also required to refrain from ever disclosing, without authorisation, information obtained at any time during his EBA service, except for information that is already accessible to the public. Similarly, he must not exploit insights of a confidential nature acquired at any time during his EBA service, in policy, strategy, or internal processes that are not already accessible to the public.

The Executive Director received the Restrictions Decision on the 16th of September. The Executive Director adopted a Delegation Decision, which took effect on 1 November, delegating his remaining tasks to other EBA managers. Starting on the effective day of the decision, the Executive Director was placed on paid leave although he remained a staff member until his departure on 31 January 2020.

²⁰² The following is a summary of case chronology and argumentation as stated in Recommendation of the European Ombudsman in case 2168/2019/KR on how the European Banking Authority handled the move of its former Executive Director to become CEO of a financial industry lobby. Full text can be found on: <https://www.ombudsman.europa.eu/en/recommendation/en/127638>.

Meanwhile, on 16 January 2020, the European Parliament adopted a resolution²⁰³ in which it questioned the EBA's decision to allow the former Executive Director to take up the CEO position, and called on the EBA to review its decision. The resolution furthermore suggested that Members of the European Parliament and representatives of the European Commission and the Council of the EU refrain from contact with the former Executive Director in his new position for two years to avoid a potential conflict of interest.

European Ombudsman ("Ombudsman") received a complaint about the decision of the EBA to allow its Executive Director to take up a position as CEO of the AFME on 16 January 2019.

On 1 February the Executive Director started his new job as AFME CEO. **It was he who was primarily responsible for applying the Restrictions Decision.** On 3 February, the EBA's Management Board agreed to implement measures for the Restrictions Decision. On 11 February, the EBA wrote to AFME's Chairperson, informing AFME of the additional implementing measures it had taken to reduce the risk of indirect lobbying involving the Executive Director. In addition, AFME was informed of practical steps to be followed in order to put these measures in place. On 17 February AFME wrote to the EBA, stating it put in place an internal protocol that supplements its policy to avoid conflicts of interest, establishing arrangements to support compliance with the conditions in practice.

b. Maladministration in the EBA's decision to allow the former Executive Director to join AFME

EBA had the opportunity to use Article 16 of the Staff Regulations and assess whether the job the Executive Director would take up is compatible with the interests of the EBA. Article 16 states the option of forbidding a civil servant from taking up a position if it is related to the official's work in the last three years of service and could "*lead to a conflict with the legitimate interests of the institution*". According to EU case law, the institutions enjoy wide discretion in this area.

Ombudsman stated that as the option of forbidding the Executive Director was the most restrictive option available to the EBA, it should have been used only where the other less restrictive measures were not adequate in terms of protecting the interests of the EBA.

As regards what those 'interests' are, the Ombudsman noted that the EBA has an interest in ensuring that it maintains a particularly high degree of independence from the European banking sector. This is due to the fact that the EBA was established precisely to harmonise supervision of this sector in the aftermath of the financial crisis, a crisis that had exposed significant shortcomings in financial supervision, both in particular cases and in relation to the financial system as a whole. If the EBA cannot ensure that it maintains the strictest independence from the European banking sector, it risks losing the trust of citizens in itself and, by extension, the EU. **Ombudsman noted that** EBA Founding Regulation makes particular reference to the need to ensure that the Executive Director remains independent.

The EBA decided not to use Article 16 of the Staff Regulations and forbid the Executive Director's move to AFME. Rather, it approved it, with restrictions.

The Ombudsman's view is that these restrictions, while extensive, are not sufficient when measured against the A) risks of a conflict with the legitimate interests of the EU, B) risks that confidential information may be disclosed or misused, or C) risks that former staff members may use their close

²⁰³ EP resolution P9_TA(2020)0017, accessible on: https://www.europarl.europa.eu/doceo/document/TA-9-2020-0017_EN.html

personal contacts and friendships with ex-colleagues to lobby. **The Ombudsman considers “that if this move to AFME does not justify the application of the option, set out in the Staff Regulations, to forbid a staff member accepting a job offer, no move would”.**

From the public trust point of view, the EBA’s approval of the former Executive Director’s move to AFME has caused wide-spread public disquiet. Ombudsman stated that *“the approval of the move creates the understandable impression that the EBA, despite its obligations to ensure the highest degree of independence from the financial sector, allows its senior staff to maintain very close ties with that sector.”*

Another problem according to the Ombudsman is that while the Restrictions Decision contains clear and ambitious rules, it cannot be effectively monitored by the EBA. For example, even if the Executive Director endeavours not to disclose this information to AFME colleagues, he would be influenced by that information in his decisions at AFME.

Ombudsman stated that 12 months lobbying ban set out in the Staff Regulations – was still arguably too short in this context. Given the highest level contacts that the former Executive Director maintained, at the EBA and at other EU institutions and bodies, since 2011, there are strong reasons to believe that he would still be able to use his contacts, once the Restriction Decision expires. Moreover, the Executive Director could help AFME staff and AFME members to lobby the EBA, by, for example, advising them on lobbying strategy and content.

In light of the above, **the Ombudsman found that the EBA’s decision not to forbid its Executive Director from becoming the CEO of a financial industry lobby was maladministration. Forbidding the job move would have been a necessary and proportionate measure in this particular case.**

c. Maladministration in how the EBA handled the other consequences of the Executive Director’s job move

According to the argumentation presented by the Ombudsman, a conflict of interest arises when an official deals with a matter in which he has any personal interest, in particular a financial interest, such as to impair his independence.

The Ombudsman further argued that it is clear that AFME’s interests, and its members’ interests, are significantly and directly affected by the work of the EBA. During the time when the Executive Director was being interviewed, AFME continued to interact with the EBA, including with its Executive Director. It is also clear that when an EBA employee hopes to take up a position at AFME, in this case, a senior position, that EBA employee’s own personal interests become, at least to some extent, aligned with those of AFME, which may be his future employer. This is precisely why the Executive Director recused himself from dealing with supervisory and regulatory matters at the EBA when he returned from annual leave on 26 August 2019, and why he was denied access to privileged information of the EBA from 23 September 2019.

According to the EBA, the Executive Director did not recuse himself from any of his responsibilities and tasks while AFME’s recruitment procedure was ongoing.

The EBA was not in a position to take any action until it was informed on 1 August. However, at the earliest opportunity, the EBA should have prevented the Executive Director from having access to confidential EBA information. **The Executive Director was not prevented from having access to confidential EBA information until 23 September 2019.** This was maladministration on the part of the EBA and the Ombudsman made a corresponding recommendation as stated below.

d. Recommendations from the Ombudsman to the EBA

Based on its inquiry into the complaint, the Ombudsman made the following recommendations to the EBA:

I. For the future, the EBA should, where necessary, invoke the option of forbidding its senior staff from taking up certain positions after their term-of-office. Any such prohibition should be time-limited, for example, for two years.

II. To give clarity to senior staff, the EBA should set out criteria for when it will forbid such moves in the future. Applicants for senior EBA posts should be informed of the criteria when they apply.

III. The EBA should put in place internal procedures so that once it is known that a member of its staff is moving to another job, their access to confidential information is cut off with immediate effect.

3.6.2. Revolving door and grey zones

Should all of this mean that mobility between the public and private sector is to be stopped? Obviously, no country has plans in these directions. However, trends are towards the introduction of so-called cooling-off periods.

Still, most revolving door cases are less clear than the case “Farkas” and much more difficult to judge. Take the case of revolving door of (top-) politicians.

Andersen²⁰⁴ distinguishes amongst four afterlife paths of top-politicians: genuine retirement, work in the private sector, a return to former jobs (e.g. in the public office), or humanitarian action. All four paths are dynamic and overlap. For example, while politicians retire, they may take on important positions in the humanitarian field, in international organisations, NGOs, or – increasingly – their own foundations, or return as part-timers to the private sector. Increasingly, former office holders take on several positions at the same time without always considering potential Col amongst these positions and with political strategies of their own countries. Thus, politicians neither go on complete retirement nor do they work full-time in the public or the private sector, but rather engage in a “hybrid world”, write their memoirs, give speeches and accept honorary professorships. “Opportunities for post-presidential service in international and regional organizations are presenting themselves in increasing numbers, as such institutions themselves proliferate (...). Just as formal positions of authority are proliferating globally, informal or short-term international roles that deal with ‘critical and controversial issues’ are also multiplying’. Alternatively, ‘Many world leaders lose elections only to sit in parliament, awaiting the opportunity to run again. Countless defeated executives spend their time outside of politics but plotting a return’. Whether or not they anticipate a return to office, more retired political figures enjoy different informal roles and post-political activities. For example, the puzzlement over the propriety of Bill Clinton’s fundraising for his foundation reflected complications brought by globalisation: Senate Republican Richard Lugar (...) said, ‘I don’t know how given all of our ethics standards now, anyone quite measures up to this who has such cosmic ties’. Yet such ‘cosmic ties’ are becoming ever more common - indeed, unavoidable - as global policy issues increasingly impinge on national policy makers. In doing so, they will create mixed and complex incentives for political leaders. The challenge of balancing the temptations of power in an era of cosmic ties with the dignity and probity expected of those working in the public trust inevitably raises questions about personal emoluments as well as political influence. For Clinton, Carter, Fox, Bill Gates, and many others, funding for their various centres or foundations is inextricably linked with their own personal prosperity.

²⁰⁴ Andersen, L., (2010), ‘The Ex-Presidents’ in Journal of Democracy, No. 21.

Therefore, increasing occupations of former office holders may result in an 'abuse of public office for private advantage' and hold potential for undue political influence.

After all, the job of a politician has become a profession and the wider public increasingly considers the political class as a professional and complex system far away from the life of the ordinary citizenry. This situation generates suspicion and public requirements for ever more ethics rules, transparency, and accountability requirements. In this context, 'a reputation for trustworthiness is an asset in the search for post-political employment and therefore a big incentive for honesty while in office'.

In fact, differently to the past, politicians can be considered as professionals and politics as a profession. Whereas in the past, most politicians continued to work in their professions, today, most (top) politicians give up their jobs and become full-time political professionals. Thus, looking at "revolving doors" from this option, the number of revolving door cases has decreased. Exceptions exist in the legal professions, for civil servants, and for farmers. Often, politicians reduce working time to a minimum, apply for unpaid leave or continue to work in these professions, once they leave political life.

However, in most cases, since being a politician is a full time job and most top-politicians are long term career-politicians, most holders of public office do not return into their former jobs. However, within this hybrid-world, many politicians accept more side-activities. The vast majority of politicians continue with political activities, even after leaving the political system.

Lazarus, Herbel & McKay²⁰⁵ found that seniority and political importance influence the likelihood of becoming well-paid lobbyists, after leaving office. Finally, Gonzalez Bailon, Jennings & Lodge²⁰⁶ show that "Time spent in public office nevertheless remains a contributing factor in the recruitment of these former parliamentarians, ministers and civil servants to corporate boards".

Overall, increased side-activities and honorary positions for top-politicians during political careers and after leaving office produce new ethical complexities. Today, almost all international organisations, many NGOs, and many private foundations are led by former top-politicians: "more and more democratic leaders come to find that there is a robust and useful life after public office and, quite possibly, beyond the borders of their own countries". Increasingly, not only how politicians gain and hold office, but how they exit office becomes essential to any healthy system of representative democracy. Despite the growing popularity of the term post-employment, so far, there is still too little debate about Col of politicians leaving office.

"So what is known about leaving political office and post-employment? In essence, not much". Bearing in mind the nature of parliamentary systems and democracies, requiring politicians to accept that they will have to quit office at some point in their career, this is surprising.

Existing literature focuses on members of parliament and, to a lesser degree, on Heads of State or Heads of Government. As regards the latter, the earliest attempts to study former office holders were in the United States of America (US), with a focus on presidents. The interest in US presidents also generated some interest in the United Kingdom (UK) concerning the role of former UK politicians and prime ministers. Comparative studies are rare. Theakston and de Vries²⁰⁷ published a study on British prime ministers, also looking at other leaders in Europe, North America, Israel, and Australia; Keane²⁰⁸ took a

²⁰⁵ Lazarus, J., McKay, A., & Herbel, L., (2016), Who walks through the revolving door? Examining the lobbying activity of former members of Congress January 2016 Interest Groups & Advocacy 5(1), DOI: 10.1057/iga.2015.16.

²⁰⁶ Gonzalez Bailon, S., Jennings, W. & Lodge, M., (2013), 'Politics in the Boardroom: Corporate Pay, Networks and Recruitment of former Parliamentarians, Ministers and Civil Servants in Britain' in Political Studies, Volume 61, Issue 4 December 2013.

²⁰⁷ Theakston, K & de Vries, J., (2012), Former Leaders in Modern Democracies, Palgrave MacMillan.

²⁰⁸ Keane, J., (2011), 'Life after Political Death' in J. Keane, J., Patapan, H. and Hart, P. (eds.), Dispersed Political Leadership.

more analytical stance; Roberts²⁰⁹ deployed an interdisciplinary, psychological, sociological and political perspective. In Germany, research focused on the professional careers of former members of parliament and on the changing nature of the status of politicians as such, including an analysis of side-jobs and side activities. The latter type of research is mirrored by several case studies (FI, DE, UK, and the US) that examine the so-called “returns to office” and whether politicians financially benefit from wielding political influence. Again, Theakston²¹⁰ carried out research on the afterlives of former UK members of parliament. There is no research on the “average politician” who has not achieved highest functions. According to Roberts²¹¹: “For those other than heads of state, we know little’. Overall, there are significant gaps in our understanding of the experience of transition from political office”. Keane²¹² described the area as: “Under-theorized, under-researched, under-appreciated, and - in many cases – underregulated”. One reason for this is the a) lack of understanding of administrative and political culture and b) the lack of distinction between pre-employment and post-employment as two components of revolving door.

In the context of Col policies, the term “revolving door” refers to the movement of senior individuals from positions of public office to jobs in the private sector and vice versa. In many countries, this has tended to deal more with people moving OUT of the public sector and has been particularly important in countries with elite, career civil services such as France and Japan, as well as the UK.²¹³ In France retirement at a relatively early age has allowed senior officials to move into the private sector in a process termed “pantouflage” (often translated as “parachuting out”). In Japan, the equivalent process is known as “amakudari” (“descent from heaven”). In both countries, this has allowed former officials to take influential positions and to extend the power of the state. Historically the British arrangements could be seen in the same light²¹⁴.

An alternative direction of influence is more typical of the US in which senior private sector people move IN to government as part of the politicisation of US public appointments sometimes referred to as the “spoils system”. These public officials will return to the private sector thus giving a true “revolving door” of people moving in and out of government.²¹⁵

In recent years, in the field of revolving door issues, countries focus on the management of moving OUT and much less on moving IN, although the ethical challenges are – broadly speaking the same. As regards Col in the recruitment and appointment phase, candidates are often asked to declare their financial interests at the moment of recruitment and whether this could influence the candidate in performing professional duties. HR departments, managers, or committees in charge can therefore only act on the information provided by the candidate. This practice is relatively ineffective.

In more recent years in many countries arrangements have been transformed in the American direction. Officials continue to move OUT into the private sector and this has been paralleled by business people moving IN to government. Clearly, these movements create the potential for unfair advantages, for conflicts of interest and, at the extreme, for outright corruption. (...). Most countries

²⁰⁹ Roberts, J., (2017), *Losing Political Office*.

²¹⁰ Theakston, K., Gouge, E. & Honeyman, E., (2007), *Life after Losing or Leaving: The Experience of Former Members of Parliament*.

²¹¹ Roberts, (2017).

²¹² Keane, (2011).

²¹³ UK, House of Commons, (2017).

²¹⁴ Ibid.

²¹⁵ Ibid.

have a system of rules focussed particularly on revolving OUT but they are lightweight, minimalist and have been roundly criticised by the press, by academics, think tanks and Parliamentary committees".²¹⁶

In the United Kingdom, the Public Administration and Constitutional Affairs Committee within the House of Commons has therefore concluded that the revolving door monitoring process "remains flawed, with three particular failings:

- i. Self-regulation – Acoba has no real power of sanction and its recommendations are non-binding – individuals do not have to abide by its judgements. Essentially then, the system is self-regulating. Therefore, "there should be independent checks", particularly where the risk of conflicts of interest is high.²¹⁷
- ii. Bias in favour of approval - the Acoba board is staffed by representatives of the three main political parties, plus a civil servant, diplomat, military representative, and two businesspeople. They are drawn from and are sympathetic towards, the very elites that they are supposed to regulate.
- iii. Partial coverage – Acoba's coverage extends to Ministers, the most senior grade of civil servants, special advisers, and military officers. It does not cover other senior civil servants, the NHS, nonministerial MPs or local Government officials.

Next to these more political causes for failure, other problems relate to data-management challenges as regards the coordination of various revolving door cases in various ministries and agencies and the need for a coherent data management system. "If the data is simply spread across individual departmental websites it is hard to find and even harder to make sense of".²¹⁸ Often, monitoring is done on a case by case basis in individual ministries or agencies, on the governmental level. Overall, managing and monitoring revolving-door cases require a high level of expertise and specific skills of those in charge of monitoring individual cases. For example, in the UK essential criteria for becoming a member of the Advisory Committee of Business Appointments (ACOBA) are:

Senior level experience of at least one of the following sectors:

- The Diplomatic Service, Military or Business;
- Understanding of the work of the Committee, and the ability to work well as part of a diverse team of influential people;
- Understanding the machinery of government, preferably gained through practical experience at a senior level;
- Excellent judgement and ability to command the confidence and trust of Parliament and the public, and of Ministers, civil servants and other Crown servants subject to the Business Appointment Rules;
- Good communication skills; and Personal integrity and strength of character.

Most importantly, it should be noted that there is no best-practice model when dealing with revolving door challenges for top-officials. This has to do with the importance of national administrative traditions and structures. For example, countries (and also the EU Institutions) with career civil servants, highly attractive working conditions and pay levels, high job security and good employment benefits have fewer incentives to switch than their counterparts in countries who are appointed on fixed term contracts.²¹⁹ In conclusion, for example, EU top-officials are less incentivized to move from the public

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Coen, D. & Vannoni, M., (2020), Where are the Revolving Doors in Brussels? Sector Switching and Career Progression in EU Business-Government Affairs, *American Review of Public Administration*, Vol. 50 (1), pp. 3-17.

to the private sector than elsewhere. This suggests that more attention should be paid for revolving-door issues for ministers than for EU-officials. Of course, only as long as the current trend (as is the case in many EU-countries) towards fixed-term contracts for top-officials will not be continued.

3.7. Conflict of Interest violations and tolerance – why people do not mind?

Today, levels of corruption seem to increase although the anti-corruption movement is as powerful as never before. All countries and all politicians share the view that corruption is destructive. The same applies to the field of Col.

How can this be explained?

One explanation is that “the underperformance of the global anticorruption movement is not unrelated to the democratic backsliding in recent years”.²²⁰ Strangely enough, the anti-corruption agenda has helped populists into power who protest the seemingly corrupt (democratic) elites. “Anticorruption helps populism to flourish as an alternative to representative democracy”.²²¹

In reality, our empirical analysis shows that systems that have lower democratic standards and perform less well as regards the rule of law accept corruption and Col more easily than systems with high standards.

Also, systems that have highly effective Governance systems do not tolerate corruption and Col. Contrary to this, toleration of corruption and Col correlates with poor Governance performance.

At the same time, it is striking that sometimes many voters are rarely interested in the corruptibility of these leaders and their conflicts of interests. Many people are surprisingly tolerant as regards unethical behaviour and conflicts of interests of their leaders (and despite rising moral expectations, trends towards the personalisation of ethical failures and the increase of scandal reporting).

How can this be explained?

As it seems, people often think in the context of two opposite conflicting intuitions:

- One is the thought that there are actions that are right or wrong universally. Thus, we share the intuition that there are right and clear answers to moral questions such as judging Col.
- The other intuition is captured by the question: Who are we to judge other opinions, acts or even other cultures? Who are we to apply our moral standards to other moral actions, or systems? Who are we to know whether somebody really has a Col? After all, a Col is a psychological state of mind, and, in most cases, we do not know whether and how people act.

The one thought leads us to make moral judgments, the other to abstain from doing so. Moral judgment is moralism and an attitude that we have an answer to complicated issues. The other is moral relativism and rather abstention of moral judgment which is not the same as tolerance.²²²

Both intuitions may be wrong, or at least not right as regards the judgment of many Col. The reason for this is that conflicts are not binary; that is, they are not simply either good or bad, present or absent or severe or not severe. However, monitoring and enforcing Conflicts of Interest requires in both ways the need for judgement. In certain cases, it is relatively easy to judge that certain conflicts of interests are

²²⁰ Mungiu-Pippidi, (2020), 100.

²²¹ Ibid.

²²² Lukes, S., (2008), *Moral Relativism*, Picador, New York.

wrong and should be avoided or prevented. However, in most cases, it is difficult to come up with a clear judgement. People also shy away from judging others' behaviour if they find themselves in similar conflicting situations (and even if these are of very minor importance).

Also, the EU and the EU Member States introduce ever stricter policies and rules in the field of Col. However, in many cases they are also tolerant if top-politicians face conflicts of interest. This tolerance for Col reflects current trends towards moral relativism in the field of moral politics. Moral relativism is the idea that the authority of moral norms is relative to time and place.²²³ It is the observation of diversity and the acceptance that moral judgment is not constraint by place, time and context. It is the acceptance of relativism and diversity as a universal principle. Consequently, personal violations of norms are “human” behaviour and therefore, tolerated, also as a protest against norms that have been adopted by “political elites”.

In our survey, more than 30% of national responses concluded that one of the biggest challenges in fighting conflicts of interest is “political reluctance to sanction”. One country mentioned a “too high tolerance for Col of ministers” and one country “trends towards politicization”. Table 12 depicts the number of countries that indicated a specific challenge as one of the biggest ones in the field of Col.

Table 12: Biggest challenges fighting Col according to Member States

g1 (revolving doors)	8
g2 (post-employment)	8
g3 (lack of monitoring experts)	3
g4 (lack of financial resources)	5
g5 (political reluctance to sanction)	6
g6 (grey zones)	7
g7 (high tolerance for Col of ministers)	2
g8 (high complexity of the issues)	7
g9 (trends toward politicization)	2

Source: Own calculations by the authors based on the information/data received from the Member States of the EU

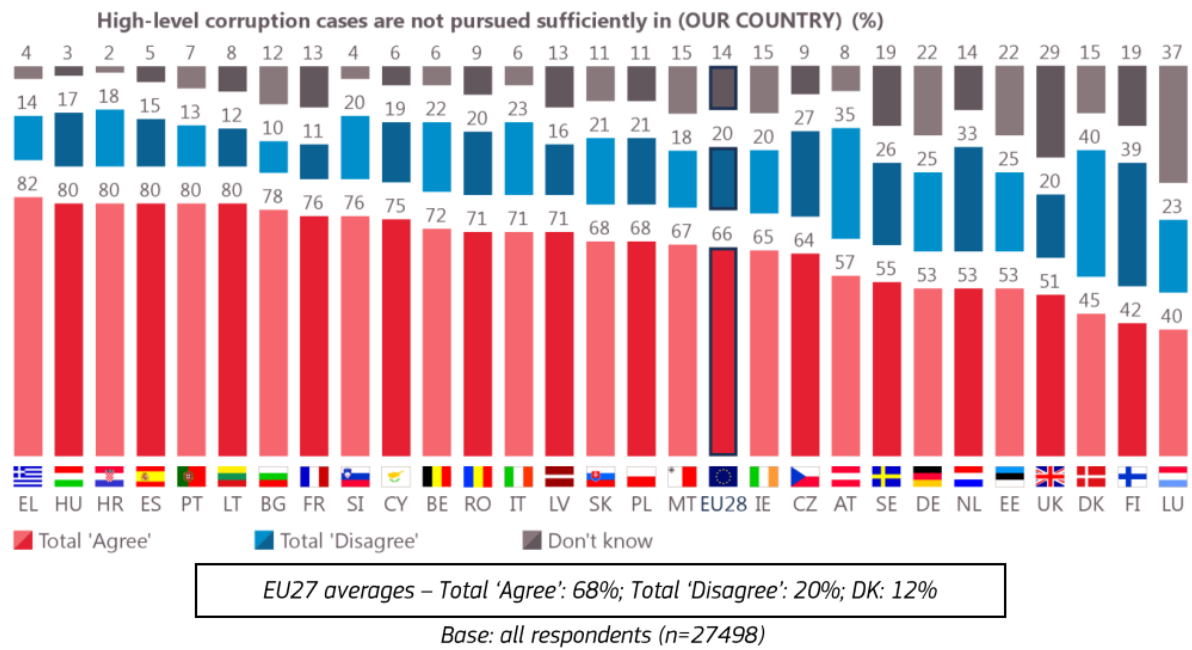
Obviously, these answers reveal a lack of political will and/or too high levels of tolerance against flagrant Col. How can this be explained in times where countries invest in the fight against Col as many efforts as never before?

One answer to this question can be found in a related policy-field: The fight against corruption. According to Eurobarometer²²⁴, one structural deficit in the fight against corruption (and also in the field of Col) is the reluctance (and tolerance) to fight high level cases.

²²³ Ibid.

²²⁴ Eurobarometer 2020, Special report 502.

Figure 37: Attitudes regarding pursuing high-level corruption in Member States

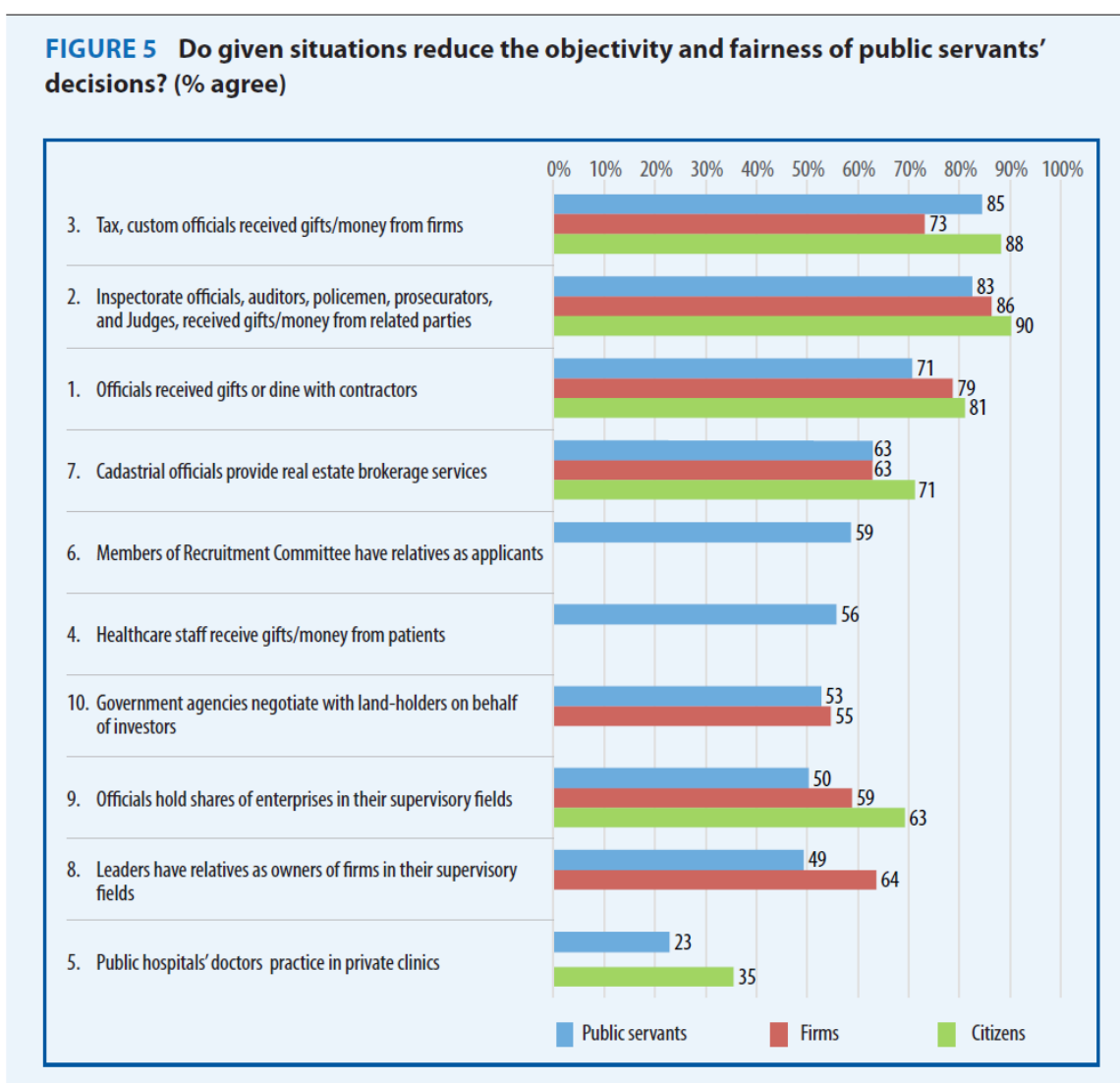


During the most recent period, this could be seen as regards the toleration of Col by top-politicians, prime-ministers and Presidents which did not have any significant impact on (dis-) approval ratings.

As Lascoumes²²⁵ shows the perceptions of breaches of integrity constitute a “foggy assortment. The judgments that citizens bring to bear upon integrity violations are often ambivalent. The boundaries that separate the condemned from the acceptable not only shift from person to person, but also shift according to the facts of the case under evaluation and the context in which they take place.

²²⁵ Lascoumes, P. Condemning corruption and tolerating conflicts of interest: French arrangements regarding breaches of integrity, in: Auby/Breen/Perroud, op cit, 83/84

Figure 38: Varying objectivity of public servants in various situations



The confusion of public and private interests, and the resultant conflicts, generally escape disapproval. Often, conflicts of interest are not perceived as such.²²⁶ Although citizens are highly critical, distrustful and disapprove of breaches of integrity, this may not prevent them from tolerating many different forms of unethical behaviour. This suggests, that even if rules exist and breaches of integrity emerge, they will have little effect as people tolerate these breaches.

As Lascoumes shows, there are three zones of individual judgment of Col: the black zone of consensual disapproval for corruption, misappropriation of public funds, lying, the pursuit of private economic interest), the white zone of consensual tolerance (friendly relations with elected officials and the defense of common good in cases of Col) and the grey zone of discord (instrumentalization of the political process, political practices in which private and public interests are confounded).

Moreover, the judgment of people differs from issue to issue. According to Lascoumes: "Broadly, French citizens do not disapprove of most of the situations regarding conflicts of interest, and, when they identify such a situation, they often find justification for it".²²⁷ The judgment that citizens bring to bear

²²⁶ Ibid.

²²⁷ Ibid.

upon this subject is often ambivalent. "The boundaries that separate the condemned from the acceptable not only shift from person to person, but also shift from according to the facts of the case under evaluation and the context in which they take place. The confusion of public and private interests, and the resulting conflicts, generally escape disapproval. Often, conflicts of interest are not perceived of as such".²²⁸

Even more, "while a strong sentiment of disapproval regarding breaches of integrity resides within citizens, it coexists with a de facto tolerance of certain abuses of power in elected office officials, and even with considerable tolerance towards the near absence of political consequences".²²⁹ How can this be explained? According to Lascoumes, one explanation may be that scandals, even when they are recurrent, "are often without any lasting effects either on the individual image of the political actor, or even on their electoral scores".²³⁰ "Numerous observations thus demonstrate that, contrary to the sort of discourse we might expect, the respect for laws and moral principles are not the only criteria employed to judge political conduct."²³¹

However, it is also important to note that attitudes with regard to public integrity differ a lot amongst the Member States of the European Union and towards public institutions and sectors. It is also a fact that tolerance for corruption is more widespread in countries that have higher levels of corruption. Thus, one could expect that this is also the case as regards conflicts of interest. "For example, increased corruption in a society lowers the trust and expectations of honesty in public institutions, which in turn might increase the belief that corruption is the only solution to get what citizens need. It might also enhance the belief that corruption is the only way to get the individual's needs satisfied and ensure quality service delivery. In addition, social norms and pressures, for example, to reciprocate favours also explain corrupt behaviour in some contexts. In the same way, social norms might tolerate corrupt decisions, they can be a powerful anti-corruption tool due to their great influence to shape behaviour in certain societies."²³²

In our study, a number of countries also reported that, frequently, Governments tolerate Col of Ministers. Moreover, Governments are reluctant to address and enforce Col of their political leaders. Therefore, it is also not surprising that countries designate potential candidates with individual Col to become a European Commissioner

In their replies to our survey, a number of countries mentioned that important challenges exist in tackling Col because Col of Ministers and top-officials are tolerated and Governments are reluctant to address political Col. Of course, if leaders commit Col and these are tolerated, this will most likely result in a further decline in trust in political leadership, ethical leadership and role-modelling. But why then do countries tolerate Col of political leaders (and other than because of political influence and power)? This can be considered somewhat surprising, given the importance of the topic of "politicisation" as such, and the transcendence of 'scandals' in terms of citizens' trust in the institutions and in democracy in general. Indeed, existing research has focused on the power of top-officials, but less on how this power is acquired and how ethical conflicts such as conflicts of interests are managed in the first place²³³.

²²⁸ Ibid., 83 and 84.

²²⁹ Ibid.

²³⁰ Ibid., 69.

²³¹ Ibid., 70.

²³² Zúñiga, N., (2018), Behavioural changes against corruption, Anti-Corruption Resource Center, Transparency International.

²³³ Peterson, J. (2016). Juncker's political European Commission and an EU in crisis. *Journal of Common Market Studies*, 13, July.

As such, political conflicts of interests can be tolerated (at least to a certain extent) as long as these concern minor conflicting political interests. This is also reflected in the Code of Conduct for the European Commissioners, which allows for the participation “in national politics as members of national political parties or an organisation of the social partners” (Art. 9 para 1) and also the participation “in European politics as members of European political parties or organisations of the social partners” (Art. 10 para. 1). Both activities may also generate conflicts of interest that are in conflict with the duties of an EU Commissioner.

However, these activities are to be accepted. Normally, politicians should be expected to be able to balance conflicting values and conflicting loyalties (such as in the case of loyalty conflicts in the case of dual-nationalities).

3.8. Managing specific Col in the appointment of EU Commissioners and members of Cabinet

No country implicitly allows for politicisation and responsiveness as enshrined principles. Moreover, no country openly tolerates personal Col of candidates. Also, the EU Institutions have established so-called zero-tolerance provisions. With zero-tolerance provisions, we mean absolute statements or absolute prohibitions. For example, Art. 1 of the code of conduct for Commissioners states that “Members shall behave and perform their duties with **complete independence**” (Art. 1 Code of Conduct for the Members of the European Commission, OJ C 65/7 as of 31 January 2018).

Art. 2 para 6 states “Members **shall avoid any situation which may give rise to a conflict of interest** or which may reasonably be perceived as such”.

Art. 2 para 2 states that “Members of the Commission are chosen on the ground of their general competence and European commitment from persons whose independence is beyond doubt. They shall be completely independent and neither seek nor take instructions from any Government or other institution, body, office or entity, they shall refrain from any action incompatible with their duties or the performance of their tasks and they may not engage in any other occupation, whether gainful or not” (indent 2).

Also the European Union treaties, in particular Art. 17 (3) and Art. 245 provide that the independence of Members of the European Commission must be beyond doubt and that Commissioners must behave with integrity a) throughout and b) after the end of their term of office. Article 17 of the Treaty on European Union (TEU) also states: “The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. (...) In carrying out its responsibilities, the Commission shall be completely independent. (...) The members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity.”

Note in this respect that the Prodi Commission’s reform in 1999 also changed the rules governing the composition of cabinets of the Members of the Commission. The newest version of existing rules governing the composition of the Cabinets from 1 December 2019 clearly states that “Cabinet staff must solely have the interests of the institutions and of the Union in mind at all times” (...). The composition of the Cabinets should balance the need for officials with appropriate experience of working in the EU Institutions and the possibility of benefitting from the knowledge of individuals previously working outside the institutions”. As regards the nationality, “Cabinets staff should reflect the diversity of the European Union”.

In the case of top-officials, even if responsiveness to political interests is seen as important, it is subordinated to the principles of rule of law, impartiality and merit. Despite these requirements,

literature on political partisanship, patronage and politicisation²³⁴ also agrees that politicisation is also an essential element of democratic systems. Of course, politicisation of appointment processes can be perfectly legal and legitimate, because democratic rule implies that the voters' choices should actually be implemented by the selection of politically trustworthy top-bureaucrats. Therefore, in a democratic society, politicians have a legitimate interest in controlling what government organisations do. The basic idea is that neutral competence is not the only important virtue of the appointment of top-leaders in a democratic society. Especially, since top-officials and Ministers (or Commissioners) assume positions with great responsibilities and impact on society, no wonder that politicians who are accountable to the parliament take an interest in appointments. Also, the relationship between politicians and top-officials should be based on trust, and politicians need to trust top-officials carrying out their duties²³⁵. Therefore, literature widely agrees on the relevance of political acumen in the field of political decision-making. Ministers/Commissioners motivated to manage and control the bureaucracy will arguably look for candidates with management and leadership competencies when recruiting top-officials. As regards the latter, the means used are "politicisation", but the interest may also be to find the best candidate based on skills and competence²³⁶. As regards the former, the means used are "politicisation" the objective should be to find the best candidate, based on merit.

The nomination of EU Commissioners illustrates the existence of another Col. Whereas Member States take a national political interests in the appointment of their candidate, the EU-Interest is to have a skilled Commissioner who is committed to the EU-Interest. The Code of Conduct for Commissioners states in the introduction that "Members of the Commission are chosen on the ground of their general competence and European commitment from persons whose independence is beyond doubt".

As such, nominated European Commissioners bring national interests into the Commission. However, this does not mean that European Commissioners act as agents of the national governments. "In fact, a Commissioner's portfolio, or DG affiliation, may be more important in explaining his or her behaviour with regard to a particular decision. Like national ministers, Commissioners have multiple and often conflicting role expectations imposed upon them (...). Balancing these diverse pressures is not always an easy task"²³⁷. The latter can best be illustrated when a national Government is nominating a candidate to become a European Commissioner who fulfilled the role as a Permanent Representative, which is nothing more or less than a diplomat who used to be the head of the national diplomatic mission in Brussels. Political self-interest and the fact that candidates for the position are chosen by the national governments suggest the possibility of potential conflicts of interest. It is rather unlikely that EU Commissioners will collectively turn against the governments that once helped them take office. On the other hand, Member states actively engage in an effort to acquire seemingly attractive Commissioner posts for "their" Commissioner, suggesting that such positions are valuable. Furthermore, former Commissioners often gain important positions in their home country after their term in Brussels, so that rational Commissioners may, to some degree, take their or their parties' future electorate and career prospects into account.

According to Costa & Brack²³⁸, the appointment procedure for EU Commissioners has seven stages:

²³⁴ Aberbach & Putnam, (1981); Dahlström, (2012); Dahlstrom, Lapuente & Teorell, (2012); Dahlstrom & Holmgren, (2015); Kopecky, Meyer Sahling, Panizza, Scherlis, Schuster & Spirova, (2016); Meyer-Sahling, Mikkelsen, Ahmetovic, Ivanova, Qeriqi, Radevic, Shundi & Vljakovic, (2015); Meyer-Sahling & Mikkelsen, (2016); Peters & Pierre, (2004).

²³⁵ UK, House of Commons, (2016).

²³⁶ Bach, T. & Veit, S. (2017). The Determinants of Promotion to High Public Office in Germany: Partisan Loyalty, Political Craft, or managerial Competencies? *Journal of Public Administration Research and Theory*, 28(2), 254-269.

²³⁷ Egeberg in Cini, M. & Perez-Solorzano Borragan, N. 2019, *European Union Politics*, Oxford: Oxford University Press, 49.

²³⁸ Costa, O. & Brack, N., (2019), *How the Eu Really Works*, Routledge, London and New York, 85.

1. The European Council, acting by qualified majority, proposes a candidate for President of the Commission.
2. The candidate is elected by the EP by a majority of its members.
3. The European Council designates with the agreement of the President the other Members of the Commission on the basis of suggestions by each Member States.
4. The President freely allocate portfolios.
5. The EP auditions candidates within its relevant parliamentary committees.
6. The EP votes on the nomination of the Commission as a body.
7. The European Council appoints the Commission which takes office for five years.

We note that the process as such is full of conflicting interests, as already discussed. The question is how to avoid that EU-Commissioners with individual Col are appointed in the context of a politicised appointment process. The question is very relevant:

EU Commissioners and Conflicts of Interest – an individual, or a structural problem?

(Potential) Col of EU Commissioners are not new as Col of national Ministers are not new. However, public and media attention as well as media coverage about Col scandals seem to increase, also on the EU level. On the EU level, so far, the most prominent case concerned the former President of the Commission, José Manuel Barroso, who was appointed as non-executive chairperson of the Goldman Sachs international investment bank. Following this case, the media report regularly about (potential) Col cases of Commissioners and Commissioners-Designate. This poses the question of whether Col concern not only individual cases. In fact, the question is whether Col of Commissioners concern a structural problem that re-emerges at regular intervals. We will come back to this.

As we will see, the allegation of potential Col of Commissioners concern a number of cases. In the following, our objective is not to judge nor to analyse potential Col of Commissioners. Rather, our objective will be to discuss some selected cases in order to illustrate the complexity and diversity of cases. We will focus on the appointment procedures in 2019/2020.

Rovana Plumb, Romania's 2019 choice for the Commissioner-Designate of Transport, was rejected because of discrepancies between her declaration of assets made in her home country and in the EU²³⁹. Her replacement – Dan Nica – met a similar fate (although this time the issue concerned an overpriced software procurement case). Ultimately, Mr. Nica was rejected by Ursula von der Leyen, the future President of the EC, before he made an appearance before the EP committee. In 2019, another rejected candidate by the EP was László Trócsányi, Hungary's choice for Commissioner-Designate for Enlargement. The European parliament also rejected Sylvie Goulard²⁴⁰, Emanuel Macron's top choice for the Commissioner-Designate for Internal Market, after two hearings (because of allegations that she used a European Parliament assistant for domestic political work, her work and for a U.S. think tank). The rejection of miss Goulard also sparked a discussion about the "grilling" standards in the EP. Next, potential Col of Thierry Breton (Goulard's successor) were discussed because of his job experience for Atos, a global company that deals in digital transformation. Breton, however, succeeded in persuading the EP, although it was not clear why his potential Col were less significant than those of miss Goulard.

Overall, all cases revealed the difficulties of the EP to thoroughly examine potential Col of Commissioners because of a lack of time and detailed documentation about candidates. In this context, we note that – under the current approval procedure²⁴¹ – the EP has a possibility of appointing a rapporteur for the hearing. There exist no information on whether and how the rapporteur seeks consultancy of independent experts in order to arrive at a balanced and professional judgment.

We also note that the appointment process is a highly politicised process. Overall, one main challenge in the approval procedure is to guarantee a professional and impartial "grilling" process and safeguarding the process against too much politicisation of the process. This could only be attained by consulting an independent (inquiry) committee that would help the EP to arrive at a more objective evaluation and by providing information and statements on the Col of the candidates. The members of this committee should be experts in Col / professional ethics (see our suggestions further below in this chapter).

²³⁹ <https://www.euractiv.com/section/future-eu/news/romaniias-commissioner-designate-plumb-sinks-before-the-hearings/>

²⁴⁰ <https://www.politico.eu/article/frances-commission-pick-sylvie-goulard-rejected-by-parliament/>

²⁴¹ Rules of Procedure of the European Parliament: Annex VII: Approval of the Commission and Monitoring of Commitments Made During the Hearings: https://www.europarl.europa.eu/doceo/document/RULES-9-2019-07-02-ANN-07_EN.html

The gathering of information in the approval procedure is of the utmost importance when considering Col. No professional judgment is possible, as long as there is no information to be acted upon. To this end, we also recommend improving exchange of information between EU and national (lobby) interest registers. Recent years have seen an increase in independent ethics committees and organisations (French Haute Autorité pour la transparence de la vie publique, Irish Standards in Public Office Commission, etc.) In the case of Commissioner-Designate Rovana Plumb, it was the discrepancy between financial interest declared at home and those declared in the approval procedure that led to her disqualification. Establishing a well-functioning exchange of information between individual national financial/lobbying registers could be used to discover conflicts of interest at the EU level. In the future, such an exchange of information could be scaled-up to underpin supranational lobbying regulation or to support an overarching ethical framework for the EU institutions, which is currently lacking²⁴².

Overall, we note that discussion about potential Col of Commissioners and Commissioner concern very different and – each time – specific, single cases. However, Only when looking at the most recent cases we observe the discussion of a surprisingly high number of cases. This number would quickly increase if we would include cases like the rejection of the Slovenian nominee Alenka Bratušek in 2014, the case of Rumiana Jeleva in 2010 and the withdrawal of Latvian candidate Ingrida Udre in 2004. As regards the latter cases, these only concerned some examples of how the nomination process ended with failure due to Col or other cases of misconduct. Therefore, we tentatively conclude that (potential) Col concern each time very different and very complex individual cases. However, the relatively high number of cases within one appointment period leads us to the conclusion that Col of Commissioners concern a structural problem, which calls for a systematic and professional handling of each case.

Box 5: EU Commissioners and Col

During the appointment of the van der Leyen Commission (2020), many clear instances of Conflicts of Interests appeared. Most cases concerned financial Col of appointed commissioners and only few violations of principles as regards the allegiance to the community interests. Some of the candidates put forward to become the new European Commissioners were of great concern due to potential conflicts of interest – from share ownership in fossil fuels and finance to overly close relationships with business. The NGO “Corporate Europe Observatory”²⁴³ had monitored these cases closely. If countries nominate candidates who are rejected by the EP, the country in question may nominate a new candidate. Corporate Europe Observatory concluded that also newly nominated candidates were not free of Col, even when the first candidates were rejected by the European Parliament.

To start with: Evaluating the integrity of candidates takes time because dossiers are – often – very technical and complicated cases and require deep knowledge on behalf of those who carry out investigations.²⁴⁴ Evaluations also require detailed and timely provided information about the candidates.

For good reasons, in the past MEP have complained that they were not given enough time to evaluate individual dossiers. However, if EP committees need to evaluate candidates, they should also be given more time to do so.

However, it would be unrealistic to expect that Member States provide for sufficiently detailed and timely information. We, therefore, suggest exploring other more practical ways for the European Parliament as regards the monitoring of designate EU Commissioners.

First, the responsible committees in the European Parliament should be allocated sufficient resources and time to evaluate potential Col of designated EU-commissioners. So far, a great problem was the

²⁴² European Court of Auditors, (2019), The ethical frameworks of the audited EU institutions: scope for improvement. Special report no 13/2019.

²⁴³ <https://corporateeurope.org/en/2019/09/new-commission-shadows-corruption-and-conflicts-interest>

²⁴⁴ (see for example the analysis of the European Ombudsman of complaint 208/2015/PD concerning conflicts of interests in a Commission expert group and (see for a listing of cases in the field of Col: <https://www.ombudsman.europa.eu/en/search?search=conflicts%20of%20interest>).

(in-) availability of information and accurate data. It happens rarely that countries (voluntarily) provide accurate and timely information about potential Col of Commissioners which they intend to propose.

In this context, we also suggest that the EP should use another – so far – widely underestimated tool of political control. This is its power to establish committees of inquiry²⁴⁵. So far, this possibility, recognised in Article 226 TFEU together with Article 14 Treaty on European Union (TEU), has been scarcely used by Parliament. Parliament can also make use of its investigatory powers by establishing a temporary special committee.

These are potential ways in which the EP may obtain information: it may call witnesses to testify before it, and it may request access to relevant information. The disadvantage of this tool is that processes for the setting up of inquiry committees are time-consuming. Another problem may be that, by refusing the invitation, designated Commissioners may not want to appear before a committee of inquiry. However, like this, they also give grounds for political blame and may raise suspicion.

This call for using inquiry committees in the field of Col should be connected to discussions as regards to reform the rules governing the functioning of the Committees of inquiry and discussions whether Committees of inquiry should be vested with very far-reaching investigative powers including the possibility to conduct on-the-spot investigations, hear witnesses, request documents, hear officials or other servants of national or EU institutions and request experts' reports.

Parliament may also establish Special committees. Special committees (previously known as Temporary committees) are temporary committees set up for a maximum of twelve months (this term may be prolonged) which "help to provide the European Parliament with the information and proposals it needs to take political action". They are not recognised in primary law, but have been included in Parliament's RoP since 1981 instead. Since they are not specifically designed to contribute to Parliament's accountability function, no specific investigative powers have been conferred upon them. They may nevertheless still invite witnesses who participate on the basis of their own will, or request documents. The effectiveness of the latter instrument may also be examined to be used in the field of Col.

On the other hand, evaluating Col of candidates can only be done in a de-politicised context. In all countries and EU institutions, some kind of body for recruiting or advising on the best candidates for senior civil service positions is used as the main tool in ensuring political neutrality and objectivity in the appointment of top-officials. For example, whereas in some countries, selection committees are internal bodies and ministers enjoy a great amount of discretion in decision-making, other countries have decided to create independent selection boards and introduce specific monitoring procedures. Both models raise important questions about how to best manage conflicts of interest and political discretion in the appointment process and combine this with the need for neutral expertise in the appointment process. However, overall, trends are towards the setting up of independent bodies. Thus, during our study, we did not come across any best-practice committee- or monitoring models. Some countries such as Canada, Australia and New Zealand have established the position of an inter-institutional *Ethics Commissioner* position. Although we find these positions of great interest, we also found little information whether and how these models could also serve as a best-practice for the European Institutions. As such, the three models also show differences as regards powers, budgets, resources and recruitment methods.

²⁴⁵ See also European Parliament, (2020), The European Parliament's Right of Inquiry in context. PE 648.708, Brussels/Strasbourg, March 2020.

Despite these findings, we conclude that systems work best that are de-politicised, not self-regulating, but instead, independent and trustworthy bodies. We also derive from these findings the conclusion that neither the General-Secretariat of the Council, nor the European Parliament, nor the European Commission should monitor themselves.

While the EP should have a (political) role in controlling the executive (meaning in “grilling” the candidates), the task of evaluating the integrity of candidates should be left to independent and technical experts. We, therefore, suggest the setting up of an independent, technical body to evaluate the potential Col of candidates. Despite being independent, this body should be close enough to the European Institutions and have expertise in European affairs.

Therefore, we suggest that the new Col appointment committee should be independent of (direct) political influence of the main EU Institutions who are involved in the appointment process (European Council, Council of Ministers, European Commission and European Parliament) while having high technical expertise in the matter of (auditing) ethics on the EU level and also on the national level. To this end, we suggest that an independent appointment committee should be located within the European Court of Auditors.

Functioning and mandate of an Independent Appointment Committee

1. The European Court of Auditors hereby establishes an Independent Ethical Committee. The Committee shall advise the Court of Auditors on any ethical question related to the appointment procedures of EU Commissioners and provide binding advise to the other Institutions on relevant ethical issues
2. The President shall set the time limit within which an opinion shall be given.
3. All EU Institutions and the nominating Member States shall cooperate fully with the Committee, in particular by providing all the relevant additional information requested. The Committee shall have the possibility to be heard if the Committee considers issuing a negative opinion to the nomination of one or several candidates
4. The Committee shall consist of five members selected for their competence, experience, independence and professional qualities in ethical issues. They shall have an impeccable record of professional behaviour as well as experience in the field of political and public service ethics. They should also have experience in EU affairs. The composition of the Committee should reflect experiences in different institutions, functions and sectors. The members are appointed by the European Court of Auditors, on a proposal from the President. They shall sign a declaration on the absence of conflicts of interest. Their term is three years, renewable once. If a member ceases office before the completion of the term, the European Court of Auditors appoints, on a proposal from the President, a new member for the remainder of the term.
5. The independent committee shall elect a permanent chairperson from among its members. The chairperson convenes meetings.
6. The deliberations of the Committee shall be made public.
7. Where an opinion is not adopted unanimously, it shall include any dissenting point of view.
8. During each nomination (phase) of Commissioners designate, this appointment committee should verify and monitor revolving door Col of Commissioners designate. If the committee concludes that candidates violate existing norms and rules, the nominating Member States shall take into account the opinion of the committee while proposing an alternative.
9. The findings of this committee should made public.

Box 6: Independent Appointment Committee

4. INNOVATION IN THE FIELD OF COI – BEHAVIOURAL INSTRUMENTS AND MOVING TOWARDS INSTITUTIONAL INTEGRITY

KEY FINDINGS

So far, the field of conflicts of interest is (heavily) dominated by legal approaches. EU Institutions and EU Member States prefer the adoption of laws and regulations as the main instrument in the field. Throughout the last years, trends have also been towards the adoption of more soft-law approaches, mostly as regards the adoption of more codes of ethics. Because of the limited effects of both approaches (traditional compliance based and value based approaches), there is growing insecurity about the right regulatory mix, the role of self-regulation, the effectiveness of deterrence mechanisms and sanctions, the quality of regulation and the need for other political, behavioural and economical instruments. However, this situation also generates a new window of opportunity to look at new and innovative approaches in the field. One innovation should be to look for alternatives to the individualized “bad person” model and move instead towards an organizational integrity model in the field of Col. However, current trends are rather exactly to the opposite with the growing popularity of behavioral instruments. Although we welcome the introduction of new behavioral instruments (and findings from behavioral sciences as such), we are critical towards this trend because it supports a further “individualisation” of approaches. Because of the (growing) individualized nature of the subject matter, it becomes ever more difficult to find institutional solutions to individualized approaches. To this end, we note that traditional Col policies are concerned with individual misconduct. Therefore, Col policies almost exclusively address individual causes of Col. This contrasts with other ethics policies that address individual-, organizational- and systemic causes for misconduct (and corruption). This individualized approach in the field of Col is ineffective as long as EU Institutions and Member States do not also address other causes for Col.

Instead, we suggest that countries and EU Institutions should focus on the organisational dimensions and causes for Col.

Because of the difficulties involved in and monitoring managing an ever-expanding concept of Col the answer from Luxemburg to our survey raised the question of whether the use of behavioural instruments could render the implementation of Col more effective and be used as an alternative to regulatory approaches. This question is relevant because behavioural instruments like nudging are designed to influence conflicted personal behaviour.

As discussed in this study, frequently Ministers and top-officials decide before the background of “bounded rationality”, “dirty hands dilemmas” and also take “unintentional”, “spontaneous” and “affective” decisions. Therefore, behavioural economics and behavioural ethics²⁴⁶ are viewed as important and increasingly inform policymaking. Contrary to this, approaches that are based on standardized assumptions, law and compliance-based approaches are believed to be ineffective since they guard only against intentional forms of unethical behavior (and not unintentional forms).

²⁴⁶ Bazerman, M.H. & Tenbrunsel, A.E., (2011), *Blind Spots*, Princeton: University Press.; Bazerman, A.T. & Chugh, D., (2015), *Behavioural ethics: a story of increased breadth and depth*: *Current Opinion in Psychology*, September 2015, pp. 205-210. Tenbrunsel, T.A., & Chugh, D. (2015), *Behavioral ethics: A story of increased breadth and depth*. *Current Opinion in Psychology*, 6, 205–210. doi:[10.1016/j.copsyc.2015.08.022](https://doi.org/10.1016/j.copsyc.2015.08.022); OECD, (2018), *Behavioural Insights for Public Integrity*, Paris: OECD.

Behavioral ethics have also become popular because these concepts offer psychological explanations about individual failure (and because people overestimate their ability to do what is right and why they (may) act unethically without meaning to)²⁴⁷.

At least partly, these trends are to be welcomed because they illustrate the shortcomings of the classical decision-making models. However, the increasing popularity of behavioral sciences in public policies and public ethics is leading toward an individualization of public management and a focus on the concept of "individual decision-making"²⁴⁸. These developments do not only run counter to the discussed grand administrative tradition of the ethics of impartiality and compliance-based approaches. Instead, today's discourses focus on partiality, bounded awareness²⁴⁹ and value-based approaches. Consequently, the "bad apple" or "focus on the person as a root cause, is making a reappearance".²⁵⁰

However, we conclude that these behavioural approaches are only welcome as long as they do not lead to a new 'moral relativism' or the revision of rational thinking as such. It is also important to state that many behavioral findings are also fashionable and not new as they only redress what philosophers (Immanuel Kant) or sociologists (such as Simon, Lindblom and Merton²⁵¹) said well before. Given the popularity of behavioural insights, classical concepts and universal values and principles such as the rule of law, principles of administrative law and the role of standardized treatment are being questioned.

As a result, also a relativist approach to the principles of modern administration and rationality is emerging.²⁵² According to Davies²⁵³ in "*Nervous States – How Feeling Took Over the World*" we are entering a new era in which generalization and assumptions that there are universal laws, principles and values governing society as a whole, disappear.²⁵⁴ Commitment to societal values, objectivity, impartiality and expertise increasingly mean old-fashioned group-thinking and the contrary of competition, speed and novelty. In the future, "the context for every life choice is that of competition, how to distinguish oneself from rivals, by qualification, image-seeking and management of oneself"²⁵⁵. Also, in the field of institutional integrity, some trends are even towards "spectacular outbursts of irrationality".²⁵⁶ An important part of the story of how we arrived here seems to be the collapse of traditional safeguards for the preservation of rational procedures and deliberation....²⁵⁷

At this point, it makes sense to refer back to the definition of classical public institutions as depersonalised systems that differ from traditional modes of "personalised" government. Could it be that we return and move back to personalised modes of post-modern government?

²⁴⁷ Bazerman & Tenbrunsel (2011).

²⁴⁸ Kirby, N., (2018), 'An Institution-First Conception of Public Integrity,' [https://www.bsg.ox.ac.uk/sites/default/files/2018-06/Public Institutional Integrity Conceptual Issues.pdf](https://www.bsg.ox.ac.uk/sites/default/files/2018-06/Public%20Institutional%20Integrity%20Conceptual%20Issues.pdf), Oxford.

²⁴⁹ Bazerman, M.H. & Sezer, O., (2016), Bounded awareness: Implications for ethical decision-making, *Organizational Behavior and Human Decision Processes*, No. 36, pp. 93-105.

²⁵⁰ Tenbrunsel & Chugh, (2015), 207.

²⁵¹ Simon, H., (1997), *Administrative Behaviour*, 4th edition, New York: Free Press. Lindblom, C.E. (1990), *Inquiry and Change*, New Haven and London: Yale University Press; Merton, R. (1936), *The Unanticipated Consequences of Purposive Social Action*. *American Sociological Review*, Vol. 1, Issue 6.1936, p. 896.

²⁵² Rutgers, M., (1999), Be rational! But what does it mean? in *Journal of Management History*, Vol. 5, No 1, pp.17-35.

²⁵³ Davies, W., (2019), *Nervous States – How Feeling Took Over the World*, London: Vintage.

²⁵⁴ *Ibid*, 162.

²⁵⁵ *Ibid*, 169.

²⁵⁶ Smith, J. E., (2019), *Irrationality*, Princeton and Oxford: Princeton University Press.

²⁵⁷ Davies, op cit, 18.

If this analysis is correct, it is time to reconsider the pros and cons of – at least – some traditional and (post-) modern institutional features (and defend rationality against irrationality and principles against moral- and cultural relativism). After all, if rationality is dismissed and universal values are rejected, then institutional ethics will be grounded on something arbitrary and modern principles are becoming relative. These trends seem to give us the freedom to go with any epistemic principle we choose.²⁵⁸ So, what could this concept of rational institutional integrity be? While it is true that the shift towards a bounded rationality framework may provide scholars with more realistic models of political decision-making, the danger is that people lose interest in the link between integrity and the sociopolitical context and power relations. Overall, public institutions must remain spaces of reasons and stick to those administrative principles that are still important, such as the principles of rule of law, impartiality, equity and fairness.

Next, this whole discussion hides another complex problem: How can it be explained that people forgive so easily, or even tolerate unethical behaviour and conflicts of interest. Even in cases of flagrant violations?

However, the call for more behavioural instruments also raises the question of whether the search for new managerial and policy tools can be found in a further individualisation of approaches (and thus in selecting behavioural instruments) or in the institutionalisation of approaches. Should we focus on persons as the root-cause, or institutions? Already today, conflicts of interests are difficult to manage and to monitor because the concept of conflicts of interest deals as such with individuals and personal behaviour. This individualized approach towards questionable behaviour, the so-called “bad apples” approach, makes that conflict of interest policies are complicated, hard to manage, to monitor, and to enforce. As Rodwin states: “Expanding the conflict-of-interest definition to include all potential sources of bias would make the concept a less practical tool. There is no effective way to eliminate most intellectual conflicts. Furthermore, nonfinancial interests are widespread, so the scope of regulation would greatly increase. It is hard to conceive of professionals ever lacking interest in their reputation, career advancement, promotion, job security, or receiving honor. Regulating these potential sources of bias using a conflict of interest framework will impose heavy burdens on professionals and institutions”²⁵⁹ because every assessment of every conflicting situation and balancing situation would count as a Col. Such a broad conception does not help in the understanding of the issue. If all decisions subject to conflicting interests and objectives were described as conflict of interest, there would hardly any non-conflicted issues left. The concept’s explanatory value would be empty²⁶⁰.

Therefore, could it be that an answer to these problems in an institutional integrity approach? Or, taking a more utilitarian cost-benefit approach: Maybe we should focus on the big cases? Or, only on those cases with financial impact? Or, those cases which are politically important?

According to D.F. Thompson, “we should not object simply because a legislator personally gains from holding office. After all, many office holders in private as well as in public life exploit the prestige of their positions and institutions to further their careers and fortunes. As long as legislators do not take bribes, why should they not enjoy financial benefit from their public service? The objection must be

²⁵⁸ Lynch, M.P. (2017), *Reasons for Reasons*, in: P. Catapano & S. Critchley (2017), *Modern Ethics in 77 Arguments*, Liveright, New York & London, pp. 222-229.

²⁵⁹ Rodwin, op cit, 75.

²⁶⁰ Rodwin, op cit.

not to personal gain as such, but to its effects on legislative judgment. Only some kinds of financial gains therefore should be prohibited²⁶¹

This argument is attractive because it is simple.

However, Thompson's ideas are facing severe criticism. Experts argue that non-financial conflicts of interest will become ever more important in the future and need to be dealt with. For example, Rothman argues that we should not regulate financial conflicts more strictly than intellectual conflicts because both are sources.²⁶² Stossel argues that individuals can never be totally disinterested and that we should not regulate financial conflicts more than intellectual commitments.²⁶³ If present trends continue, in the future attention must be paid to intellectual or nonfinancial conflicts, which include situations that current laws and codes do not regulate as a conflict of interest.²⁶⁴

We agree with these arguments: Non-financial Col are as relevant as financial Col. However, if we accept this argument, the problems remain. The broader the Col concepts, the more these concepts "are amorphous, which reduces their usefulness."²⁶⁵ If ever more sorts of non-financial interests and conflicting interests are included within the definition of conflicts of interest then the whole concept of interest will become just another phrase for bias. Thus, whereas the traditional and narrow definition of Col may exclude from scrutiny a large bulk of conflicting situations which may lead to a conflict of interest, a too broad definition leads "to finding conflicts of interest everywhere in social life". A further broadening of the issues that are considered a Col makes it more difficult to focus on those conflicts of interest that are significant and can be judged by legal means and legal instruments.

On the other hand, artificially reducing the definition of Col only to "hard" and measurable Col would remove all restrictions for Ministers and Holders of Public Office to engage in all sorts of non-financial conflicts. For example, in the (currently) expanding field of revolving door conflicts. This, again, could provoke several new scandals and conflicts that will most likely not enhance trust in holders of public office. However, this can not be the intention of any reform of Col policies.

Of course, the problem with this approach is that it is often difficult if not impossible to distinguish cases in which financial gain does have improper influence from those in which it does not. So, should we apply the criterion of proportionality in conflict of interest policies? Should we apply a cost and benefit analysis? Should conflicts of interest be tolerated if the damage is not problematic, serious or when benefits outweigh the risks and safeguards that are instituted?

²⁶¹ Thompson, D.F., (1987), *Political Ethics and Political Office*, Harvard University Press, Cambridge, 98.

²⁶² Rothman, K.J., (1993a), Conflict of interest. The new McCarthyism in science. *Journal of the American Medical Association* 269(21): 2782–2784; Rothman, K.J., (1993b), Conflict of interest policies: protecting readers or censoring authors? *Journal of the American Medical Association* 269(21): 2684.

²⁶³ Stossel, T., (2008), Has the hunt for conflicts of interest gone too far? *Yes BMJ*. 2008 Mar 1; 336(7642): 476. doi: 10.1136/bmj.39493.489213.AD

²⁶⁴ Levinsky, N.G., (2002), Nonfinancial Conflicts of Interest in Research, *The New England Journal of Medicine*, September 2002, pp. 759-761; Maj, M., (2008), Non-financial conflicts of interests in psychiatric research and practice, *British Journal of Psychiatry*, August, 193(2):91-2. doi: 10.1192/bjp.bp.108.04936; Rothman, K. J., and C. I. Cann., (1997), Judging words rather than authors. *Epidemiology* 8(3): 223–225; Marshall, E. 1992. When does intellectual passion become conflict of interest? *Science* 257(5070): 620–623. Rosenbaum 2015a, Rothman 1993a, 1993b.

²⁶⁵ Bero LA, Grundy Q., (2016), Why Having a (Nonfinancial) Interest Is Not a Conflict of Interest. *PLoS Biol* 14(12): e2001221. <https://doi.org/10.1371/journal.pbio.2001221>; Brody, H., (2011), Clarifying Conflict of Interest, *The American Journal of Bioethics* 11(1):W4-5 DOI: 10.1080/15265161.2011.548199; Loder, E., Brizzell, C. & Godlee, F., (2015), Revisiting the commercial-academic interface in medical journals, *BMJ* 2015;350:h2957 BMJ Publishing Group Ltd 2015; Krinsky 2006; Loder, Brizzell, and Godlee 2015; Steinbrook, R. Kassire, J.P. & Angell, M., (2015), Justifying conflicts of interest in medical journals: a very bad idea, in *BMJ* 2015 Jun 2; 350.

"In assessing likelihood, we may reasonably assume that, within a certain range, the greater the value of the secondary interest (e.g., the size of the financial gain), the more probable its influence. Below a certain value, the gain is likely to have no effect; this is why de minimis standards (which define that value) are appropriate for some gifts. Also, the values should generally be measured in relation to typical income and to the scale of the practice or research project. Also affecting likelihood is the scope of the conflict, in particular the nature of the relationship that generates the conflict. Longer and closer associations increase the problem. A continuing relationship as a member of the board or a limited partner of an industrial sponsor, for example, creates a more serious problem than the acceptance of a one-time grant or gift".²⁶⁶

There are pros and cons to this discussion. Therefore, we have decided to refrain from a clear suggestion. However, the following considerations may be important if we want to form an opinion:

Taking a principled point of view, the purpose of Conflicts of Interest policies is to maintain trust in the integrity of professional judgment. As discussed, it is doubtful whether Col policies contribute to an increase in public trust. However, it is most likely that judging Col policies only by their severity would lead to an increase in public distrust.

Another aim of conflict-of-interest policies is to minimize any forms of organisational injustice. For all of these reasons, it is important to apply a zero-tolerance (preventive) approach against conflicts of interest. Allowing a "relativist" approach to certain Col would open the box of Pandora and lead to dangerous and relativist trends in the field of ethics as such.

In this survey, we have seen that international, national rules, policies and guidelines are abundant in the field of conflicts of interest and no political debate goes by without mentioning the importance of integrity. However, ethical popularity is not ethical awareness and knowledge. It is easier to teach, preach, study, advocate and debate (and to publish) ethics than to practice ethical living. In the field of conflicts of interest, designing conflicts of interest policies is easier than implementing and managing conflicts of interests.

Therefore, we opt for the traditional paths chosen, with some strings attached. These strings should be an obligation to invest in a more effective ex-ante evaluation of Col policies and instruments. We also plead for a more critical assessment as to the need for further expansion of potential Col situations and issues. Next, we are also critical as to the need for ever more "integritism"²⁶⁷ and the pursuit of perfect integrity policies. Any attempt to abuse conflicts of interest as a moral stigmatiser should be avoided. Overall, trends towards moralism do not fit easily with principles of a democratic society that is built on the principle of conflict, communication, tolerance and openness.

Instead, Col should be rational politics and proportional. There is no such thing as perfect or absolute integrity". However, this does not suggest that we support moral relativism. Instead, we believe in the importance of traditional values and principles: rule of law, organisational justice and fairness, impartiality, transparency, accountability and responsibility. As long as we agree to strengthen Col policies and standards, we must do the same as regards the implementation and monitoring of policies. Otherwise, all we do is ineffective.

²⁶⁶ Thompson, D.F., (1993), Assessing Financial Conflicts of Interest, The New England Journal of Medicine, Vol. 329, No. 8, p.3.

²⁶⁷ Maesschalck, J. & Bertok, J., (2008), Towards a Sound Integrity Framework, instruments, processes, structures and conditions for implementation, Paris: OECD.

5.CONCLUSIONS AND POLICY RECOMMENDATIONS: LOOKING INTO A GLASS DARKLY – FUTURE TRENDS IN THE FIELD OF COI

1. In most countries and also on the EU level, the number of very high profile Col cases result in declining public confidence. So far, Member States react by adopting ever more rules, codes, policies, stricter standards and the widening of concepts and definitions. At present, no EU- and national administration is equipped with the necessary resources, tools and skills to manage and to monitor Col in an efficient and effective way
2. Ideally, a system to manage these types of (revolving door) conflicts of interest needs more than just policies, codes, or legal measures. In fact, the need to avoid Col should be effectively learned by everyone to be an intrinsic value on its own. However, at times, Ministers and top-officials show little interest when it comes to their own Col. Moreover, Ministers and top-officials esteem too highly their ability to deal with their own Col. They also overestimate their capacity to deal in a conscious and impartial way with their own Col. To this should be added trends – at least in some countries – towards poor ethical leadership, moral relativism and less acceptance of previously accepted (universal) norms.
3. Overall, ministers and top-officials are subject to increased public and media scrutiny and (an exponential rise of) ethical and moral scandals. While it can be doubted that holders of public office have become more unethical as such, a generalised and inflated use of the term moral scandal, the increased (digital) media visibility of scandals and the political abuse of moral issues have negative side-effects on trust perceptions. Increasingly, anti-corruption and moral campaigns against the elites have helped populists far more than it has helped politicians genuinely committed to fighting anti-corruption and conflicts of interest.
4. Overall, ethics policies are becoming more and more politicised and slowly emerge as a perfect policy field in electoral campaigns. The downside of this development is that it becomes more difficult to avoid that ethics as a policy issue is abused as moral stigmatisation. Also on the EU level, high-level Col cases can be easily used and abused for political purposes in scandal reporting. Overall, more attention should be placed on the misuse of ethics policies used as a political weapon. Instead, we plea for using ethics politics that are based on facts and rational discussions and not on personal and moral attacks.
5. At this point, we suggest engaging in an open discussion on innovative approaches in managing Col policies, including the implementation of Col policies. One innovation should be to look for alternatives to the individualized “bad person” model and move instead towards an organizational integrity model in the field of Col. This means that countries and EU Institutions focus on the organisational dimensions and causes for Col. Because of the (growing) individualized nature of the subject matter, it becomes ever more difficult to find institutional solutions to individualized approaches.
6. To this end, we note that traditional Col policies are concerned with individual misconduct. Therefore, Col policies almost exclusively address individual causes of Col. This contrasts with other ethics policies that address individual-, organizational- and systemic causes for misconduct (and corruption). This individualized approach in the field of Col is ineffective as long as EU Institutions and Member States do not also address other causes for Col.
7. Often, politicians are in favour to adopt more rules and policies to enhance trust levels. Despite the increasing number of rules and regulations, politicians continue to promise ever higher

ethical standards as a means to gain votes. These ethics measures are also suggested by politicians with an eye on the perceived problem of decreasing public trust in their own political class, in public institutions or in the system of democracy as such. However, the intention of increasing public trust is rarely met while proposing more and tougher policies.

8. The more rules and policies are proposed and adopted, the more rules and policies can be violated and enhance perceptions of distrust. However, this does not suggest that deregulating Col rules and policies would increase trust levels.
9. We also note a growing complexity of the concept of Col (because of the blurring of concepts like conflicting interests and Col) and the expansion of concepts (such as the concept of revolving door). As regards rules in the field of Col, we also observe trends towards a) the adoption of more ethics rules and standards in different institutions and for different categories of staff/holders of public office etc., c) an "ethicalization of rules" (more laws, rules and standards in various policy fields include references to ethics and ethical standards), d) a broader applicability of ethical definitions (e.g. the term spouse) and e) the setting of stricter Col standards. This trend towards the adoption of ever more rules and instruments and a widening of concepts renders the implementation and institutionalisation of Col ever more complex.
10. Still, our survey concludes that Member States have no evidence about trends in the field. In order to improve the situation, we suggest that Member States start to invest in monitoring Col and the statistical monitoring of infringements according to different Col issues to generate better knowledge on the development of different Col issues.
11. In order to improve this situation, we suggest to the Member States to undertake/publish regular monitoring reports and the systematic collection of data on the development and management of Col according to the classification of Col, as applied in our study.
12. This task could be accompanied by nominating independent monitoring bodies, national ombudsmen, court of auditors or specific anti-corruption bodies to prepare Col monitoring reports. This observation underlines the need for better monitoring of Col and addressing the total lack of statistical and empirical evidence, monitoring and awareness of Col as such – hence the recommendation of investing in a Col database for the purposes of research, comparison and public scrutiny.
13. As regards the latter, we also suggest to publish annual appointment and revolving door reports. For the EU level, we suggest the publication of a regular Col - appointment report of Commissioners designate. This report could be carried out by the European Court of Auditors in cooperation with independent experts and NGO's working in the field.
14. Despite the growing complexity in the field of Col, Col can be classified amongst financial Col and non-financial Col. Whereas, in former times, the focus was on financial Col, new definitions include ever new forms of non-financial Col. We note that the management of non-financial Col is more difficult to monitor and more difficult to regulate than for financial form of Col. We suggest to the Member States and the EU to engage in discussions on how to effectively implement and enforce non-financial Col (such as loyalty-conflicts on the EU-level when moving from the COREPER to the European Commission).
15. There is no consensus regarding the mechanism by which instrument and management approach might impact on output and outcomes. Whereas clear rules and thresholds may be effective in the field of gift policies, they may be ineffective in reducing Col in cases of dual loyalties. Countries and EU Institutions are advised to look for more flexible approaches and instruments in the field of Col policies.

16. As already discussed, we note an increasing overlap between the concepts of conflicting interests and conflicts of interest. This contributes to increasing confusion (about what should be a conflict of interest, and what not) and trends towards inflation of the concept of Col. Again, this inflation is linked to growing implementation challenges in the field.
17. So far, the field of conflicts of interest is (heavily) dominated by legal approaches. EU Institutions and EU Member States prefer the adoption of laws and regulations as the main instrument in the field. Throughout the last years, trends have also been towards the adoption of more soft-law approaches, mostly as regards the adoption of more codes of ethics. Because of the limited effects of both approaches (traditional compliance based and value based approaches), there is growing insecurity about the right regulatory mix, the role of self-regulation, the effectiveness of deterrence mechanisms and sanctions, the quality of regulation and the need for other political, behavioural and economical instruments. However, this situation also generates a new window of opportunity to look at new and innovative approaches in the field.
18. The management of conflict of interest requires interdisciplinary cooperation because it is a borderline concept in the intersection of law, politics, economy, sociology, organisational behaviour and morality. This situation immediately also raises the deep question of the limits of the law and traditional compliance-based approaches. Therefore, while designing new rules, policies and approaches, the early involvement of experts from various disciplines should be considered in the early phases of political decision-making.
19. In most countries, the regulatory landscape is highly fragmented. Many countries do not have a consolidated version of all existing rules in place. We suggest the publication of a consolidated version of all existing policies and rules at EU level and in the Member States of the EU.
20. In most countries, various bodies are responsible for the monitoring of ethics policies such as various ethics commissions, ethics inspectorates, ethics commissioners, integrity officers, HR departments, audit bodies and ombudspersons. Similarly, to the legal situation, the administrative "oversight" is extremely fragmented. Member States have introduced ever more monitoring and enforcement bodies with different and often overlapping roles. We suggest the publication of a consolidated document/handbook with clear overviews about the institutional distribution of responsibilities in the field of Col.
21. Existing rules and policies can only be effective if EU Institutions and Member States are willing to invest in the implementation, monitoring and enforcement of rules. However, if in the past there were seen to be regulatory gaps and a lack of enforcement, the more recent concern is that some governments have gone overboard in building an elaborate ethics apparatus that reflects the prevailing negative assumptions about the motivations and capabilities of both politicians and public servants. Today, trying to pursue absolute individual integrity in every sense of the word, could mean that public institutions, organizations and their leaders end up pleasing no one. Current developments generate ever more administrative and bureaucratic burdens, but are not necessarily effective.
22. Again, this does not suggest that deregulating ethics policies would be a solution. As such, being against more rules and standards is counterproductive. However, it is important to question the logic: ever more, ever stricter – ever more individualised approach. Expanding the concept of conflicts of interest to include all sources of personal bias threatens the effectiveness of conflicts of interest policies. Regulating and managing ever more potential

sources of conflicts of interests will impose a heavy burden on HR experts, ethics experts and implementing agencies and authorities.

23. The issue at the heart of the debate is also not whether there is too little, too much or just the right amount of ethics. Instead, new discourses focus on the question of whether some policies and instruments are effective and what kind of institutionalization of ethics regimes is needed.
24. Overall, the most acute implementation challenges exist as regards the management of disclosure requirements, as regards revolving-door cases and the management of Col due to side-activities and memberships (the latter mostly applies in the case of parliamentarians). Disclosure systems can be powerful tools, but they are also prone to disappointing results and setbacks if they are launched with overly ambitious mandates, are not supported by adequate resources, or are not underpinned by political commitment.
25. Often, disclosure requirements look good in themselves. However, despite the popularity of the instrument, there is an urgent need to discuss openly the existing difficulties in the field. Overall, disclosure policies illustrate increasing tensions between transparency requirements and privacy rights. Moreover, disclosure policies are mostly based on principles of individual self-declarations and transparency and the belief that the public will monitor individual Col. Thus, the systems rely on individual motivation, professional self-regulation and the public as a watchdog. It is, however, doubtful whether disclosure policies can be effective without appropriate control systems and the putting into effect of credible sanctions. At the same time, disclosure requirements should be user friendly, ask for relevant information, but also be understandable, short and clear – avoiding an excess of bureaucracy.
26. Overall, countries and EU Institutions have rarely anticipated the consequences of stricter and broader revolving door and disclosure policies as regards the bureaucratic and “red tape” impact on administrative burdens. While all revolving door cases need to be assessed on a case-by-case basis, greater scrutiny of moves by senior officials is imperative given the higher potential risks involved in the interests of the institution. The nature of the employment contracts also needs to be taken into consideration, whether it is a permanent official who is leaving or retiring, or a temporary or contract agent. In the case of countries that apply top-officials with limited contracts, this means fewer permanent officials and therefore a more mobile workforce with individuals who move several times in their careers between the public and private sectors, thus making managing this “revolving doors” issue more complex.
27. On the EU level, there is less need to focus the attention on sector switching of top-officials, at least compared to some Member States. Overall, mid-career sector switchers on the EU level concern very few cases.
28. Instead, EU-Institutions and Member States should focus more on post-employment challenges, including Col arising if Ministers/Commissioners “leave” office, go on retirement or fulfill all sorts of new private activities.
29. As regards post-employment, ideally, the responsible bodies should assess revolving door cases of all persons leaving the service. Moreover, these assessments should be carried out by staff who have not had any direct professional connections with the official concerned.
30. All administrations should request leaving top-officials and Ministers/Commissioners to provide **sufficiently detailed** information in order to allow the responsible services to carry out a full analysis of the revolving door case. All administrative decisions should also be set out in well-reasoned and well-documented decisions.
31. At this point, we wish to highlight again that, within the discussions of managing the revolving door issue, the discussions on how to effectively manage, implement and enforce policies are

not keeping pace with the call for ever more standards and stricter rules. The management of revolving door issues requires a highly professional case by case assessment by experts who have the necessary skills to carry out these tasks. Most national and EU Institutions are not in the position to carry out professional and speedy assessments in each case.

32. Professional handling of revolving door cases requires a focus on needs to be carried out for the recruitment/appointment of new Ministers/Commissioners designate (incoming revolving door move), in the case of mobility issues (sector switchers), in cases of temporary moves (in and outside the administration, for example in the case of unpaid leave and sector switching), in the case of temporary staff moving, and in the case of post-employment issues.
33. Anyone who applies for a job and is designated to take up a top position (such as a Commissioner) must inform the responsible services of "*any actual or potential conflict of interest*". Such potentially problematic interests may be financial or family interests, as well as interests related to previous employment. It is a complicated undertaking to check whether candidates provide for all relevant data. Also here, the task of the responsible authority to check revolving door Col of incoming personnel requires time- and cost-intensive investigations, if properly pursued. These tasks can only be fulfilled by experts.
34. Next, staff and politicians leaving the organization (within the cooling-off period) must notify the responsible services of their intention to take up any type of new professional activity. In these cases, the responsible services must monitor if the new position conflicts with the former position. Note that these assessments require careful and timely investigations into the individual files and the work that has been verified by the individuals in question. This is as difficult as it is time-consuming. Most administrations limit themselves to check only selected cases, or those under media coverage.
35. If this is the case, the services may prohibit the person in question from taking up the new job. However, implementing such a decision is difficult and it is rarely taking place. Also, in this case, taking such a decision requires time, resources and expertise (and may involve the political and managerial commitment to engage in legal disputes). However, often responsible administrations have very little means and incentives in place to rigorously enforce post-employment provisions. Consequently, national and EU administrations rarely prohibit former staff or politicians from any new job or activity.
36. After all, enforcing post-employment policies is a bureaucratic challenge. To improve this situation (and while taking the view that countries are reluctant to invest much more in an ethics bureaucracy), we suggest that the responsible services publish information on all senior cases assessed on its website and in a timely manner.
37. So far, revolving door cases of Ministers/Commissioners have not been dealt with sufficiently. Overall, many conflicts of interests of Ministers are (to a certain extent) tolerated. Often, countries shy away and act reluctantly when it comes to enforcing Col against top-level personnel.
38. Currently, the focus is on post-employment issues. Still, there is too little interest in what else happens to politicians/holders of high public office when they leave. Today, former office holders are strongly exposed to a Conflict of Interest (Col) because of various active post office occupations. Never had former office holders so many opportunities for employment, visibility and influence. Leaving politicians are preoccupied with their historical reputation, and thus they write memoirs, teach at universities, lead charity work and foundations and search out awards and prizes. Today, there are more opportunities for former office holders than simply taking up a new "conflicting" job. Thus, we suggest that revolving door laws and rules should not only

focus on post-employment conflicts. Instead, the focus of attention should also be on other conflicts arising from other activities than professional jobs.

39. Increasingly, some kind of external body for recruiting or advising on the best candidates for senior civil service positions is used as the main tool in ensuring political neutrality and objectivity in the appointment of senior-level officials. However, also here, practice differs; appointment procedures are often carried out in opaque and complex ways. Overall, little is known as to appointment committees in general and how Col are dealt with in these committees.
40. Whereas in some countries, selection committees are internal bodies and ministers enjoy a great amount of discretion in decision-making, more countries have decided to create independent selection boards and introduce specific monitoring procedures. Both models raise important questions about how to best manage conflicts of interest and political discretion in the appointment process and combine this with the need for neutral expertise in the appointment process.
41. Overall, any internal form and self-regulation have the advantage that it is simpler, easier and less conflictual. However, arguments in favour of the introduction of more transparent and independent structures outweigh the critical points.
42. Therefore, current trends in the field of appointment policies of top-officials are indeed towards the introduction of more independent scrutiny and monitoring. However, often, the term "independent ethical committee" hides that, in fact, it is not an independent committee (see Art. 12, para. 4 of the Code of Conduct for the Members of the European Commission, OJ of 21.2.2018 (2018/C 65/06)).
43. Self-monitoring is particularly difficult in the field of Col. Therefore, we wish to highlight the importance of independent and external monitoring and the importance of NGO's (such as Alter-EU and ENCO) and critical media in the field. This cooperation may never be easy "for the powerful" since it is the task of NGO's to act as watchdogs. However, the effectiveness of Col policies and rules also depends upon external control.
44. For the EU level, this study also recommends a series of measures to enhance the appointment process of commissioners, including inter alia:
 - a. Member States are invited to shortlist a list of candidates instead of presenting a single candidate. Before designating candidates, these candidates should be "screened" for potential Col on the national level. In each case, a screening report should be made public.
 - b. A special appointment procedure should be adopted for the appointment of EU-Commissioners. The objective of amending Article 7 as well as Article 29 of the Staff Regulations is to improve their clarity and limit chances of misapplication and perhaps also maladministration.
 - c. As regards the role of the European Parliament, we suggest that the responsible parliamentary committee should be given more time to evaluate potential Col of designate Commissioners (including giving a clear time frame).
 - d. However, overall, we suggest that the evaluation of potential Col of designated Commissioners should be de-politicised. To this end, we suggest the setting up of an external and independent appointment committee. The task of this committee is to evaluate potential Col of designate Commissioners. With "independence" we mean that members of the committee should not have a political function or belong to a

- political party. Instead, Members should have a thorough theoretical and practical understanding of Col policies and EU affairs.
- e. We suggest the introduction of this independent Col appointment committee in the premises of the European Court of Auditors. Given the (increasing) expertise of the ECA in auditing ethics (of the EU Institutions), we suggest that Members of the committee will be appointed by the ECA. The ECA will designate one member of the Committee.
 - f. During each nomination (phase) of Commissioners designate, this appointment committee should verify and monitor revolving door Col of Commissioners designate. If the committee concludes that candidates violate existing norms and rules, the nominating Member States shall take into account the opinion of the committee while proposing an alternative.
 - g. The findings of this committee should be made public.
45. During our study, we did not come across any best-practice committee- or monitoring model. Experience shows that systems work best that are de-politicised, not self-regulating, but instead carried out by independent and trustworthy bodies. We derive from this the conclusion that, on the EU level, neither the General-Secretariat of the Council, nor the European Parliament, nor the European Commission should be entrusted with monitoring themselves. Elsewhere, some countries (such as Canada, Australia and New Zealand) have established the position of an inter-institutional *Ethics Commissioner* position. We consider these positions as potential best-practices. However, there is little information available whether and how these models could really serve as a best-practice for the European Institutions or the Member States.
46. Despite this, we believe that more could/should be done without creating additional administrative burdens, especially on the EU-level. First, the responsible committees in the European Parliament should be allocated sufficient resources and time to evaluate potential Col of designated EU-commissioners. So far, a great problem was the (in-) availability of information and accurate data. It happens rarely that countries (voluntarily) provide accurate and timely information about potential Col of Commissioners designate.
47. Second, in this context, we also suggest that the EP uses more extensively another – so far – widely underestimated tool of political control. This is its power to establish committees of inquiry. As it seems, so far, this possibility, recognised in Article 226 TFEU together with Article 14 Treaty on European Union (TEU), has been scarcely used by Parliament.
48. The disadvantage of these tools may be that processes for the setting up of inquiry committees are time-consuming. Another problem may be that, by refusing the invitation, designated Commissioners may not want to appear before a committee of inquiry. However, like this they also give grounds for political blame and may raise suspicion.
49. This call for using inquiry committees in the field of Col could also be connected to discussions as regards a reform of the rules governing the functioning of the Committees of inquiry (and discussions whether Committees of inquiry should be vested with very far-reaching investigative powers including the possibility to conduct on-the-spot investigations, hear witnesses, request documents, hear officials or other servants of national or EU institutions and request experts' reports).
50. Parliament may also want to establish a special Col committee. This special committee (to our knowledge special committees were previously known as temporary committees) may be set up for a limited term (this term may be prolonged) which help to provide the European Parliament with the information and proposals it needs to take political action. Temporary committees are not recognised in primary law, but have been included in Parliament's RoP.

Since they are not specifically designed to contribute to Parliament's accountability function, no specific investigative powers have been conferred upon them. However, temporary committees may nevertheless invite witnesses who participate on the basis of their own will, or request documents. The latter may help the responsible EP committee in receiving more timely information as regards potential Col of Commissioners designate.

51. Finally, we wish to highlight that, overall, conflicts of interest policies are ineffective if ethics policies are not integrated into other policies and if they fill the gap of ever new "unethical" effects of other Governance logics. If ethics policies and ethical logics are not integrated into other organizational and systemic logics, too much is expected of ethics policies. In fact, Governments and EU administrations are advised to focus on Good Governance policies and on the development of institutional integrity models, considering concepts of organizational justice and fairness.
52. This study concludes that systems based on Good Governance have lower tolerance levels for unethical conduct. Contrary to this, countries with lower ratings in democracy, rule of law and integrity also have higher levels of acceptability of corruption. Because of the limitation of this study, we also suggest to further study the link between Good Governance, the rule of law, the state of democracy, the state of government integrity and the acceptance and toleration of Col policies and corruption.

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6. ANNEX A – QUESTIONNAIRE

University of Vaasa

COMPARATIVE STUDY "*Conflict of interest policies: effectiveness and best practice in Europe*"

**Study for the European Parliament
2020**

Conflict of interest policies: effectiveness and best practice in Europe

Dear Colleagues,

We would like to inform you about a study on **Policies and Management Practices of Conflicts of Interest (CoI) for Ministers and top-level Holders of Public Office (HPOs)**, which will be carried out by the University of Vaasa (FL). The purpose of the study is to evaluate the effectiveness of current CoI regimes in place and to propose practical improvements in the area. In the meantime, most countries have highly sophisticated and complex CoI policies and mechanisms in place. Still, measuring CoI is difficult and many countries are dissatisfied with the outcomes of present CoI regimes.

A review of recent literature and feedback from research on ethics regimes in a selection of Member States and international organisations shows that with regard to content, most ethics regimes address the following four questions:

What needs to be covered? The actual conflict of interest issues covered can be organised in four categories, namely, conflicts related to in-office activity (activities related to the office); conflicts related to political activity (e.g. if the office holder intends to stand for election); other activity (e.g. other public functions, charitable activities etc.); financial and private interests.

At what point in time is coverage required? This addresses the time before taking office (pre-office), during office (in-office) and after leaving public office (post-office).

Who needs to be addressed? Ethics rules focus on the office holder. However, some of the possible conflict of interest situations also involve the office holder's family and other relations (e.g. partners, friends and pre-office professional contacts).

And how can compliance be enforced? Ethics rules generally include provisions on the prevention of conflicts of interest (e.g. via training), internal enforcement (i.e. within the office), external enforcement (e.g. reporting to outside bodies) and sanctions (i.e. the consequences of unethical behaviour).

The following matrix presents the main issues covered by CoI regimes for public office holders.

Content of ethics regimes with regard to conflicts of interest

1) What ?	2) When?			3) Who?			4) How?			
	2.1) pre-office	2.2) in-office	2.3) post-office	3.1) office holder	3.2) family	3.3) other	4.1) prevent	4.2) internal enforcement	4.3) external enforcement	4.4) penalty
In-office activity										
<ul style="list-style-type: none"> ▶Conflict of interest with pre-office activity ▶Public and private behaviour respectful of the public office (dignity) ▶Confidential treatment of in-office information (discretion) ▶Gifts / decorations / honours ▶Other benefits / hospitality ▶Operational resources: travel and representation, appointment of support staff 										
Political activity										
<ul style="list-style-type: none"> ▶Supporting political activity (e.g. engagement in national political activity) / Standing for election 										
Other activity										
<ul style="list-style-type: none"> ▶Public office ▶For benefit (including seeking future employment) ▶Non for benefit: artistic / scientific /creative / literary / charitable / educational 										
Financial assets										
<ul style="list-style-type: none"> ▶Financial / real estate 										

Source: Blomeyer & Sanz, The Code of Conduct for Commissioners – Improving Effectiveness and efficiency, published by European Parliament. PE 411.268, Brussels, 2009

Nowadays the common standards in the field of conflicts of interests comprise:

- A body of rules, and principles. Mostly these instruments enumerate a number of prohibitions and restrictions (e.g. not receiving gifts of over 250 euros). Here, important differences exist as to the number of prohibitions, restrictions and obligations.
- Different ways of mitigating conflicts of interest through: recusal, divestiture, disclosure and incompatibility. Three of them are preventive measures (...). Recusal means excluding oneself from participating in a decision. (...) Divestiture means that the official sells off the conflicting interest (...). Disclosure means different ways of informing the institution, superior and/or the public on own financial, personal and/or professional “interests”.
- The design of codes of ethics and codes of conduct (here, important differences exist as regards the decision-making of codes and the involvement of staff (representative), the detailedness of codes, whether and how violations of codes can be sanctioned, whether or not codes contain expectations as to concrete workplace behaviour etc.).
- Disclosure policies and registers of interests that require to register potential conflicts of interests and other interests. Here, differences exist as to transparency requirements, the level of detail of reporting obligations and specific obligations (e.g. whether spouse’s activities should be registered or not) etc.

- Monitoring and enforcement mechanisms. Here, important differences exist regarding powers and resources of ethics committees and ethics commissions which have the task to advise on ethical questions and/or to monitor and control the development of conflicts of interests within their organisations. Also, important differences exist as to (criminal and administrative) sanctions in cases of ethical misconduct.
- Training, awareness raising and education requirements (e.g. differences range from the question whether training on CoI should be obligatory or not, offered to all civil servants, or only for top officials, only once or regularly, whether training should only inform on rules and policies, but also include dilemma training etc.).
- Managerial and value-based systems. Awareness has grown that issues like ethical leadership, organisational culture and organisational fairness and justice are closely related to unethical behaviour.

Moreover, countries have become much more active in raising awareness and enhancing understanding of conflict of interest policies.

In the meantime, most countries have moved from a focus on regulating CoI policies to managing conflicts of interests and from top-down approaches (prohibitions, restrictions, criminal and administrative sanctions) to more complex value-based approaches including education, training, transparency requirements and better monitoring systems. Consequently, modern conflict of interest systems are no longer based purely on law, compliance and penalising wrongdoing. In fact, they are oriented towards preventing CoI from happening and encouraging proper behaviour through guidance and orientation measures, such as training and the introduction of codes of conduct. Consequently, all countries – to different degrees – offer a wide range of instruments in the fight against unethical behaviour and the emergence of conflicts of interest.

This study will be complementary to the work done under the various EU Presidencies within the European Public Administration Network (EUPAN) on Ethics and Integrity Policies during the last years.

This study was commissioned by the European Parliament.

We believe that the study may produce a fascinating piece of work as regards the situation in the area of public ethics and conflicts of interest in the Member States. Thus, the study may become an important reference documentation in the field of administrative ethics for the future.

Best regards, Christoph Demmke

Questionnaire on the Rules, Policies and Management Practices of Conflicts of Interest for Ministers and top-level Holders of Public Office

Dear Colleagues,

We would like to thank you for your participation in this comparative study on **Rules, Policies and Management Practices of Conflicts of Interest for Ministers and top-level Holders of Public Office**.

The present study aims to identify and analyse the effectiveness of various policies and practices of conflicts of interest policies of ministers and the holders of public office (HPO). By HPO we refer to Ministers or elected or appointed high-ranking government officials (Directors-General), working at the national and European level. The objective is to survey and compare these policies and practices where they exist and where they are applied explicitly to HPOs. Apart from this descriptive task, another objective is to discuss the emergence of public ethics as a political topic with growing importance and the increasing difficulties to manage the fragmentation of ethics policies in this area.

We will analyse the national level

- (1) ministers or other members of the government
- (2) top-level holders of public office

Please reply by filling out this questionnaire and sending it to Prof. Christoph Demmke at christoph.demmke@univaasa.fi by the **1 April 2020 at the latest**. You may want to answer in English (preferably), French, Italian, Spanish, German, Dutch, Finnish or Swedish. If you have any difficulties in filling out this document, please contact the survey conductors. The first draft of the survey findings will be presented to the European Parliament at the end of June 2020 and the full report will be completed and published later that year.

Thank you in advance for your cooperation and valuable comments.

Vaasa March 2020

Professor Dr Christoph Demmke
Professor of Public Management
University of Vaasa
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QUESTIONS

1. Standards of conduct for ministers/other members of the Government and top-officials (Directors-General)

Below you will find a list of ethical issues that are regulated in many member states by law and/or code of conduct. In some countries, these issues are not formally regulated - they are part of administrative culture, habits and tradition. What is the situation with the ministers or other members of the Government in your country? **Are there any specific standards concerning CoI policies?**

Please note that the options *Law* and *Code of Conduct* are not exclusive. You can mark both options if needed. If the Code of Conduct has a legal status in your country, you can mark both options and write a comment below.

	Law	Code of Conduct	Unregulated
a) declaration of financial interests and assets	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) HPO's spouse's activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) provisions relating to the declaration of interests	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) outside activities: political activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) outside activities: honorary positions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) outside activities: conferences	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) outside activities: publications	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) professional confidentiality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) professional loyalty	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j) missions, travels	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k) rules on receptions and representation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l) accepting gifts, decorations or distinctions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m) general rules on impartiality and conflicts of interest	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n) specific rules on incompatibility of posts and professional activities before or during the term of office	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
o) restrictions on professional commitments or holding other posts after leaving office	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p) other rules and standards, please comment below	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments: Klicken oder tippen Sie hier, um Text einzugeben.

2. Does your Country/Institution have an ethics committee or advisory group on ethics responsible for assisting the competent authorities when they are called upon under the terms of a code of conduct or similar provisions to rule on certain aspects of the application of these conflicts of interest policies?

- Yes; please provide more information on committees: Klicken oder tippen Sie hier, um Text einzugeben.
- No

3. Who is member of this committee and how does it work (as regards the appointment of its members, financing, decision-making, monitoring, enforcement of decisions)? Is it an advisory body, or does it have enforcement powers?

Klicken oder tippen Sie hier, um Text einzugeben.

4. Do you have a register on declarations of financial interests?

- Yes; please provide more information how the register operates: Klicken oder tippen Sie hier, um Text einzugeben.
- No

5. Do you consider the register as being effective in managing and enforcing Conflicts of interest policies? What are the negative and/or positive aspects of the register? Klicken oder tippen Sie hier, um Text einzugeben.

6. What do you consider the greatest challenges in managing CoI policies and standards of ministers and top-officials? (please feel free to comment)

- difficulties to manage revolving-door issues (CoI issues arising from moving between the public and private sectors): Klicken oder tippen Sie hier, um Text einzugeben.
- managing post-employment and CoI arising when HPOs leave their positions Klicken oder tippen Sie hier, um Text einzugeben.
- lack of qualified experts who can monitor declarations of interest Klicken oder tippen Sie hier, um Text einzugeben.
- difficulties when managing declarations on CoI because of lack of financial resources Klicken oder tippen Sie hier, um Text einzugeben.
- political reluctance to sanction ministers and HPOs in cases of CoI Klicken oder tippen Sie hier, um Text einzugeben.
- difficulties to judge whether individual cases constitute CoI (so called grey zones) Klicken oder tippen Sie hier, um Text einzugeben.
- too high tolerance as regards CoI of ministers Klicken oder tippen Sie hier, um Text einzugeben.
- high complexity of the issue as stake Klicken oder tippen Sie hier, um Text einzugeben.
- general trends towards more politicization in appointment procedures Klicken oder tippen Sie hier, um Text einzugeben.
- others Klicken oder tippen Sie hier, um Text einzugeben.

7. Often, CoI are difficult to define, to regulate, to implement and to enforce. Therefore, do you think that managing CoI requires new innovative policies and management practices?

- Yes
- No
- Cannot say

8. As it seems, the future will be dominated by more value conflicts and newly emerging values arising from digitilisation trends, new forms of public-private partnership, changing forms of governance, new surveillance technologies, changes in data management and the emerging use of artificial intelligence. Generally saying, do you consider that these trends have the following effects. CoI are...

- increasing

- decreasing
- stay stable in your country
- cannot say

Please comment and specify:

9. Mostly, CoI policies seen as an important instrument in order to increase trust in politicians and top-civil servants. Or, would you say that conflicts of interest policies reflect a growing lack of trust in public authorities, public officials and “the powerful”?

Please comment [Klicken oder tippen Sie hier, um Text einzugeben.](#)

7. ANNEX B – CODEBOOK

DATA MATRIX ABBREVIATIONS AND DESCRIPTIONS

List of conflict-of-interest items used in the study

<i>Abbreviation</i>	<i>Description</i>
a1	Political activities
a2	Honorary positions
a3	Conferences
a4	Publications
a5	Specific rules on incompatibility of posts and professional activities
b1	Declaration of financial interests and assets
b2	HPO's spouse's activities
b3	Provisions relating to the declaration of interests
c1	Accepting gifts, decorations or distinctions
c2	Missions, travel
c3	Rules on receptions and representation
	Restrictions on professional commitments or holding other posts after leaving
d1	Office
e1	General rules on impartiality and conflict
e2	Professional confidentiality
e3	Professional loyalty
e4	Other rules and standards
<i>Values</i>	
1	Unregulated
2	Code of Conduct
3	Law
4	Law/Code
5	Law/Unregulated
6	Code/Unregulated
7	Law/Code/Unregulated
9	Missing value

List of other issues included in the study

<i>Abbreviation</i>	<i>Description</i>
f1	Ethics committee or advisory group
f2	Declaration of financial interests
<i>Values</i>	
0	No
1	Yes
9	Missing value
g	Challenges in managing CoI policies and standards
g1	Difficulties to manage revolving-door issues
g2	Managing post-employment and CoI arising when HPOs leave their positions
g3	Lack of qualified experts who can monitor declarations of interest
g4	Difficulties when managing declarations on CoI because of lack of financial resources
g5	Political reluctance to sanction ministers and HPOs in cases of CoI
g6	Difficulties to judge whether individual cases constitute CoI (so called grey zones)
g7	Too high tolerance as regards CoI of ministers
g8	High complexity of the issue as stake
g9	General trends towards more politicization in appointment procedures

Values

0	No
1	Yes
9	Missing value

h1 New innovative policies and management practices

Values

1	No
2	Yes
3	Cannot say
9	Missing value

i1 Following trends have the following effects

Values

1	Decreasing
2	Stable in your country
3	Increasing
4	Cannot say
9	Missing value

List of external variables

Reg_Den Regulation Density Sum
0-15

Reg_Den_Perc Regulation Density Percentage
0-100 (%)

Reg_Den_2007 Regulation Density 2007
0-100 (%)

country_geo Member states by categorized by geography
1 Sweden, Latvia (Finland) (Nordic + Latvia)
2 Czech Republic, Hungary, Slovakia, Romania, Bulgaria, Slovenia (Central Europe)
3 Spain, Portugal (Southern Europe)
4 France, Belgium, Luxemburg, Netherlands, Austria (Continental Europe)

country_admin_typo Member states categorized by administrative typology
1 Spain, Belgium, Luxemburg, Romania, Hungary, Slovakia, Bulgaria, France (Classical Systems)
2 Sweden, Netherlands, Austria, Latvia (More private sector like - managerial systems)
3 Poland, Slovenia, Czech Republic, Finland, Portugal (Hybrid Systems)

country_membership Member states categorized by membership period
1 Early Membership: France, Spain, Portugal, Netherlands, Belgium, Luxemburg, Sweden, Finland, Austria
2 Late Membership: Romania, Bulgaria, Czech, Slovakia, Slovenia, Poland, Latvia, Hungary

Cor_Index_2007 Corruption Index by Transparency International (Perceived by experts)
0-100 (Points)

Cor_Index_2019 <i>0-100 (Points)</i>	Corruption Index by Transparency International (Perceived by experts)
Cor_Index_Change <i>0-100 (Points)</i>	
Trust_Gallup_2007 <i>0-100 (%)</i>	Trust Index by Gallup World Poll 2007 (Citizens Poll)
Trust_Gallup_2018 <i>0-100 (%)</i>	Trust Index by Gallup World Poll 2018 (Citizens Poll)
Trust_Gallup_Change <i>0-100 (%)</i>	
Cor_Tolerance_2020 <i>0-100 (%)</i>	Acceptability of Corruption by Eurobarometer 2020 (Citizens Poll) <i>Values show people indicating that corruption is unacceptable</i>
Cor_Perception_2020 <i>0-100 (%)</i>	How widespread is corruption in your country (Citizens Poll) <i>Values show people believing that corruption is total widespread</i>
Cor_Existance_2007 <i>0-100 (%)</i>	Is corruption a major problem in respective country (Citizens Poll) <i>Values show people agreeing that corruption is a major problem</i>
Cor_Existance_2020 <i>0-100 (%)</i>	Does Corruption exist in your country (Citizens Poll) <i>Values show people believing that corruption exists in national institutions</i>
Cor_Politicians_2020 <i>0-100 (%)</i>	Is bribery and abuse of power widespread among politicians (Citizens Poll) <i>Values show people who mentioned they believe that bribery is widespread among politicians</i>
Cor_Parties_2020 <i>0-100 (%)</i>	Is bribery and abuse of power widespread among political parties (Citizens Poll) <i>Values show people who mentioned they believe that bribery is widespread among political parties</i>
Ties_Pol_Econ_2020 <i>0-100 (%)</i>	Ties between Politics and Businesses lead to corruption (Citizens Poll) <i>Values show people agreeing that too close ties between business and politics lead to corruption</i>
Cor_Prevention_2007 <i>0-100 (%)</i>	Sufficient prosecutions to deter people from giving or receiving bribes (Citizens Poll) <i>Values show people agreeing that there are enough successful prosecutions to deter people from giving or accepting bribes</i>
Cor_Pursued_2020 <i>0-100 (%)</i>	Corruption cases not pursued sufficiently in respective country (Citizens Poll) <i>Values show people agreeing that cases are not pursued sufficiently</i>
Cor_Effectiveness_2020	Government combats corruption effectively (Citizens Poll)

0-100 (%)	<i>Values show people agreeing that government combats corruption effectively</i>
Cor_Impartiality_2020 0-100 (%)	Are anti-corruption measures applied impartially (Citizens Poll) <i>Values show people agreeing that anti-corruption measures are applied impartially</i>
Democracy_2019 0-100 (%)	Satisfaction with functioning of democracy in respective country (Citizens Poll) <i>Values show people satisfied with the way democracy works in their country</i>
RoL_Improvement_2019 1-10	Need for improvement in RoL across 17 issues (Citizens Poll) <i>Index based on peoples' answers on multiple issues</i>
Imp_Pers_Gain 0-100 (%)	Importance that Public Officials don't use their positions for personal gain (Citizens Poll) <i>Values show people mentioning that issue in question is essential or important</i>
Imp_Codes_Ethics 0-100 (%)	Importance that Public Officials follow Codes of Ethics (Citizens Poll) <i>Values show people mentioning that issue in question is essential or important</i>
Improvement_Pers_Gain 0-100 (%)	Improvement needed concerning personal gain through public office (Citizens Poll) <i>Values show people answering that issue in question needs or somewhat needs to be improved</i>
Improvement_Codes_Ethics 0-100 (%)	Improvement needed concerning clear codes of ethics (Citizens Poll) <i>Values show people answering that issue in question needs or somewhat needs to be improved</i>
Cor_Effectiveness	Freedom House: Are safeguards against official corruption strong and effective (0 (worst) – 4 (best)) (Index)
Democracy	Democracy Index by Economist Intelligence Unit (0 (worst) – 10 (best)) (Index)
RoL	Rule of Law Index by World Justice Project (0-100 (re-calculated; originally 0-1))
GovInt	Government Integrity by Heritage Foundation (0 (high corruption) – 100 (low corruption))
GovEffect	Government Effectiveness by World Bank Group (-2 (bad) – 2 (good))
Democracy_Bert	Democracy Index by Bertelsmann Foundation (0-10)

This comparative study - commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs - analyses the effectiveness of relevant rules, policies and practices within Member States regarding conflict of interest for top political appointment (Head of Government, Ministers and other high ranking officials).

The research highlights the theoretical and practical aspects of the notion of conflict of interest, giving some policy recommendations
