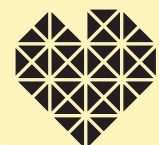




The implementation of conflict of interest policies for Ministers in the EU Member States

More, stricter and institutionalized – but less effective?

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ABSTRACT

All countries agree that Holders of Public Office are role models, should exercise ethical leadership and accept highest ethical requirements. If countries want these standards and requirements to be effective, they must invest in the institutionalisation, implementation, monitoring and enforcement of ethics policies.

In the field of Conflicts of Interests (CoI), countries continue to introduce ever more and ever stricter standards and requirements. They also invest ever more resources in the institutionalization of CoI policies. Because of the sophisticated nature of these policies, the effective implementation remains a challenge. This article explains the lack of effectiveness, drawing on longitudinal insights derived from two studies conducted by the authors in 2007 and 2020. We rely on data generated in an expert survey with public officials from 18 EU Member States. Our results show that countries regulate ever more CoI issues, broaden CoI concepts and introduce tougher behavioural standards, shifting the focus towards an individualised “bad person” logic instead of systemic or institutional approaches. If CoI scandals emerge, the focus is almost always on individual misbehaviour. Although Member States invest more in the implementation of CoI policies, they shy away from enforcing policies and rules against ministers. As such, policies become more complex, the institutionalisation of CoI policies more professional (yet also more fragmented) and the management of CoI ever more resource intensive. Overall, formalism, administrative burdens and the politicization of CoI policies are increasing. As such, we conclude that CoI policies have not become more effective.

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Abbreviations

CoI	Conflicts of Interest
EU	European Union

1 INTRODUCTION

(Paper presented at the EGPA Conference in Brussels, September 2021)

How effective are the Conflicts of Interest (CoI) policies in the EU Member States? Also, how can the effectiveness of these policies be measured? In the field of Conflicts of Interests (CoI), countries continue to introduce ever more and ever stricter standards and requirements. They also invest ever more resources in the institutionalization of CoI policies. Because of the sophisticated nature of these policies, the effective implementation remains a challenge.

This article explains the lack of effectiveness, drawing on longitudinal insights derived from two studies conducted by the authors in 2007 and 2020. Public policies can only be effective if they are supported by political processes that support these policies from the design of the policy (or instrument) to its implementation and enforcement. In the field of ethics, for a long time, the focus has been on the adoption of new ethics policies, but not on the implementation and enforcement (Demmke and Moilanen 2012, 55; Demmke et al., 2021).

During the last decades, the political climate seemed to become more favourable for ethics politics. Ethics policies have not only become more popular. Instead, politicians have also discovered that moral action helps them to gain political support, for example by using anti-corruption agendas as a political weapon against political opponents. Countries have also started to invest in new value-based integrity policies, ethics infrastructures and the management of ethics policies in order to compensate for the integrity gaps that previous governance and managerial logics produced. Anecharico and Jacobs (1996) define this as the birth of a “panoptic vision” of integrity policies. “They have gone beyond the political, legal, and institutional legacies of their predecessors (...). The contemporary reformers adopt or invent technologies, institutions, and routines to monitor public employees closely” (Anecharico and Jacobs 1996, 23).

In the meantime, all countries find themselves in a process of institutionalisation of ethics policies (Hoekstra and Kaptein 2012; Hoekstra/Zweegers, 2021) and address the question of how ethics policies can be professionalized and thoroughly secured, anchored, embedded or safeguarded within the organization.

On the other hand, despite claims about the positive effects of Good Governance and the institutionalization of ethics policies, today, also in western countries, 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.

Thus, if current trends towards *democratic backsliding* (on the one hand) and the rise of populism (on the other hand) continue in most countries, this may necessarily have a critical impact on the (in-) effectiveness of integrity policies (Johnson and Fritzen (2021)).

Moreover, efforts in monitoring, enforcing and evaluating (the effectiveness of) ethics policies remains a tremendously difficult task. Despite a growing interest in the subject, there is almost no attention to the increasing administrative and bureaucratic challenges in monitoring revolving door and disclosure policies. Also, from a more theoretical point of view, evaluating the effectiveness of Conflict of Interest (CoI) policies faces many obstacles. Whereas efficient policies can be measured as regards a balanced ration between input, output and outcomes, the term effectiveness is also about offering better solutions and reaching governance objectives and standards. As such, effectiveness can be understood as the degree to which public authorities are successful in preventing and reducing CoI. However, in this study, our definition of effectiveness allows for a more multidimensional analysis of effects of governance policies. As such, we start with the assumption that ethics policies rarely have only positive effects, but they always also have negative, mostly unintentional side-effects, such as more bureaucracy, higher costs, more intrusion into privacy and moral instruments for political purposes. Next, effects of ethics policies also depend on many other variables such as good working conditions, ethical leadership and perceptions of organisational fairness. Therefore, we follow the approach, as discussed by Hesse et al. (2003) who have presented a useful matrix to assess various parallel positive, negative, intentional and unintentional effects of reforms. Applying this analytical concept to the field of ethics may help to engage in a meaningful debate about the effectiveness of ethics policies. However, in the field of ethics management, there exists very few methodological approaches that actually define effective ethics policies. Most promising is a framework that has been developed by Hoekstra et al. (2021). The authors discuss the quality of ethics systems according to a number of indicators and the (non) existence of preconditions for effective ethics policies:

1. Attention/ agenda setting: attention to integrity at all levels of the organization, integrated with the personnel policy, communicated externally and provided with sufficient resources.
2. Clarity/ specification: the integrity concept and policy are clearly defined, (socially) motivated and coherently operationalized.
3. Ethical leadership: the management itself sets a good example, is open to employees and supports and enforces the integrity policy.
4. Balanced strategy/ balancing: attention to a balanced and coherent integrity strategy that is both value- oriented (training and moral awareness) and rule-oriented (rules, supervision and sanctions).

5. Organize the presence of integrity measures and instruments, such as: code of conduct, specific regulations, reporting procedure, integration in personnel policy, training, confidential adviser, reporting point, investigation protocol, registration and reporting, risk analysis, integrity bureau or officer.
6. Critical reflection and evaluation: periodic monitoring and evaluation of policy and system in terms of implementation and operation, learning from it, and external accountability.

Amongst scholars, there is little doubt that these elements are essential requirements for any effective ethics policy and ethics management. However, from a theoretical point of view, it is still difficult to explain why some countries with relatively high integrity levels exist (such as Germany or Luxemburg) show little interest in the concept of integrated ethics infrastructures and ethics management and – instead - focus in their approaches on anti-corruption and anti-discrimination policies, rules, compliance and training (the so-called compliance- based countries). So far, experts have failed to explain why these countries show relatively little appetite in introducing complex ethics management systems, intentionally shy away from value based approaches and – nonetheless – provide for relative integer political- and administrative systems.

This paper takes a first step into this direction.

As we will show in this paper, many EU Member States perceive the management of CoI as an increasingly complex issue. However, countries also admit that, often, CoI of ministers are tolerated and not enforced. Overall, the EU Member States struggle to handle CoI despite their own increased political, regulatory and institutional efforts throughout the past decades. Therefore, we argue that Member States do too much and too little at the same time. On the one hand, they introduce ever more rules, tougher standards and invest in the institutionalisation of ethics policies (European Parliament 2020), however, thereby just increasing the complexity and making it harder to monitor and enforce compliance. On the other hand, Member States neglect the schism between higher complexity and the lack of effectiveness of ethics policies.

The article presents empirical findings from a comparative study (European Parliament 2020) for the European Parliament which was carried out in the year 2020. By conducting exhaustive empirical research on the ethics systems of 18 EU Member States, in-depth insight in an extremely complex and politically very sensitive subject could be gained. Because of its longitudinal approach, for the first time, we are also in the position to measure the development of CoI policies over time. Still, despite this, more empirical research is needed in a field that is characterised by highly intransparent and opaque structures and policies.

In the following sections, we first assess the literature on CoI and the effectiveness of policy instruments in the field of CoI. As a concept, Conflict of Interest has expanded to include ever more areas of life, such as loyalty conflicts and non-financial CoI of spouses. This in turn makes it harder to monitor CoI effectively.

Second, we explain our methodological approach and why studying Conflict of Interest of Ministers is an important theme. Until now, there exists no empirical research on ministers. This is remarkable, as ministers exercise important positions of power and influence and their tasks differ from any other group of office holder or staff in general. In our survey, we operationalised CoI using a list of 15 different CoI. Because we wanted to provide a longitudinal analysis regarding EU Member State ethics frameworks, we followed a similar method used in an earlier comparative study in 2007. Moreover, our survey data was analysed with data from other surveys.

Third, we introduce our survey results showing that the EU Member States have shifted their attention from a combination of compliance and value-based approaches to new strategies including behavioural approaches. In a time of more rules and stricter standards, it is difficult to sanction individual breaches of CoI. Regarding oversight and control, the situation is highly fragmented and decentralized. Concerning longitudinal analysis, every CoI issue has a higher policy coverage density than a decade ago. In most important forms of CoI, the law is still the predominant form of regulation. Interestingly, more than 30% of national responses considered "political reluctance to sanction" to be one of the biggest challenges in fighting CoI. We note a positive relationship between Government Integrity and the unacceptability of corruption, confirming the hypothesis that Good Governance and "ethics pay off". However, CoI are notoriously hard to measure, making it hard to gather evidence about the effectiveness of CoI policies. Moreover, ever more new rules may even decrease public trust. Our data do not suggest a negative effect of higher policy coverage density on trust, but neither a positive effect. Overall, we question whether the objective of increasing trust by implementing more policies and rules can *de facto* be achieved.

1.1 Towards a theoretical understanding of the concept of (in)effective ethics and CoI Policies

As we will see later, so far, no country is actively monitoring the development of CoI, nor whether the policies introduced, achieved the objectives. Therefore, to start with, it is difficult to know whether certain CoI policies are effective, or not and what are the costs and benefits of conflicts of interest laws (Rosenson 2006). 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 and fines (Lambo et al. 2015). However, many relations remain unclear: 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 behaviour of employees resulting in lower tolerance of misconduct and recognition of previously unnoticed minor infractions. Inside the field of conflicts of interest, discussions about the pros and cons of the right choice of instruments have only started. So far, it seems, the increasing interest in CoI policies has not necessarily produced more clarity and consensus on the effectiveness of CoI instruments in different contexts, the right choice of policy instruments within the best-fit organizational design of ethics infrastructures and the question of 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 is too little control and monitoring. Again, others point to the need for more intrinsic incentives 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. Solid evidence only exists to the importance of the overall ethical climate of organizations, organisational justice and the importance of ethical leadership.

Overall, research regarding ethics management and institutional integrity is progressing (Schwartz et al. 2015; Kirby 2020; Demmke 2020). According to Breaky, Cadman and Sampford (2015, 3), Sampford was the first academic to distinguish between institutional and individual integrity. Since then, Hoekstra and Kaptein became the leading experts in the field of institutionalising (public service) ethics. Also related to the issue of institutional integrity, Cropanzano and Folger (1991) were the first to invent the term of organizational justice and Linda Trevino the concepts of unethical behavior in the workplace and ethical culture (Trevino 1986). In the private sector, the concept of managerial ethics was founded by Schminke (1998). The notion of integrity systems seems to originate in the works by Pope, the founder of Transparency International (Pope 1996). Related concepts focused on the term of ethics integrity (Polowcyk 2017) or ethics infrastructure (such as those published by the OECD 2020) As regards the latter, the most important distinction between integrity systems (Huberts et al. 2012) and ethics infrastructures seems 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, democracy and the judiciary (Fernandez and Camacho 2016; Martin and KishGephart 2014). Finally, according to the OECD (Maesschalck and Bertok, 2009) 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 then the sum of systematic and integrated efforts to promote integrity within public-sector organizations (Kaptein 1998).

From a comparative point of view, at present, several reform trajectories exist which lead to innovations in the field of institutionalizing ethics management, but these highlight the existence of alternative models rather than a shift towards one common institutional reform model in the field of integrity. As such, the search for a best-practice ethics infrastructure is confronted with a context and institution-based, fragmented-, situational and pragmatic reality. Overall, institutional differences – notably the levels of budgetary resources, social legitimacy, work systems, leadership styles, education and training systems, work organisation and the collective organisation of employers and employees – mediate the impact of converging processes. Consequently, the proposition for implementing institutional and organisational models such as best-practice ethics management systems is ambiguous. The political and institutional world is currently moving away from universal best-practice institutional configurations towards more specific best-fit and individualized context-related models. New developments lean more towards the testing of new organisational models that fit into the national, regional, local or even into the specific organisational and leader-follower context. Best fit schools are associated with this contingency approach and argue that organisations must adapt their strategies and implement reforms to the specific local strategy and its environment. In most countries, the effectiveness of any particular institutional integrity system is also determined by the way it fits into the specific organisational culture. Consequently, also the choice of policy instruments is seen as a pluralist, nondeterministic and multipurpose approach that allows the application of a wide menu of instruments that address the specific individual, organizational and systemic causes for unethical behavior (Ewert 2020).

Compared to these many innovative trends in the field of ethics policies and ethics management, there is still standstill as regards the adoption of innovative approaches as regards the effectiveness of ethics policies. Most countries have not even started to monitor CoI, nor implemented cost-benefit analysis of CoI policies, nor reduced administrative burdens or suggested solutions to increasing legal-and organisational fragmentation. In almost all countries, there is also no consensus regarding the mechanism by which instrument might impact 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?

1.2 The concept of CoI – ever more confusion, ever more ineffectiveness?

In everyday life, people have many roles and take many decisions that are conflictual, or even contradictory. As Ackerman notes (Auby et al. 2014, 3), we live in an era where people

are taking on ever more conflicting roles, identities, and changing loyalties. Also, in political life, leaders and politicians must make decisions that are based on conflicting interests, “bounded rationality”, limited information and are taken before the background of various interests and value conflicts. Conflicting interests are everywhere and emerge in all sorts of daily life situations.

Contrary to this wide definition, the concept of CoI used to be a legal concept that (exclusively) applied to professional activities. Therefore, according to legal doctrines, a CoI arises only whenever interests, activities, decisions, or relationships compromise the loyalty or independent judgment of civil servants, or holder of public office. Thus, whereas in daily life, multiple conflicting interests may pull people in different directions, CoI only arises when these conflicting interests compromise professional obligations. According to the OECD (2003), “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” (OECD 2003).

As we will see, the distinction between CoI and conflicting interests becomes “blurred” and more problematic, which, again, renders the possibility to implement CoI policies ever more complicated. From a theoretical point, this can be explained as a result of the following developments:

1.2.1 The blurring of the concepts of conflicting interests and CoI and financial interests and non-financial interests

In all countries worldwide (up until the middle of the 1960s), the type of interest that the discourse regarding CoI addressed remained largely pecuniary – hence “objective”. The types of private interests that were addressed were hard, objective and measurable. Today, definitions of CoI become broader. They 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 (Stark 2000). Therefore, the distinction between CoI and conflicting interests is blurring. This trend contributes to increasing confusion regarding the concept of CoI and the inflation of the concept. As Rodwin (2018) states: “Expanding the conflict-of-interest definition to include all potential sources of bias would make the concept a less practical tool”. The inflation of the concept also increases the already existing implementation challenges in the field.

1.2.2 The regulatory focus and ineffectiveness of rules

Today, CoI 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. The broader the CoI concepts, the more these concepts “are amorphous, which reduces their usefulness. 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. Trends towards broader definition led to finding CoI everywhere in political and administrative life. A further broadening of the issues that are considered a CoI makes it ever more difficult to focus on those conflicts of interest that can be judged by legal means and legal instruments.

1.2.3 The difficulty to prove that a conflicted state of mind has a CoI

One of the most sacred principles in most legal systems is holding that a defendant is innocent until proven guilty of illegal behaviour. Contrary to this, conflicts 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 it is impossible to know whether a conflicted person acts accordingly. It is difficult to prove whether a person (Minister) has been conflicted or whether the CoI had an impact on the decision taken by the person. CoI rules and policies could be more easily justified if it could be proved that a conflicted state of mind has led to conflicting consequences. Deciding and realizing when an apparent conflict may lead to 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).

1.2.4 The difficulty to manage an individualized bad person model of integrity

CoI policies are focusing on the management of individual behaviour. They address individual misconduct, and not organisational-, -economical-, or institutional causes of misconduct. Thus, differently to anti-corruption policies, CoI policies follow a so-called individualised “bad apples” approach. Consequently, implementation and enforcement strategies also follow an individualised approach as regards the monitoring of individual conduct. However, managing and monitoring ever more potential sources of bias using a conflict-of-interest framework imposes heavy burdens on professionals and institutions (Rodwin 2018). For example, countries continue to expand the concept of non-financial issues that are being defined as (potential) CoI. Especially, the latter findings are important, because of the difficulties involved in managing and enforcing non-financial

forms of CoI. Take the case of national affinity, political affinity, friendships, family relationships, party affiliations, associations, religious beliefs, emotional life or other factors that could compromise the impartiality and objectivity of a person. Direct and indirect interests can also include not-economic interests, or result from involvement with non-governmental or political organizations (even if non remunerated), competing duties of loyalty between one entity the person owes a duty to and another person or entity the person owes a duty to. The latter issue is the most difficult issue to monitor and enforce. The relationships constituting family membership vary between countries and need to be analyzed within the legal and cultural context. For example, the concepts of immediate family or spouse go significantly beyond that of the nuclear family, but its precise contours are not universally recognized. The European Commission takes the view that “‘immediate family’ should comprise, at least, the following relationships (...): The spouse (including a partner with whom the individual has a (non-) registered non-marital partnership), children and parents, (great-)grandparents and (great-)grandchildren, (half-) brothers and sisters (including from blended families), uncles and aunts, nieces and nephews, first-degree cousins, parents-in-law, children-in-law, siblings-in-law, stepparents and stepchildren” (European Commission, OJ, C 121/1 of 9 April 2021, 8 and 9). Apart from the concept of ‘immediate family’, the wider concept of close friendships, extended family, etc. may still lead to other forms of conflict of interests and pose a huge challenge in the monitoring process.

1.2.5 The difficulty to institutionalize a “fluid subject”

As such, the notion of risks and conflicts is subject to continuous changes. Countries constantly adopt new rules and policies, introduce new standards, broaden definitions and define new implementation and enforcement requirements. Trends are towards the inclusion of ever new forms of CoI: Take the case of loyalty conflicts, nonfinancial CoI of spouses, CoI because of the expansion of ever new forms of philanthropic activities, loyalty conflicts and CoI because of new opportunities to abuse information and data. In the Member States of the EU, trends are also towards more interaction, cooperation and coordination between the public- and the private sector and “a more politicized, flexible and ad hoc policy advisory system” (van den Berg 2017, 80). As regards Ministers, 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 revolving door” job. These trends increase the likelihood of more CoI.

All of these trends towards the expansion of CoI require countries to invest ever more resources and capacities in the institutionalisation of ethics policies and the implementation of policies. This mainly concerns the management of disclosure policies and revolving door policies. Countries are reacting to these trends by nominating ever more ethical responsibilities in the field and introducing ever more ethics bodies, ethics inspectorates, ethics committees, ethics agencies and audit bodies (Hoekstra/Zweegers, 2021). Responsibilities are often fragmented and coordination capacities are lacking.



Figure 1. Fragmented responsibilities

1.2.6 The naïve support of value based approaches

Thus, if in the past there seemed to be regulatory gaps and a lack of enforcement, the more recent concern is that some governments have gone overboard in adopting a complex regulatory system and by building an elaborate ethics apparatus that reflects the prevailing negative assumptions about the motivations and capabilities of both politicians and public servants. However, all Member States are still in a process of introducing new rules, policies, standards and implementation requirements. 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” (Anecharico and Jacobs 1996, 12).

However, all of this does not suggest that deregulating ethics policies would be a solution. Here, it is also important to note that countries that pursue so-called value based strategies (like The Netherlands) do not have systems with less formal requirements and less administrative burdens than other countries (and often also not less rules and/or codes of ethics in place). Instead, they have implemented more complex ethics systems as such (Hoekstra/Huberts/von Montfort/Maesschalck/Demmke, 2021).

As such, being against more rules and standards is indeed counterproductive. According to Kühl (2020), the effectiveness of rules depends on many conditions. First, it depends on whether people are aware of them, rely on them, whether the rules have a meaning, are understood, and whether they are enforced and sanctioned (Kühl 2020: 83). Moreover, the effectiveness of rules depends on whether someone refers to them, in what situation this happens, and what consequences one must expect if one ignores the rules (Kühl 2020: 83). An additional criterion is how violators behave when their offense becomes known and how the violator is dealt with when the violation becomes known (Kühl 2000: 84). In an organization where violations of rules are only sanctioned in exceptional cases, it becomes clear that the organization does not take its own rules so seriously (Kühl 2000: 86). We will come back to this point when we discuss the phenomenon of toleration of violation. We also note at this point that shortcomings in the implementation process are not only due to a lack of monitoring resources and enforcement powers. Instead, another problem concerns the lack of motivation and willingness to enforce CoI against Ministers and top-officials.

1.3 Why studying ministers and conflicts of interests? Managing conflicts of interests, conflicting interests and “dirty-hands”

Research about CoI in public policies is abundant. However, comparative research about CoI amongst holders of public service is rare and started only recently (Saint-Martin and Thompson et al. 2006; Demmke et al. 2008; Peters and Handschin et al. 2012; Auby et al. 2014). Empirical research in the field is an exception (European Parliament 2008) and, if existing at all, focused on different categories of Holders of Public Office. So far, research about CoI of ministers represents a “black hole”.

CoI of ministers differs in many ways from those of any other group of office-holders or categories of staff. More than other groups of holders of public office, ministers are exposed to a mixture of potential CoI and conflicting interests. They exercise important positions of power and influence, interact regularly with the private sector, take important

decisions which have a financial impact, hold important functions in boards, agencies or committees, possess information about important issues, allocate grants of public funds and are involved in appointments to top positions etc. Moreover, 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 (OECD 2003). As senior members of their parties, they also wield considerable influence both inside and outside parliament, demonstrating considerable autonomy and discretion in their dealings with colleagues and the public in general. “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 often conflicting pressures in a party-political system can be particularly onerous to co-ordinate and arguably expose ministers to potentially unethical situations” (Fleming and Holland 2000, 4). The central place of the cabinet and the ministry puts the power of ministers on another plane to that of parliamentarians, for example, with respect to expert advice, access to lobby groups and privileged information.

In the case of ministers, the question of how to deal with conflicting interests and conflicts of interests is even more acute when thinking of conflicting interests and “dirty hands” (Walzer 1973; de Wijze 2013), which means that ministers may be caught in a situation where they are required to do morally wrong in order to do right. For ministers, leading a politically moral life is not about choosing to live a moral life without moral conflicts and CoI. Rather it is about knowing how to deal with moral conflicts and to manage them. The discussion about minister’s moral conflicts and responsibilities seem to suggest that it is impossible to lead a political life without conflicts of interest. In fact, balancing different interests is a core element of democracy, administration, and public officials. However, everyday conflicting interests, values, and conflicting targets or objectives as such are not always conflicts of interest. Often, ministers' esteem too highly their ability to deal with their own CoI. They also overestimate their capacity to deal in a conscious and impartial way with their own CoI.

2 METHODOLOGY AND APPROACH

Our research interest in the study for the European Parliament was to get an overview of the existing rules and policies in place amongst different CoI.¹ In order to be able to carry out a longitudinal analysis about trends from 2007 to 2020, we followed a similar method that was used in an earlier comparative study on a similar topic². In order to do so, we also decided to carry out the survey in co-operation with the European Public Administration Network under the umbrella of the EU-Presidency (which is composed of top-officials from all Member States of the EU and officials from the European Commission). The functions and grades of respondents to the survey (and even some respondents) were almost identical to the earlier study. As regards the operationalisation of the term CoI, we suggested to the Member States a list of 15 different CoI, as the following table shows.

Table 1. List of potential CoI

1) Declaration of financial interests and assets	11) Rules on receptions and representations
2) HPO's spouse's activities	12) Accepting gifts, decorations and distinctions
3) Provisions relating to the declaration of interests	13) General rules on impartiality and conflicts of interest
4) Outside activities: Political activities	14) Specific rules on incompatibility of posts and professional activities before or during the term of office
5) Outside activities: Honorary positions	15) Restrictions on professional commitments or holding other posts after leaving office
6) Outside activities: Conferences	
7) Outside activities: Publications	
8) Professional confidentiality	
9) Professional Loyalty	
10) Missions, travels	

During the period from January to March 2020, a questionnaire was drafted, containing several open-ended and closed questions. The questionnaire was provided to the EUPAN

¹ The original comparative study commissioned by the European Parliament assessed both ministers and top-officials CoI policies in EU Member States. Because of the limited space, we focus solely on ministers in this article.

² However, in this study, the authors analysed the so-called regulation density index and examined more categories of staff from a wider group of public institutions. Still, it was possible to compare some of the findings of both surveys.

network in order to ensure that experts from all EU countries would be consulted as early as possible and in order to get a chance to pre-test the questionnaire. After internal validation of the survey, the survey was conducted by means of personal email. Ultimately, 17 countries (excluding Germany which responded to this survey per mail) responded to this survey. After completion, we analysed and filtered all answers and identified those which were either still missing or unclear. In those cases, the respective countries were re-contacted on a bilateral basis in a “third round”.

Our survey followed partly the tradition of elite studies although our respondents were officials who are supposed to provide official data that does not reflect personal opinions. 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. In fact, in most countries, the delivered data was discussed internally and coordinated with several other persons, anticorruption agencies, and ministries.

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. 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. We acknowledge the danger of 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 image on the international scene.

To operationalize and to measure the existing policies and instruments in the Member States, we introduced the term “policy coverage density” which defines the quantitative degree of coverage of conflict of interest issues by laws, rules and codes. If a Member State regulates/manages all conflict of interest issues, the country has a high degree of coverage density.

The data gained from the survey was subsequently analysed with data from different surveys such as Eurobarometer, Gallup trust polls, Transparency International corruption indices or Quality of Government data from the University of Gothenburg to inter alia examine the relationship between the policy coverage density, trust, tolerance of corruption etc.

2.1 Discussion and shortcomings of the survey

In this article, we intend to provide a comprehensive picture of the CoI challenges in EU Member States during a turbulent context that was characterized by the COVID-19 pandemic. Despite a very high interest in the survey, some countries decided to refrain from participating in the survey because of other (emergency) priorities and high workloads as a reaction to the unfolding crisis.

However, the most important challenge when comparing and analysing ethics rules and standards for ministers concerned the access to data and to obtain honest answers to sensitive and complex questions. Despite the intensive work of the OECD in the field of CoI, overall, comparative data is scarce, and it is also vulnerable to change and manipulation. 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 CoI and questions about the nature and effectiveness of ethics committees. Overall, we concluded that no country is generating data in the field of CoI. The lack of data makes any research difficult and somehow a subject of speculation. We suggest that valuable further research should address and focus on data management and monitoring issues in the field.

Instead of providing data, some countries responded to our survey by adding long lists of existing rules in the field. We noted that the Member States face increasing challenges as to the quality of the existing rules. Overall, there is no shortage of rules and standards in the field of conflicts of interest. Differently to other policy areas, no country is applying regulatory impact assessments or assessing administrative burdens of CoI policies.

In addition, CoI are managed by different authorities, agencies, administrative units, and persons. As for the legal situation, the institutional landscape is highly fragmented. In some countries, different institutions are also responsible for monitoring CoI policies for ministers.

In doing this type of research, 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, there are challenges in comparing and analysing the different (legal, political, organisational and HR-) instruments in different legal and administrative traditions and in many languages. Although countries could answer to this study in seven languages, this

comparative study was carried out in English. Naturally, national respondents to the survey were asked to respond to terminology that may not be understood universally across all EU countries. Therefore, we used a considerable amount of time in comparing and analysing the different national linguistic definitions of the concept of CoI.

3 FROM BUREAUCRATIC TO BEHAVIOURIST APPROACHES

We note that the Member States have shifted their attention from a combination of compliance- and value-based approaches to new strategies that also add behavioral approaches. As behavioral approaches focus on individual decision-making motives (and not on organisational or institutional causes for misconduct), CoI policies – increasingly – require sophisticated and complex examinations into individual motives, individual behavior and individual decision-making (Stark 2000).

After decades of focusing on the adoption of rules, the Member States have started to invest in the institutionalisation of ethics policies and the implementation of policies. In times of de-bureaucratisation, CoI policies are becoming ever more bureaucratic. The increasing investment by Member States in the implementation of ethics policies leads to a fragmentation of institutional responsibilities, making it more difficult to clarify responsibilities. Monitoring oversight of Minister CoI issues is challenging because of the rarity of independent, depoliticized- and outside control. Overall, oversight and control tasks 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 CoI in the process;
- Specific Revolving-Door Bodies;
- Courts with legal- and disciplinary control- and sanction responsibilities.

Compared with earlier decades, HR-, Integrity- and compliance officers must check and manage many more rules, ethical standards and disclosure requirements. As regards implementation and enforcement practices, this also requires the constant adaptation of knowledge and skills of those who oversee the conduct of individuals. However, as such, individualised monitoring is difficult, complex, time-consuming and increasingly costly.

Trends towards a further individualisation of ethics policies and the broadening of CoI concepts make it ever more complex and difficult to manage and sanction individual breaches of CoI policies, while at the same time not necessarily contributing to more effectiveness.

These trends must be seen before the background that countries have not only implemented more rules in general, they have also implemented more rules on a broad range of CoI issues. Our longitudinal data shows that nearly every country has more rules and policies in place today than in 2007.

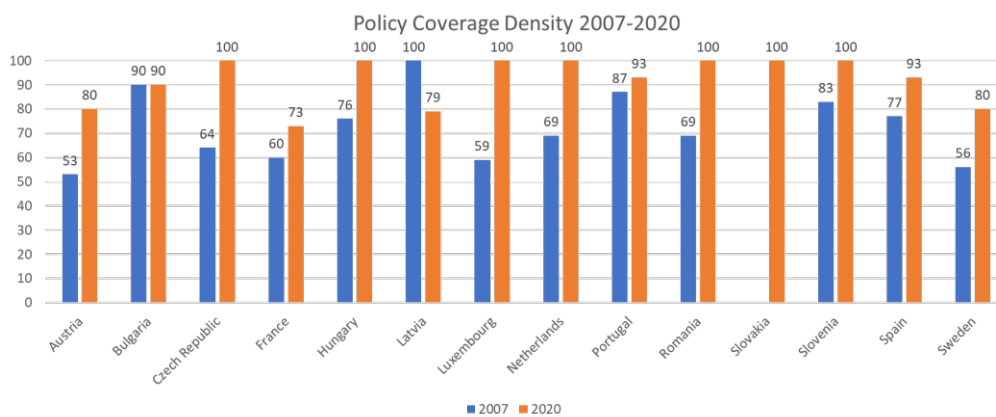


Figure 2. Average Policy Coverage Density by Member State from 2007-2020

As the survey results show, amongst the 15 analysed CoI policies, every CoI issue has a higher policy coverage density than a decade ago.

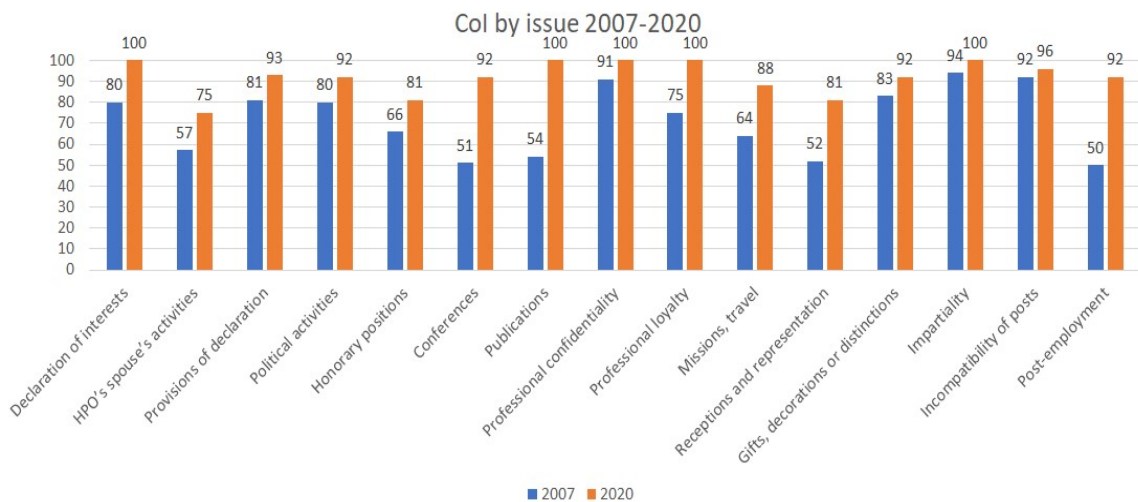


Figure 3. Average Policy Coverage Density by CoI issue from 2007-2020

Our survey also confirms the findings of an earlier study (European Parliament 2008) which shows that – structurally – the Central and Eastern European countries have higher regulated systems than, for example, the Northern European countries. Overall, Sweden stands out as the least regulated system. For example, Northern European countries have no rules in place as regards spouse activities (such as obligations to declare income, or assets), whereas this issue is very densely regulated in Central European countries as well as Continental European countries. This can be explained by the fact that Northern European countries are much more careful when balancing privacy rights with obligations to disclosing private interests.

This allows for the conclusion that the design of the national ethics infrastructure and ethics legal system is linked to the national context. If trust in Government is higher, there may also be less need for regulation. As such, these findings are not surprising. However, they also allow for the conclusion that – in the field of ethics – it is difficult to suggest best-practices in the field of ethics infrastructure, for example, according to the suggestions made by the OECD (2020).

Apart from the analysis of the list of all potential CoI issues we also examined the situation as regards the group of most important CoI (see Table 1.) in order to get more comparable evidence about the core CoI issues. In all countries

(except for Luxemburg and the Netherlands), the use of law is the predominant form of regulation. This shows that

Member States are still having a strong belief in compliance-based approaches. We also note that most Member States of the EU have adopted general anti-corruption or anti-fraud laws (which include CoI provisions). However, only few EU countries have also

adopted CoI laws and regulations that apply to government as such. Thus, only few countries have adopted general CoI laws which apply to all institutions. Instead, most countries have different and separate rules for different institutions.

Coverage of most important CoI issues – use of law

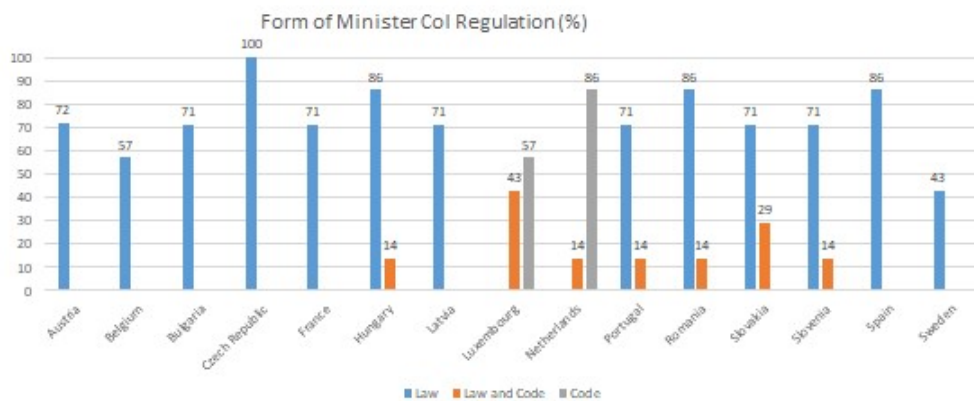


Figure 4. Coverage of most important CoI issues – use of law

Overall, 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. Northern European countries have fewer rules and policies in place than the 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 CoI, b) more rules and policies are a reaction to high levels of corruption and policies and distrust in politicians. Finally, we note that classical bureaucratic countries (like Luxemburg) have a higher policy coverage density than countries with more (private sector) managerial types of public administrations (like the Netherlands).

3.1 More investments in implementation of CoI policies, but also more moral relativism and toleration?

A popular assumption is that highly effective Governance systems do not tolerate corruption and CoI. In these systems, the interpretation of *the rule of law* does not only mean that all people are treated equally before the law. In addition, these systems have a culture in which civil servants implicitly expect from each other that the law is applied. They do not accept if certain legal requirements are set aside in a given personal context,

situation, or if politicians ask them not to apply parts of the law (see also Basu 2020: 117). Contrary to this, toleration of corruption and CoI correlates with poor Governance performance. Our empirical analysis indeed shows that systems that have lower democratic standards and perform less well as regards the rule of law accept corruption and CoI more easily than systems with high standards.

However, attitudes towards universally applicable values and rules seem to change in all countries. At least in international politics, in the past decade, a trend towards moral relativism in (international) politics has taken place, meaning that the acceptance of universal values and principles decreased, while – at the same time - ethics and values as political instruments have gained in importance. Moreover, value management and the general attention to purpose driven management seem to be increasing. Current, trends also lead to increased politicization of ethics policies, as elected political actors try to reassert the primacy of political interest in the ethics policy process.

Accordingly, we suppose this trend supports the politicisation of ethics policies, the toleration of CoI of ministers, and increasing reluctance to monitor and to sanction CoI of ministers. This assumption also explains why levels of corruption seem to increase although the anti-corruption movement is as powerful as never before. Another explanation is that “the underperformance of the global anticorruption movement is not unrelated to the democratic backsliding in recent years” (Mungiu-Pippidi 2020, 100). Strangely enough, the anti-corruption agenda has helped populists into power who protest the seemingly corrupt (democratic) elites. Our empirical analysis shows that systems that have lower democratic standards and perform less well as regards the rule of law accept corruption and CoI more easily than systems with high standards. Also, systems that have highly effective Governance systems do not tolerate corruption and CoI. Contrary to this, toleration of corruption and CoI correlates with poor Governance performance. Also, politicians abuse ethics policies irresponsibly for their personal self-interest (Grandstanding) and as a political weapon against political opponents (Tosi and Warmke 2020; Driver 2005; Neuhäuser and Seidel 2020). As such, ethics is also used for self-promotion (Tosi and Warmke 2020). Parallel to this, public expectations about ethical behaviour have risen, as has public scandal-reporting. Like this, trends in the field of political ethics are as much towards “excessively demanding moralism” (Driver 2005: 137; Neuhäuser & Seidel 2020) whereas trends in international politics are towards a growing disrespect for universal values and moral relativism (Lukes 2008). This combination of egoistic ethicality and moral relativism influences the effectiveness of ethics policies. For example, moral relativism is linked to “tolerance to intolerant” (Walzer 1998: 98).

At the same time, it is striking that many people who vote for populist leaders 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). On the other hand, all politicians share the view that corruption is destructive. The same applies to the field of CoI. Therefore, neither corruption nor conflicts of interests are tolerated. 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 CoI.
- 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 CoI? After all, a CoI is a psychological state of mind, and, in most cases, we do not know whether and how people act.

The first intuition 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 intuition is moral relativism and rather abstention of moral judgment which is not the same as tolerance (Lukes 2008).

Both intuitions may be wrong, or at least not right as regards the judgment of many CoI. 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 CoI requires in both ways the need for judgement. In certain cases, it is relatively easy to judge that certain CoI are 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.

Therefore, in many cases, they are also tolerant if ministers face CoI. This tolerance for CoI reflects current trends towards moral relativism. We define moral relativism as the idea that the authority of moral norms is relative to time and place (Lukes 2008). 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 CoI of ministers” and one country “trends towards

politicization”. Obviously, these answers reveal a lack of political will and/or too high levels of tolerance against flagrant CoI. How can this be explained in times where countries invest in the fight against CoI as much effort as never before?

One answer to this question can be found in a related policy-field: The fight against corruption. According to Eurobarometer (2020), one structural deficit in the fight against corruption (and also in the field of CoI) is the reluctance (and tolerance) to fight high-level cases. During the most recent period, this could be seen as regards the toleration of CoI by top-politicians, prime-ministers and presidents which did not have any significant impact on (dis) approval ratings. However, this toleration is not only politically motivated. In fact, in the field of conflicts of interest, a particular act can “evoke different opinions on whether it was morally right or wrong” (Kerkhoff & Overem, 2021, 83). The latter mainly concerns the evaluation of revolving door cases, which can turn out to be extremely complex individual cases (and may be very difficult to monitor and to assess from the point of view of the enforcing officials).

Moreover, also 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. 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 if citizens tolerate these breaches.

The judgment that citizens bring to bear upon different forms of conflict of interest 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” (Lascoumes 2014, 83–84).

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” (Lascoumes 2014, 84). In their replies to our survey, a number of Member States mentioned that important challenges exist in tackling CoI because CoI of ministers are tolerated and Governments are reluctant to address political CoI. Of course, if leaders commit CoI and these are tolerated, this will most likely result in a further decline in trust in political leadership, ethical leadership and rolemodelling. But why then do countries tolerate CoI of political leaders (and other than because of political influence and power)? As such, political CoI are almost always 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). Obviously, both activities may generate CoI that are in conflict with the duties of an EU Commissioner. However, these activities are accepted, even if there exists no evidence whether politicians can balance and mitigate these conflicts.

3.2 Purpose and objective of CoI policies – “dreams” fulfilled?

Obviously, the effects of public management reforms always depend on the different national political and institutional contexts (Lapuente and Van de Walle 2020; Pollitt and Bouckaert, 2011). However, expectations as to the effects of CoI policies are the same everywhere. For example, in our survey, all the Member States expect CoI policies to provide a tool for preventing and reducing CoI. In addition, most national and international regulations and code also mention other objectives such as:
Increase public trust 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 CoI 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 institutionalise powerful ethics policies in times of budgetary constraints? How to monitor CoI policies if countries themselves have no data and oversight about the development of CoI cases? How to enforce CoI of ministers in times of increasing politicisation of ethics policies? How to evaluate the contributions of CoI policies to trust developments?

In our survey, we focused on carrying out research about the two most important objectives of CoI, which are shared by all Member States:

- CoI should prevent and reduce CoI.
- CoI policies should contribute to generating more trust in holders of public office.

In the following, we will discuss the outcomes of our research.

4 EVIDENCE ABOUT THE EFFECTIVENESS OF COI POLICIES – TOWARDS BETTER PREVENTION AND LESS COI?

Like corruption, CoI is 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 (2008, 98) came to the following conclusion: “Worry about the ethics of public officials greatly exceeds formal evidence of ethical violations.” Remarkably, no country provides statistical evidence about the development of CoI over time.

Although our data, for the reason mentioned above, do not allow for definitive answers about the effectiveness of CoI policies, it allows for the drawing of some important conclusions. Table 3 displays the national answers as regards the most important challenges in the field of CoI. Obviously, this is a highly sensitive question and allowing for “politicised and biased” answers. In contrast, it does underpin the validity of the answers received, as there is no political incentive to lie about existing challenges other than deny them. Interestingly, when taking a look back at the policy coverage density in figure 1, it appears that mainly the countries with higher levels of policy coverage density admit facing challenges, with the exception of Austria, Latvia and Sweden. While this does not suggest that countries with lower levels of policy coverage density perform better, it does indicate that ever more regulation certainly does not lead automatically to more effectiveness.

Table 2. Countries confirming challenges as the greatest in managing CoI

g1 (revolving doors)	Austria*, Bulgaria, Czech Republic, Hungary, Luxembourg, Portugal, Romania, Slovenia
g2 (post-employment)	Austria, Belgium, Czech Republic, Hungary, Portugal, Slovakia, Slovenia, Sweden
g3 (lack of monitoring experts)	Austria, Czech Republic, Portugal
g4 (lack of financial resources)	Austria, Czech Republic, Portugal, Romania, Slovenia
g5 (political reluctance to sanction)	Austria, Czech Republic, Portugal, Romania, Slovenia, Sweden
g6 (grey zones)	Austria, Belgium, Hungary, Latvia, Luxembourg, Portugal, Slovakia
g7 (high tolerance for CoI of ministers)	Austria, Portugal
g8 (high complexity of the issues)	Austria, Czech Republic, Hungary, Latvia, Luxembourg, Netherlands, Sweden
g9 (trends toward politization)	Austria, Slovakia

While corruption is arguably not the same as CoI, underperformance on corruption prevention can certainly be used as a proxy to draw conclusions about the general approach towards ethical misconduct. As such, our data show that countries with higher levels of policy coverage density are generally attributed worse scores on the Transparency International Corruption Index. Additionally, these countries do also score low on the Freedom House Index measuring the effectiveness of corruption prevention. This has important implications for the assessment of effectiveness. It allows for the conclusion that simply regulating more does not lead to better management of corruption. Higher policy coverage density does also not suggest a high quality of the policies adopted. In this case, even better implementation will not suffice to tackle CoI effectively.

Preventing and reducing CoI is difficult because of the 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. Also, countries with better safeguards against corruption have generally higher scores on the democracy index. Thus, if countries want to take the fight against unethical behaviour seriously, an important precondition for this is to – simultaneously – maintain or strengthen systems of Good Governance. 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.

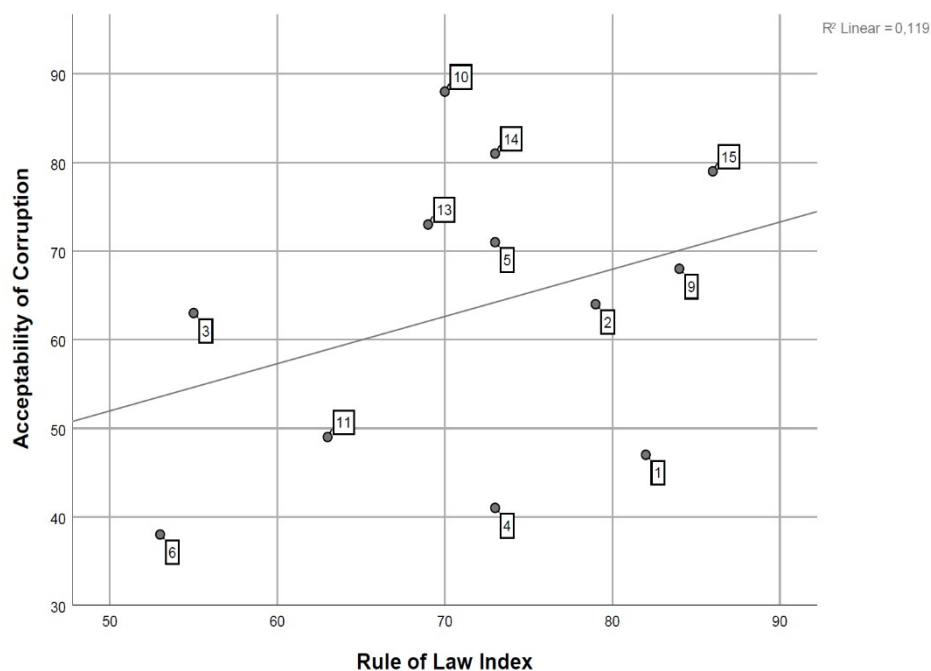


Figure 5. Relationship between acceptability of corruption and state of rule of law

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

We note a positive, although not statistically significant, relationship between the Government Integrity and the unacceptability of corruption. As such, this confirms the hypotheses that Good Governance and “ethics pay off”. We further discovered that Government Integrity is higher in countries with lower levels of policy coverage density and that countries with better safeguards to prevent corruption have on average higher Government Integrity. From this, we also draw the conclusion that adopting rules and policies is not enough. Instead, it is important to invest in high quality integrity policies and Good Governance policies as well as implementing them properly. These findings are not new. More important is the empirical confirmation, according to which 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.

However, this only means that – in order to prevent and reduce CoI – certain preconditions need to be fulfilled, such as Good Governance policies. Still, in all countries, there is a trade-off between the growing complexity of our societies, the broadening of CoI concepts, the adoption of new policies, the emergence of new CoI, and the increasing number of violations. “There are many more laws to be broken nowadays.” (Rosenthal 2006, 163). This does not mean that people have become more unethical.

Moral and ethical standards are also changing more rapidly than before. What was legal a generation ago is considered corrupt today. As discussed, regulation in the field of CoI 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. In the academic field, most experts believe that new governance trends generate more opportunities for CoI. Still, there exists no longitudinal empirical research on the development of CoI during the last decades. Moreover, countries provide no statistical evidence on trends. Because of the existence of these limitations, it is impossible to say whether CoI are increasing, or decreasing.

4.1 Conflicts of Interest policies and trust – a complex relationship

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 (Rosenson 2006, 137). 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 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” (Nieuwenburg 2007, 21).

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 Behnke (2005) 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.” 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.

As trust is a manifold issue, we tried to operationalise the term by testing various variables, asking for opinions related to trust. As such, we found the following relationships between trust and the policy coverage density of EU Member States. However, it needs to be noted that these findings don’t represent statistically significant results, as the number of observed cases would make any generalization vague.

Table 3. The relationship between trust and policy coverage density

1. The higher the policy coverage density, the higher the general trust levels
2. The lower the policy coverage density, the more people believe that bribery and abuse of power is widespread among politicians (Note: very slight effect!)
3. The lower the policy coverage density, the more people believe that bribery and abuse of power is widespread among political parties (Note: very slight effect!)
4. The higher the policy coverage density, the more people believe that corruption is widespread in their respective country
5. The higher the policy coverage density, the more people believe that corruption does not exist in their respective country
6. The higher the policy coverage density, the more people believe that close ties between politics and business lead to corruption (Note: very slight effect!)
7. The lower the policy coverage density, the more people believe that corruption cases are not pursued sufficiently
8. The higher the policy coverage, the more people believe that government compacts corruption effectively
9. The higher the policy coverage density, the more people believe that anti-corruption measures are applied impartially

According to Auby et al. (2014) “the level of public trust in government... impacts the choice of legislation”. It is often thought that countries with lower trust levels have more rules in place than countries with higher trust levels. This is contradictory to our findings. At first, it might seem the only thing this – admittedly – contradictory table is telling us is that there is no answer to the question if higher policy coverage density leads to more trust in government (as anticipated by many politicians). However, this is not entirely true. For once, trust is only slightly higher, the higher the policy coverage density. Further, the result is influenced by Luxembourg and the Netherlands, the only two countries with high policy coverage density and high trust levels. On the other hand, countries like the Czech

Republic, Hungary, Slovakia and Slovenia also have very high policy coverage density but low trust levels. As such, while the general trend might slightly suggest otherwise, a closer look at the cases shows that the majority of countries with very high policy coverage density actually suffers from low trust levels. Harder to explain is, nevertheless, the fact that in these countries' governments are believed to combat corruption effectively. A logical explanation seems to be that only a few cases are actually considered as corruption and can, thus, be combatted more easily. Importantly, it has also to be noted that high policy coverage density does not suggest a high quality of the implemented rules. As such, enhancing trust by decreasing the number of scandals through ever more rules doesn't work if the rules are ineffective.

These findings show even more how contested the issue of trust actually is and how differently it can be interpreted.

As all the variables, except the variable for trust in general, stem from the same Eurobarometer data (European Commission 2020), one would expect to find a coherent pattern. The fact that this is not the case does further suggest that the participants of the survey don't have a coherent opinion themselves. It is also important to note that, while more variables indicate higher trust in countries with higher policy coverage density, correlation is not causation. Our findings show no clear pattern and even if they would, this would not suggest that higher policy coverage leads to more trust. Simply that there is correlation between those two, as the number of cases does not allow for reliable regression analysis. To summarize, our data does not suggest a negative effect of higher policy coverage density on trust, but neither a positive effect. It can, thus, at least be questioned if the objective of increasing trust by implementing more regulation is actually achieved.

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...” (Williams, 1978, 41). Rules of ethics are resources that politicians mobilise to attack and discredit their opponents.

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

This illustrates how CoI 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 CoI 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.

5 CONCLUSIONS

Because of the limited effects of both compliance-based and value-based approaches, there is growing insecurity about the next strategy to follow and the best 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. As our study show, EU Member States find themselves in a process in which they constantly add more rules, stricter standards, broader definitions and more investments in an emerging ethics bureaucracy. However, outcomes seem to be frustrating.

Results of our survey also largely confirmed the study results of an earlier survey (European Parliament, 2008) which concluded that there is a clear relationship between the nature of administration and the policy coverage density: Countries with a more classical bureaucratic system manage CoI much more detailed by laws and regulations than more private sector like managerial systems who prefer the use of codes of ethics. However, we find no evidence whether the so-called compliance based-models or the value based-models are more or less effective. Instead, both systems demonstrate various shortcomings in the institutionalization and enforcement of CoI policies. In addition to the above-mentioned study, we also found a clear link between the political situation within a country and the acceptance of CoI. To summarise the main implications of our findings: Ever more and ever stricter regulation does not enhance the policy effectiveness. However, this does not suggest a pathway for deregulation. The reasons for this may rather be shortcomings in the effective implementation as well as the low quality of the adopted policies. More research is needed to strengthen this conclusion.

For example, the toleration and shortcomings in the implementation and enforcement of CoI 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.

The downside regarding the politicization of ethics policies is that it becomes more difficult to avoid that ethics as a policy issue are abused as moral stigmatisation and 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, 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. To this should be added the problem that – often - CoI of ministers are tolerated and not enforced.

Overall, conflict of interest policies remain ineffective even if governments slowly establish impressive ethics bureaucracies. As such, ethics policies 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.

Still, detecting, managing and measuring CoI policies involves some of the greatest challenges and difficulties in legal, political, organizational, behavioural and administrative sciences. The management of conflicts of interests “is like aiming at a moving target and requires careful and flexible consideration” (Kerkhoff & Overem, 2021, 91). Countries find themselves in a paradox: Whereas politicians must be subject to tough scrutiny and the highest standards, it is nonetheless unrealistic to expect that legal and managerial ambitions solve the ever new emerging CoI issues once and for all (Kerkhoff & Overem, 2021, 91).

There were a few obstacles that prevented doing full-fledged quantitative research. As such, there is a need for more research that is, quantitatively speaking, more rigorous. The same can be said for critically assessing the relationship between administrative reforms and public ethics. It was not possible to gather data from all 27 EU Member States, meaning it was only possible to work with smaller-n analysis. Hence, more sophisticated regression analyses were not reliable. Also, many of the survey questions were politically sensitive and only a few member states replied. For explorative research, the data allows drawing some interesting conclusions, while it makes proper statistical analysis much harder. The overall goal of this research is not the generalizability but understanding development in the EU Member States.

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