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A COMPARATIVE REVIEW

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CONFLICT-OF-INTEREST POLICIES AND PRACTICES IN NINE EU MEMBER STATES: A COMPARATIVE REVIEW

SIGMA PAPER NO. 36

Following a request by the Czech Ministry of Interior, this paper was prepared for Sigma in December 2005 by Prof. Manuel Villoria-Mendieta, University Rey Juan Carlos, Madrid, Spain. It provides descriptive data and an evaluative analytical overview of approaches to regulating and managing conflicts of interest in the public sector of nine European countries — six "old" EU members (France, Germany, Italy, Portugal, Spain and the United Kingdom) and three "new" EU members (Hungary, Latvia and Poland).

It was intended to serve as a basic comparative working document for the preparation of a new policy and regulation on conflict of interest in the Czech public sector.

Given the degree of generality adopted in the paper, it might also be useful for any country interested in having comparative input when drafting regulations or building institutions for the management of conflicts of interest.

This revised version corrects certain factual data concerning the information on Latvia.

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FOREWORD

This paper was prepared by Sigma, upon the request of the Ministry of the Interior of the Czech Republic, to serve as a basic comparative working document for the preparation of a new policy and regulation on conflict of interest in the Czech public sector. Given its generalist orientation, the paper could also be useful for other countries carrying out specific reforms in the area of conflict of interest and general reforms related to anti-corruption policies and instruments.

This paper provides descriptive data and an analytical overview of approaches to managing conflicts of interest in the public sector of nine European countries — six "old" EU members (France, Germany, Italy, Portugal, Spain and the United Kingdom) and three "new" EU members (Hungary, Latvia and Poland). The paper also provides some conclusions that are worth taking into account when reforming policies and instruments to improve regulations and practices on conflict of interest.

The 2003 OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service served as a basis for developing the conceptual framework and the survey questionnaire. An early version of the questionnaire was tested in southeastern European countries in early 2005. The Guidelines also provided good practice benchmarks for measures to prevent conflict of interest. Further information is available by visiting the Gov website here: www.oecd.org/gov/ethics.

Under the direction of Sigma, Prof. Manuel Villoria of Madrid prepared this paper on the basis of information compiled from the above-mentioned countries. Selected national experts contributed information in response to a standardised questionnaire. The author and Sigma wish to express their gratitude to these national contributors: Mr. Antoine Godbert, General Directorate of Public Administration and Civil Service of France; Dr. Bernhard Schloer of Germany; Prof. Bernardo Giorgio Mattarella of the University of Siena, Italy; Mr. Julio Nabais, Secretary General of the Parliament of Portugal; Prof. Manuel Villoria of the University Rey Juan Carlos, Madrid, Spain; Mr. Michael Carpenter, Legal Advisor, House of Commons of the UK; Dr. Zoltan Hazafi, Deputy Director General of the Ministry of the Interior of Hungary; Mr. Aleksejs Snitnikovs of the Corruption Prevention and Combating Bureau of Latvia; and Prof. Patrycja Joanna Suwaj of the University of Bialystok, Poland. Special thanks also go out to Janos Bertok from OECD/Gov for his input and advice in the preparation of this paper.

Each of the nine national contributions contains information — as at September 2005 — on legal approaches, means, institutions, procedures and management practices that have been adopted to manage conflict of interest in the relevant country. Each study also provides information about the system of legal penalization foreseen for cases of regulations being breached and the kind of body or authority established for supervising compliance with incompatibility and conflict of interest regulations.

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INTRODUCTION

The paper is presented in four sections, with one appendix showing a synoptic table of the nine countries examined.

The first section introduces a conceptual framework and definitions of conflict of interest in the public sector, and tries to contextualise conflict of interest policies within broader policies aimed at preventing and combating corruption. It also shows the rationale of these policies and their importance for a well functioning democracy.

The second section examines the broad commonalities of structures, mechanisms and methods used to manage conflict of interest among the nine selected EU member countries. It also examines broad differences in legal frameworks, means of implementation, evaluation mechanisms and means of enforcement. The paper aims to show in this section the rationale behind the various policies to design and establish restrictions for otherwise legitimate economic, social and political activities of public officials, including politicians (in terms of economic activities and transparency) and civil servants (in terms of economic activities and political party involvement).

The third section summarizes the nine country case studies, identifying the main issues and difficulties encountered in each country in formulating and implementing conflict of interest policies. It includes an assessment of the advantages and disadvantages of the various legal instruments in terms of their usefulness in adequately preventing and managing actual conflict of interest situations.

Finally, the fourth section of the paper focuses on drawing some conclusions that could be read as recommendations providing different options for formulating and implementing conflict-of-interest and anti-corruption policies and regulations.

I. CONCEPTUAL FRAMEWORK

Defining Conflict of Interest

This paper principally uses as conceptual reference the OECD`s generic definition of conflict of interest. That definition reads as follows: "A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the public official's private-capacity interest could improperly influence the performance of his/her official duties and responsibilities"[1].

We consider — within the broad concept of conflict of interest — not only the situation where ***in fact*** there is an unacceptable conflict between a public official's interests as a private citizen and his/her duty as a public official, but also those situations where there is an ***apparent*** conflict of interest or a ***potential*** conflict of interest.

An apparent conflict of interest refers to a situation where there is a personal interest that might reasonably be considered by others to influence the public official's duties, even though in fact there is no such undue influence or there may not be such influence. The potential for doubt as to the official's integrity and/or the integrity of the official's organisation makes it obligatory to consider an apparent conflict of interest as a situation that should be avoided.

The potential conflict of interest may exist where an official has private-capacity interests that could cause a conflict of interest to arise ***at some time in the future***. An example is the case of a public official whose spouse would be appointed in the coming weeks as executive director or CEO of a company concerned by a recent decision made by the official, and the public official is aware of the spouse's appointment. The basic definition used here therefore assumes that a reasonable person, knowing all of the relevant facts, would conclude that the official's private-capacity interest could improperly influence his/her conduct or decision-making.

Conflict of Interest and Corruption

It should also be understood that conflict of interest is not the same as corruption. Sometimes there is conflict of interest where there is no corruption and vice versa. For example, a public official involved in making a decision in which he/she has a private-capacity interest may act fairly and according to the law, and consequently there is no corruption involved. Another public official could take a bribe (corruption) for making a decision he/she would have made anyway, without any conflict of interest being involved in his/her action.

However, it is also true that, most of the time corruption appears where a prior private interest improperly influenced the performance of the public official. This is the reason why it would be wise to consider conflict of interest prevention as part of a broader policy to prevent and combat corruption. Situated in this context, conflict of interest policies are an important instrument for building public sector integrity and for defending and promoting democracy.

Democracy and Public Perception of Corruption

Public attitudes toward politics, politicians, political parties and parliaments seem to reflect a growing decline in confidence. Disillusionment with politics and politicians is an almost universal sentiment. In some countries this trend toward political dissatisfaction, mistrust of political leaders and declining confidence in parliament is weakening the functioning of democracy and entails a certain risk of democratic failure. In other countries this attitude is simply an expression of tiredness with the traditional way of politics.

[1] Recommendation of the Council on Guidelines for Managing Conflict of Interest in the Public Service, see at http://www.oecd.org/dataoecd/13/22/2957360.pdf.

One central thesis of this paper is that public corruption is one of the most important reasons behind this disturbing trend. However, to understand this statement it is important to know what corruption is about. If corruption is only bribery, then in most European countries corruption could not be the cause of dissatisfaction, since the bribery of public officials is not a common practice. But corruption is not only bribery. Corruption is also capturing policies, the abuse of power, illegal financing of parties, buying votes, granting favours, and trading in influence. Corruption is not only the illegal abuse of power by public officials for direct private interest. Corruption is also the unethical abuse of power. The private interest involved is not only direct but also indirect, which means that it could be relevant not only for the public official but also for the political party that appointed him/her.

The absence of a comprehensive framework and of knowledge concerning the causes, consequences and nature of corruption have traditionally meant that social scientists and legal experts have had a tendency to assess corruption in western democracies from a criminal law perspective only. For example, according to the 2002 Report by the Open Society Institute[2], the absence of such a comprehensive framework in EU countries has meant that the European Commission's assessment of corruption in the then EU candidate countries tended to be expressed from a "bribo-centric" perspective. Since most western democracies do not have high rates of criminal corruption, corruption was not considered to be an important variable when political dissatisfaction in the most developed countries was analysed.

Corruption is more than bribery, however. Corruption is the corruption of politics, which means all kind of actions where political actors (public officials included) breach the rules of the (democratic) political game and put their private interests before anything else. For example, the rules of the democratic political game stipulate that public officials should not abuse their power for direct or indirect private interest. There is abuse of power not only when they breach the law, but also when they breach the rules of public ethics for the purpose of increasing their personal power or wealth.

Considering these issues, it is obvious that corruption is an important threat to democratic institutions and processes. It has negative political, economic and social consequences. Politically, it lowers the quality of democracy and governmental performance and creates negative social capital. When corruption is high, there is no political equality, and preferential treatment for the most corrupt is the rule in political regimes where corrupt networks hold the power. In highly corrupt countries, corrupt politicians and civil servants have an interest in maintaining an inefficient public administration, because they can then selectively offer protection from the inconvenience of this inefficiency. Corruption requires trust among the actors who take part in illegal exchanges; this trust favours the spread of dense social networks, but these networks are synonymous with patronage, personal clienteles and bribery. Political corruption feeds and reproduces these networks.

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

In a well functioning democratic system there is a basic principle, which is that politics should be about identifying and promoting the general interest while respecting the pre-established rules of the game. Politicians should remember that principle. Civil servants should also bear it in mind when they participate in the formulation of policies and whenever they make decisions, prepare or implement those decisions and evaluate them.

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[2] Open Society Institute/EU Accession Monitoring Program: "Monitoring the EU Accession Process: Corruption and Anti-corruption Policy". Budapest, 2002.

Disregarding that principle is one of the causes of the low confidence in basic democratic institutions and one of the most important reasons why most citizens in some countries are not satisfied with the functioning of their democracies. As shown in Table 1, the confidence in parliament is low in all of the European countries studied. It is nevertheless also true that the results of the surveys are not the same for all countries. Obviously, when the level of corruption — understood as bribery — is also high in a country, the results of the surveys for that country are worse than for countries with a tradition of low corruption. They are worse not only on the question about confidence in parliament, but also on the question about satisfaction with the functioning of democracy (see Table 1).

Table 1. Trust in parliament, satisfaction with the functioning of democracy, and scores in the 2005 Corruption Perception Index (CPI) in the nine countries under comparative review and in the Czech Republic.

Country	A great deal, quite a lot of confidence in parliament (%age)	Very satisfied, rather satisfied with the way democracy is functioning in our country (Percentage)	CPI 2005
"New" EU Members			
Czech Republic	**12,0**	**36,6**	**4,3**
Hungary	**32,6**	**31,6**	**5.0**
Latvia	**26,3**	**28,2**	**4,2**
Poland	**30,1**	**40,6**	**3,4**
"Old" EU Members			
France	**38,8**	**45,5**	**7,5**
Germany	**34,2**	**72,8**	**8,2**
Italy	**33,2**	**34,6**	**5.0**
Portugal	**43,7**	**72,3**	**6,5**
Spain	**45,0**	**63,2**	**7,0**
United Kingdom	**34,1**	**44,4**	**8,6**

Source: *World Values Survey*, 2000 and CPI 2005 (TI).

In conclusion, although conflict of interest and corruption are notionally different, it seems appropriate that the policies dealing with conflict of interest are part of a broader strategy or policy to prevent and combat corruption. This is not, however, the practice in the majority of pre-2004 EU Member States examined in this paper — except in the UK and to a point in Germany (see below), whereas it is quite a common practice in post-2004 Member States. This practice may have been influenced by EU institutions, especially the Commission, during the accession negotiation process, and this raises the question as to whether the demand for the establishment of a comprehensive anti-corruption strategy is more a technocratic ideal than a political reality in consolidated democracies.

Whatever the case may be, the policies and strategies to prevent and combat corruption are very important for improving the quality of a democracy, and even for the defence of the democracy against populism, apathy and disillusionment. Consequently, conflict of interest policies are also important for improving and consolidating our European democracies.

Anti-corruption Policies and Instruments

The policies aimed at preventing and combating corruption include very different instruments and strategies, which can be roughly grouped in four large categories: structure, prevention, detection and investigation, and penalization.

1. *Structural framework*, which includes not only political commitment and ethical leadership, but also strategies and policies designed to avoid significant inequalities, build generalised and inclusive trust, spread good social capital and build a high quality democracy. A sound structural framework requires certain constitutional conditions, because a high quality democracy embraces the related principles of popular control and political equality[3].

These principles have four dimensions:

- Free and fair elections;
- Open, transparent and accountable government;
- Guaranteed civil and political rights and liberties; and
- A democratic society, which includes free media with access to different social groups, public accountability of powerful private corporations, and a democratic political culture and education system.

2. *Instruments of prevention*, which include an effective legal framework, workable codes of conduct, an efficient system of accountability, a career and merit-based civil service, and mechanisms of professional socialisation, especially in ethics and democratic values.

3. *Instruments of detection and investigation*, which include a co-ordinating body acting as "watchdog", whistle-blower hotlines and whistle-blower protection programmes, and an effective network of specialised public prosecutors as well as a sufficiently specialised judiciary, general inspectors and comptrollers.

4. *Instruments of penalization*, with penal laws, disciplinary systems, economic responsibility procedures, and administrative sanctions.

Conflict of Interest Policies and Instruments

Where are conflict of interest policies situated within the larger framework of anti-corruption policies? Indeed, they are within the four groups. They are part of the structural framework because these policies help the democratic system to build generalised trust and to open the government to scrutiny. They are part of the preventive strategy, because conflict of interest regulations, codes of conduct, incompatibility laws and other instruments — such as the rules on abstention and routine withdrawal — constitute a very effective approach to preventing corruption. Conflict of interest policies are also part of the detection and investigation of corruption, because certain instruments of these policies — such as the declaration of income or the declaration of family assets — can help a great deal in the detection of corrupt practices. They are, finally, part of the punishing instruments because in some countries conflict of interest is considered a crime and other countries have foreseen various sanctions for breaching the laws and regulations on conflict of interest.

The most important instruments to prevent and avoid conflict of interest are:

- Restrictions on ancillary employment;
- Declaration of personal income;
- Declaration of family income;

[3] Beetham, David (1994), *Defining and Measuring Democracy,* Sage, London.

- Declaration of personal assets;
- Declaration of family assets;
- Declaration of gifts;
- Security and control of access to internal information;
- Declaration of private interests relevant to the management of contracts;
- Declaration of private interests relevant to decision-making;
- Declaration of private interests relevant to participation in preparing or giving policy advice;
- Public disclosure of declarations of income and assets;
- Restrictions and control of post-employment business or NGO activities;
- Restrictions and control of gifts and other forms of benefits;
- Restrictions and control of external concurrent appointments (e.g. with an NGO, political organisation, or government-owned corporation);
- Recusal and routine withdrawal of public officials from public duty when participation in a meeting or making a particular decision would place them in a position of conflict);
- Personal and family restrictions on property titles of private companies;
- Divestment, either by the sale of business interests or investments or by the establishment of a trust or blind management agreement.

II. COMMONALITIES AND DIFFERENCES ACROSS THE NINE COUNTRIES

A. Commonalities

This paper will provide a generalised view of what is common to the various national programmes dealing with conflict of interest. To that end, we will follow the list of issues considered relevant to conflict of interest policies and examine how they are treated in the countries under review (see also the synoptic table in the appendix).

1. *Part of a broader policy or strategy?* All of the "new" EU members studied in this report have formally adopted a broad strategy to prevent and combat corruption, and their programmes on conflict of interest are part of these broad strategies. However, the "old" EU members do not have these broad strategies — only Germany has a federal agreement against corruption. As a consequence, conflict of interest policies do not form part of a broader policy in these countries. Nevertheless, the UK is an exception, as their conflict of interest programmes are part of the broad policy of "ethical standards in the public sector". They are not part of a broad strategy against corruption but part of a broad strategy to guarantee and improve ethical standards in public life.

2. *Preventive approach?* All of the "new" EU members analysed in this report have preventive and remedial approaches, although in the case of Hungary the approach is mostly preventive. Hungary does not have any penal sanction for violations of conflict of interest rules, but Latvia and Poland do. France uses both approaches too, and has designated a special crime related to conflict of interest, referred to as "unlawful interest-seeking". The five other "old" EU countries have a preventive approach.

3. *Prevention measures*

- *Restrictions on additional employment*: In all of the countries studied, public officials have restrictions on ancillary employment. Political appointees, including members of government, civil servants and judges have this kind of restriction in all countries, but France, Germany, Poland and Spain are stricter than in the others. All countries have restrictions on additional public employment for members of parliament, but only Spain has strict incompatibilities for MPs with private posts as well. Locally elected officials can be members of the national parliament in France and Hungary. In all of the countries there are restrictions on other public and private employment when locally elected officials are engaged on a full-time basis and receive pay for the positions to which they have been elected.
- *Declaration of personal income*: This kind of declaration is not necessary in France, Germany and the UK, but in the last two countries members of parliament must declare certain types of payments when the amount is significant. In Hungary and Italy, only members of parliament must declare income (in Italy political appointees now have to declare certain income), while in Poland only locally elected officials and political appointees must declare it. In Spain locally elected officials and political appointees have to declare their income, and members of parliament should also declare paid activities. In Latvia officials must declare their income, not only political appointees and elected officials but also civil servants.
- *Declaration of family income*: Only in Poland are the spouses of locally elected officials and political appointees obliged to declare their income. In Spain this declaration is voluntary for political appointees' spouses. In all other countries this declaration is not obligatory.
- *Declaration of personal assets*: In Germany and the UK, the declaration of assets is not obligatory, although members of the British Parliament should declare assets if they are worth more than 59,000 pounds sterling. In Germany civil servants, before being appointed, must make a formal statement recognising that they do not have significant debts. In all of the "old" EU countries studied, civil servants do not have to declare assets, but in the three "new" EU members they are obliged to do so (in Hungary this applies only to senior executives). Government and

political appointees, members of parliament and locally elected officials have to declare assets in all countries except Germany and the UK.

- *Declaration of family assets*: In Poland the spouses of locally elected officials and political appointees must also declare their assets. In Hungary, all members of the family living with a political appointee or senior official must also declare their assets. In all other countries this declaration is not obligatory.
- *Declaration of gifts*: In Latvia the declaration of gifts is mandatory for all public officials (including elected officials and members of parliament). In Poland this applies only to locally elected officials and political appointees, and in Hungary only to members of parliament. In Germany, Spain and the UK, it is compulsory for political appointees and government. Members of the British Parliament must declare any gift worth more than 1% of their salary. German members of parliament must disclose this information when the gift is worth more than 5000 euros. In France members of parliament must declare any gift, no matter what the value may be.
- *Security and control in the access to internal information*: Civil servants in all countries must keep secret any confidential information, but in France, Hungary, Poland and Spain there are rules and sanctions that clearly state this obligation. Members of parliament in Hungary and Spain have the obligation of secrecy.
- *Declaration of private interests relevant to the management of contracts*: A formal declaration by political appointees of such private interests is required in countries such as Portugal (including information on the three years prior to the appointment) and Spain (two years). In Germany and Spain this declaration is mandatory for locally elected officials as well. In the UK public officials, including locally elected officials, should make a formal declaration of interest[4] every

[4] Members of Parliament in the UK are obliged to fill in a form with ten categories of declarable interest, as follows:

1) *Directorships* — any remunerated directorships of companies, public or private, the value of which exceeds 1% of the current Parliamentary salary (i.e. £590 at 1 April 2005);

2) *Remunerated employment, office, profession* — any remunerated employment, office, trade or profession which exceeds 1% of the Parliamentary salary, or in which the Member has any pecuniary interest; (This category requires the Member of Parliament to disclose membership of Lloyds, together with disclosure of the category of insurance business which the MP is underwriting.)

3) *Clients* — any paid employment registered under (1) or (2) above which entails the provision of services to clients which depend essentially on the Member's position as a Member of Parliament, with disclosure of the names of clients and the nature of their business; (This category seeks to reinforce the prohibition, resolved by the House on 6 November 1995, against lobbying for reward or consideration. The effect of the rule is that Members of Parliament should not initiate or take part in proceedings in the House or in committee which seek to confer benefits exclusively on a particular individual or body from whom the MP receives payment. The notes to the form explain that the relevant services include action connected with any parliamentary proceeding or other services relating to membership, such as sponsoring meetings or functions in parliamentary buildings or providing advice on parliamentary or public affairs.)

4) *Sponsorships* — any donation of more than £1000 to the Member's constituency association in the previous 12 months and which was linked specifically to the Member's candidacy or membership, or any other form of sponsorship or financial or material support to the Member which exceeds more than £1000 per year; (This category denotes any source of support from which the Member of Parliament receives any financial or material benefit, and would include the provision of free or subsidised accommodation or provision of the services of a research assistant, either free or at a subsidised rate.)

5) *Gifts, benefits, hospitality* — any gift, benefit or hospitality received by the Member or spouse or partner which exceeds 1% of the Parliamentary salary and which relates in any way to membership of the House; (This wide category includes any hospitality, services or facilities provided at a cost that is below the price normally charged to the public. The gift or benefit must be registered if the cumulative value form the one source exceeds the 1% threshold. Benefits given to all Members of Parliament, or to all MPs within a particular area, government hospitality, and reasonable travel costs and subsistence for attendance at conferences or site visits within the UK do not need to be registered.)

6) *Overseas visits* — any overseas visit by the Member or spouse or partner in the previous 12 months relating to or in any way arising out of membership of the House where the cost exceeded 1% of the Parliamentary salary and was not borne wholly by the Member or from UK public funds; (Visits undertaken by or on behalf of the House of Commons or its committees and inter-parliamentary bodies, such as the Council of Europe, are excluded.)

7) *Overseas benefits and gifts* —- any gift or benefit exceeding 1% of the Parliamentary salary and received in the previous 12 months by the Member, spouse or partner from or on behalf of any foreign government, organisation or person and which relates in any way to membership of the House; (The form requires that the nature of the benefit and its source be disclosed.)

8) *Land and property* — any land or property (other than a personal residential home of the Member, spouse or partner) which is worth more than £59,000, or receipt of rental income greater than 10% of the current Parliamentary salary (i.e. £5,900 in 2005); (The Member of

time there is an interest that might reasonably be considered by others as influencing the official's actions. British public officials must include family interests and interests of closely associated persons in their declaration. In Latvia this declaration is to be done yearly. In France, Hungary, Italy and Poland, this formal declaration is not required, but if there is a specific conflict of interest it is mandatory to declare the private interest involved in the procedure and to request permission to abstain.

- *Declaration of private interests relevant to decision-making or voting*: A formal declaration of such private interest is required in countries such as Portugal (including information on the three years prior to the appointment) and Spain (two years) for political appointees and members of parliament, and in Spain for locally elected officials also (in Portugal it is voluntary for locally elected officials). In Germany this declaration is mandatory only for locally elected officials. In the UK public officials, including members of parliament and locally elected officials, should make a formal declaration of interests every time there is an interest that might reasonably be considered by others to influence official's actions. British public officials should include family interests and interests of closely associated persons in their declaration. In Hungary only members of parliament are obliged to make this declaration. In Latvia a similar obligatory declaration is to be provided yearly. In France, Italy and Poland, this formal declaration is not required, but if there is a specific conflict of interest it is mandatory to declare the private interest involved in the procedure and to request permission to abstain.
- *Declaration of private interests relevant to participation in preparing or giving policy advice*: A formal declaration of such private interests is obligatory for political appointees in countries such as Portugal (including information on the three years prior to the appointment) and Spain (two years). In Spain this declaration is mandatory for locally elected officials as well. In Germany this declaration is mandatory only for locally elected officials. In the UK, public officials, including those locally elected should make a formal declaration of interests every time there is an interest that might reasonably be considered by others to influence the official's actions. British public officials should include family interests and interests of closely associated persons in their declaration. In France, Hungary, Italy, Latvia and Poland, this formal declaration is not required, but if there is a specific conflict of interest it is mandatory to declare the private interest involved in the procedure and request permission to abstain.
- *Public disclosure of declarations of interests, income and assets*: There are no provisions regarding public disclosure in France or Hungary, whereas in Poland public disclosure of declarations is mandatory only for locally elected officials, and in Germany and Italy only for members of parliament. In the UK political appointees must declare gifts, and this declaration is public. The declarations of interest of British MPs are also public. In Spain the declarations of interest of members of parliament and locally elected officials are made public only upon the request of an interested person(s), but according to a new draft law, the declarations of assets of members of the government and of secretaries of state will be public. In Portugal the declarations of political appointees, members of parliament and locally elected officials are public, and in Latvia all declarations are public.
- *Restrictions and control of post-employment business or NGO activities*: In Portugal and Spain, during the two years (Spain) or three years (Portugal) after leaving a public post, former political appointees may not accept employment in a commercial or private company that is or was

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Parliament is required to indicate the nature of all property concerned, giving its general location, but the amount of rental income does not have to be registered.)

9) *Shareholdings* — any holding of more than 15% of the issued share capital of a company, or any shareholding of 15% or less where its value is greater than the current Parliamentary salary; (Shareholdings held by the Member of Parliament's spouse or partner do not need to be registered.)

10) Miscellaneous — any other relevant interests which the Member considers ought to be disclosed. (The form advises that there is no obligation to register unremunerative interests, but that these interests may be registered if the Member of Parliament considers that they may be considered by others to influence his/her actions in a manner similar to that of a remunerated interest.)

involved in a contractual, regulatory or direct relationship with their previous employing public organisation. In Germany, Hungary and Italy there are no such restrictions. In Poland political appointees must obtain consent to undertake outside appointments before leaving office. France, Italy and the UK have restrictions and control of post-employment business activities of civil servants; in Poland this concerns both civil servants and locally elected officials, and in Latvia it applies to all categories of public officials. The restriction periods are diverse: one year in Poland, two in the UK and Latvia, and five in France. In France there is a very detailed regulation on employment for civil servants upon leaving office, and in the UK civil servants must report any contacts from outsiders offering jobs, including NGOs.

- *Restrictions and control of gifts and other benefits*: The UK has a very strict policy concerning gifts. For example, political appointees are only allowed to retain gifts if their value is less than 140 pounds sterling. Civil servants and members of parliament cannot accept any gifts. In Germany and Spain public officials cannot accept gifts; in France they cannot accept gifts when it affects their independence. There are restrictions in this regard in Poland for political appointees and locally elected officials, and in Hungary the restrictions apply to members of parliament. In any event, the area between gifts and bribery is too narrow, and for that reason we could conclude that in all countries it is not possible to accept gifts when they seriously affect the public official's independence.
- *Restrictions and control of external concurrent appointments* (for example, in an NGO or political party): These restrictions are very important for judges, because their independence and impartiality could be undermined if they were political party members. This is the reason behind the prohibition of political involvement for judges in all of the countries studied. France, Germany, Latvia, Poland, Spain and the UK all have restrictions on concurrent appointments of political appointees in NGOs. In Hungary, Poland and the UK, high-ranking civil servants are not allowed to hold top positions in political parties. In Latvia politicians are allowed to hold offices in NGOs and in religious and political organisations.
- *Recusal and routine withdrawal*: All persons acting on behalf of the administration must be excluded from participation in the release of an administrative act or establishment of an administrative contract whenever they have a private interest in the decision. For example, a person involved in an administrative procedure on behalf of the administration may be personally concerned — or may be a relative of a person concerned — by the administrative procedure. In such a case it is appropriate for the public official to maintain his/her position but to not participate in any decision-making on the matters affecting him/her. This can be done, for example, by having the decision in question made by an independent third party or by the affected official abstaining from voting on decisions, withdrawing from discussion of relevant proposals and plans, or not receiving documents and other information relating to his/her private interest. In all of the countries studied5, all public officials must abstain from participating in the release of an administrative act or establishment of an administrative contract whenever they have a private interest in the decision. In France, Germany and Spain these rules are very detailed.
- *Personal and family restrictions on holding property titles of private companies*: In France, Latvia, Portugal, Spain and the UK, there are restrictions for all public officials on holding property titles of private companies when these companies contract with the public sector or when public officials have to regulate, control or contract them. In Italy for locally elected officials there are certain restrictions on property ownership; Italy also has restrictions for members of parliament but these are interpreted very restrictively and are not applied in practice. In Poland, locally elected officials are not allowed to own a private business. In Germany and Hungary there are no restrictions in this regard.

[5] There is no information available about Hungary on this matter.

- *Divestment, either by sale or by the establishment of a trust or blind management agreement*: These solutions for divestment are regulated in the UK for political appointees, have been made possible in France, and will also be required in Spain for political appointees.

4. *Detection*

4.1. *Whistle-blower detection*? Germany, Hungary and the UK have developed a system of detection by whistleblowers (people who report wrongdoing in the public sector). The other countries under review do not have such a system.

4.2. *Independent body*? Institutional instruments for detecting and investigating conflicts of interest vary from country to country. There are no commonalities, except in the difficulties in establishing a real independent body. The Latvian Corruption Prevention and Combating Bureau enjoys a certain degree of independence and has broad powers of investigation and prosecution. However, the only really independent body is the Constitutional Court in Portugal. Obviously, using the court to detect conflicts of interest is very controversial and has been rejected in most countries. Large countries and especially countries with federal arrangements cannot afford to use the constitutional court to detect and investigate conflicts of interest, because the court tends to be overburdened with constitutional issues.

In Germany and Hungary, detection and investigation are carried out through the hierarchy, which means that every head of agency, local government or body has responsibility for detecting and controlling conflicts of interest through internal inspection and the sanctioning of violations. In Poland detection and investigation are ensured through the hierarchy (supervision is exercised by the prime minister and ministers in central government, and by governors and the self-government boards of appeal in local government). The Supreme Chamber of Control and the Ombudsman also help in detection, and the State Treasury oversees local government.

In the UK there is no body specifically charged with overseeing and evaluating the implementation of conflict of interest regulations. In central government departments, the matter would be considered by the National Audit Office in its audit role and in its review of the economy, efficiency and effectiveness of government spending. The Audit Commission performs a similar role in relation to local government expenditure, but questions of conduct of local authority members are now considered by the Standards Board for England (and the comparable bodies in Scotland and Wales), which began receiving complaints in 2002. The closest approximation to a national body of the kind envisaged in Portugal would be the Committee on Standards in Public Life, which has recently reviewed the implementation of its Seven Principles across the public sector in the UK in its 10th Report, published in 2005.

In France a non-independent body controls the declaration of assets: The Political Financing Transparency Commission (PFTC). Three professional ethics commissions control post-employment businesses and posts of former civil servants. In Italy the system is complicated as there are very different bodies in charge. The Italian Competition Authority and the Italian Communication Authority (for conflicts of interest in the areas of publicity and communication respectively) are the bodies in charge of detection and investigation of conflicts of interest of members of government. Conflicts of interest concerning civil servants and the judiciary are detected through their respective hierarchies. The presidents of the chambers control members of parliament. In addition, the "High Commissioner can do detection and some investigation for the Prevention and Combat of Corruption and other forms of Offence in the Public Administration". Finally, Spain will set up an Office of Conflicts of Interest (with some, but little, independence) in charge of conflicts of interest of members of government and political appointees. The presidents of the chambers control members of parliament. Conflicts of interest of civil servants, locally elected officials and the judiciary are detected through their respective hierarchies and through complaints made by citizens who have been affected by biased decisions.

5. *Investigation*

5.1. *Who*? Public prosecutors in all of the countries studied carry out criminal investigation. In Portugal the Central Directorate on Investigation of Economic and Financial Crime and Corruption, which is part of the judiciary, also plays a role in criminal investigations. In Spain a special Anti-corruption Attorney's Office is in charge of the investigation of relevant corruption crimes. This office, created in 1995 by consensus among the leading Spanish political parties, is part of the Spanish Public Attorney's Office, with which it shares the norms of operation of all attorney offices. The office is supported by several specialised units — one from the Treasury Department (with four tax inspectors and six assistant inspectors), another from the Intervention of the State (with two inspectors and three administrators), and two others from the police (one from the Civil Guard and the other from the judicial police), for a total of 25 staff. Assistance is also provided by 11 public prosecutors specialised in economic criminality and tax fraud from the Public Attorney's Office, as well as 21 assistants. All units and public prosecutors are under the supervision of the Head of the Public Attorney's Office.

All of the countries carry out administrative investigation, which is usually ensured by the body/authority in charge of detection (see above). In Latvia the Corruption Prevention and Combating Bureau investigates corruption cases and violations of conflict of interest regulations. It can investigate bank accounts or business transactions and has access to the tax agency databases. In Hungary the "Assets Declaration Register and Control Bureau" is the body in charge of investigation once it receives the detected case from the relevant authorities. It can investigate bank accounts or business transactions and has access to the databases of the tax agency. In Poland, the police and the Internal Security Agency help in the investigation process if there is a crime, while the State Treasury examines declarations of local officials. In Germany, tax inspectors can investigate conflict of interest cases in the event of a tax fraud, and they have access to bank accounts. In France, the Commission against Money Laundering can help in the investigation if a crime has been committed. In Italy, the Competition Authority and the Communication Authority are in charge of the investigation of conflicts of interest of members of government, but they only have access to bank accounts and tax records if they possess a judicial order.

6. *Prosecution*

Judicial or administrative: Both kinds of prosecution exist in all of the countries studied. Judicial prosecution proceeds in the event of a crime, whereas administrative prosecution is applied whenever a disciplinary fault has occurred.

7. *Sanctions*

7.1. *Penal*: Crimes related to "conflicts of interest that are inadequately managed" do exist in most of the countries studied. In Latvia, violations of conflict of interest rules are sanctioned with up to five years in prison if substantial harm has been done to the public interest. In Poland, local public officials can be sanctioned with up to three years in prison for false declaration of interests. In the UK criminal sanctions are attached to non-disclosure of interest by members of the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly. Such sanctions continue to apply for a transitional period to non-disclosure of pecuniary interests by members of local authorities and for failure to withdraw from the local authority's deliberations. In Italy, members of government could be indicted with criminal charges if they do not submit a declaration of interests or if they send it with false information according to the requirements of the Competition Authority or the Communication Authority. France has a special crime called "unlawful interest-seeking", and the sanction can be up to five years in prison and a fine of 75 000 euros. It is also a crime in France to breach the post-employment restrictions on private companies in order to obtain pecuniary benefit; the sanction is up to two years in prison and a fine of 30 000 euros. In Germany there is a crime related to conflict of interest called "acceptance of an advantage". The regulation in § 331 of the Criminal Code covers all kind of advantages. The instructions of ministries list the most important examples:

- Money and advantages of money-like value, such as jettons or vouchers;

- Jewellery;
- All kinds of devices or machines for private use, e.g. electronic devices;
- Reduction in price for private use;
- Reduction in interest on loans;
- Unjustified high payment for an officially approved second employment;
- Employment of the civil servant's relatives;
- Tickets, travel vouchers, expensive dinners;
- Provision of unjustified inexpensive lodging;
- Inheritances;
- Special honorariums;
- Invitations to exclusive events;
- Sexual advantages.

7.2. Disciplinary

7.2.1 *Suspension of salary:* Administrative sanctions are provided for civil servants in most of the countries studied. They have also been established for judges in France, Germany, Italy, Latvia and Spain. In Poland, locally elected officials can be sanctioned with a suspension of salary, and in the UK a member of parliament's failure to comply with the Code of Conduct can lead to the withholding of salary.

7.2.2 *Dismissal:* Dismissal is the most serious administrative sanction for violations of conflict of interest regulations in all of the countries studied. In particular, the dismissal of civil servants and judges is provided for in the regulations of most countries. Members of government and political appointees can also be sanctioned with removal from office in France, Hungary, Latvia, Poland, Portugal and Spain (according to the new draft law).

7.3. *Administrative*: Administrative sanctions found in the regulations are: fines, moral sanctions (i.e. to publish the violation in the Official Gazette of parliament or the Official Bulletin of the state), reports to Parliament, prohibition to hold public office for up to 10 years, and restitution of items illegally received.

B. Differences

After the overview of commonalities, we now present the actual or programmed features of each country that are specific, unique or innovative. We will also show the rationale behind each of the different policies.

United Kingdom: The UK approach is different from the other approaches because conflict of interest is treated as an aspect of ethical standards in the public sector. Although there is no single regulation governing conflict of interest across the public service, there are "Seven Principles" of public life that have been endorsed by successive governments and have now become the benchmark by which standards in public life are assessed. Given their importance, we set them out in full here, as follows:

"Selflessness
Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity
Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity
In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability
Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness
Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only where the wider public interest clearly demands.

Honesty
Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership
Holders of public office should promote and support these principles by leadership and example."

The Committee on Standards in Public Life (a parliamentary standing committee) examines concerns about standards of conduct of all holders of public office (central and local government officials, members of parliament, officials of the National Health Service and non-departmental public bodies), including arrangements relating to financial and commercial activities. The Committee recommends any changes in current arrangements that might be required to ensure the highest standards of propriety in public life.

Also peculiar to the UK is the reluctance to require the disclosure of personal and family income and assets and the publication of such declarations. The UK has no general requirements to declare income and assets, and the reason for this is to avoid the invasion of privacy that these requirements imply. The British approach is based on the idea that every public office-holder should declare any pecuniary or even non-pecuniary interest that might reasonably be thought by others to influence his or her actions. Transparency and personal accountability are the key issues in the British system.

Portugal: An interesting Portuguese feature is the impediment placed on companies in which public office-holders are shareholders, either on their own behalf or through close relatives, possessing more than 10% of the share capital. In such cases, companies cannot tender for supply contracts or service contracts to the state and other public organisations. As in the UK, in Portugal whenever members of parliament present bills or participate in parliamentary activities on matters in which they have a direct or indirect private interest that might be affected by a parliamentary decision, they must declare it beforehand.

However, the most striking feature of the Portuguese approach is the role of the Constitutional Court in the monitoring and detection of conflicts of interest in the public service. The overall control of the inexistence of incompatibilities and impediments of any office-holder has as its main element the declaration of the office-holder before the Constitutional Court. In this declaration the official must state the non-existence of incompatibilities or impediments, clearly referring to all exercised positions, functions and professional activities, as well as to the existence of any shares he/she might have. The declaration has to be submitted to the Constitutional Court within 60 days after taking office. The Constitutional Court examines, monitors and, when required, applies the sanctions set down by law with regard to infringement or disrespect of the rules on incompatibility. If office-holders do not submit this declaration, the Constitutional Court notifies them of an additional period of 30 days for its submission; otherwise office-holders will lose their mandate. In order to increase the efficiency of the monitoring system, the law also establishes that the secretariats in which office-holders perform their functions have to notify the Constitutional Court of the names of all office-holders and the dates on which their terms of office began.

Latvia: Latvia is a country that has suffered from high levels of corruption. To reduce and successfully integrate into the European Union, the Latvian Government introduced a broad strategy to prevent and

combat corruption. What makes Latvia different from the other countries studied is this strategy and the role of the Corruption Prevention and Combating Bureau. The Bureau is an interesting institution with broad powers, although it is not very well staffed and not fully independent (the Head of the Bureau is appointed for a term of five years but may be dismissed by parliament on the recommendation of the Cabinet of Ministers, and the officials of the central and regional administration and heads of the territorial branches of the Bureau are appointed and may be dismissed by the Head of the Bureau following broad guidelines). The Bureau's functions include, among others:

- Develop an anti-corruption strategy and draw up a national anti-corruption programme, which is then approved by the Cabinet of Ministers;
- Co-ordinate co-operation among the institutions indicated in the national programme in order to ensure implementation of the programme;
- Monitor observance of the law "On Prevention of Conflict of Interest in Actions of State Officials'' and any other additional restrictions for state officials provided in normative acts;
- Review complaints and submissions within its authority and carry out checks suggested by the President of Latvia, the Saeima (parliament), the Cabinet of Ministers and the Prosecutor-General;
- Compile and analyse results of these checks, information contained in declarations submitted by state officials, any violations found in these submissions and failure to observe the restrictions provided by law;
- Examine the declarations of state officials in the framework of the Law "On Prevention of Conflict of Interest in Actions of State Officials".
- Charge state officials with administrative liability and impose punishment in cases of administrative violations in the area of corruption, as provided by law;
- Carry out investigations and operative actions to discover criminal offences in the area of corruption in the National Civil Service, as provided in the Criminal Law;
- Monitor compliance of political organisations (parties) with party financing regulations.

France: According to the information available about the French approach, there is a very interesting regulation on the conflicts of interest of civil servants. France probably has the best regulation on post-employment activities of civil servants. It also has a very strict system of incompatibilities for the civil service. Control and detection of incompatibilities and post-employment violations are carried out through hierarchical control. However, there are also three professional ethics commissions (one for the central civil service, one for the regional and local civil service, and one for the national health service), which have to be consulted before an official leaves the public service and accepts a position in the private sector. These commissions could open a due process of law in order to gather all relevant facts and, after listening to all interested parties, emit a non-mandatory resolution about the consultation. The resolution is sent to the administrative authority that has the legal responsibility to make the decision. This resolution can declare the private sector position as compatible, incompatible, or compatible under certain conditions. Another interesting feature of the French approach is the existence of a special crime related to conflict of interest, referred to as "unlawful interest-seeking". Any civil servant or public employee could be charged with this crime when he/she accepts a position in a company that had been under his/her control in the past five years. It is also a crime for any public official (including an elected official) to have, receive or keep an interest in a company that is currently under his/her control. Nevertheless, the regulation on conflict of interest and incompatibility for elected officials and political appointees is very permissive, and the control and detection system may need some improvements.

Hungary: The Hungarian approach is mainly juridical, based on enacting laws and regulations to prevent and combat corruption. When analysing the Hungarian system a certain French influence on the regulations is obvious; for example, compatibility among locally elected officials and national deputies is

allowed: Mayors can be elected as members of parliament. In 2004 Hungary established a consultative body called the "Public Life without Corruption Consultative Body", which is very similar in its functions to the French "Central Service for the Prevention of Corruption". The way in which civil servants' incompatibilities are regulated is interesting. According to the law there are three kinds of civil servants: common civil servants; civil servants working in public services, such as health or education; and civil servants working in public security; each kind has its own regulation. The problems with this approach are the inconsistencies and contradictions among the regulations. An interesting feature of the Hungarian system is that it is incompatible to hold a position as a civil servant in an area or service where there are family interests involved; obviously, this incompatibility only applies when the civil servant has responsibilities of control or monitoring in that area. However, the main weaknesses of the approach are the lack of specific regulation on conflict of interest and the lack of independence of bodies in charge of conflict of interest detection and investigation.

Poland: According to the 2005 Corruption Perception Index (CPI) of Transparency International, Poland has a score of 3.4 (10 is the best possible score). This is a very low score. These data may explain the importance given in Poland to a comprehensive strategy against corruption. This strategy exists and conflict of interest policies are within the scope of this broad strategy. Indeed, a range of laws and other instruments, which govern various aspects of public administration and the activities of individual categories of public servants and public officials as a whole, provides the conflict of interest policy framework. Amendments to upgrade existing legislation started in the early 90s (1990), while most of the new legislative standards were enacted as from the mid 90s (1997). We could now say that the Polish legislative conflict of interest framework is complete and detailed.

The system of recusal or "abstention" or withdrawal regulated in the *Code of Administrative Procedure* is interesting, as it provides the option of excluding from participating in a case (suspension) any public official whose impartiality is questionable. The list of reasons for suspension contained in the law is probably incomplete and the law is of limited use, but it is an interesting regulation. Also interesting are the specific prohibitions in public procurement procedures, which prevent an official from acting on behalf of an ordering party. Finally, the disclosure of private interest procedure for civil servants is remarkable, with its three steps — before employment, during employment and post-public employment.

However, although the legal system is complete and detailed, the conflict of interest policy does not work. What is the problem? There are two important weaknesses in the Polish approach: the laws are not fully implemented and no specific and independent body is in charge of detecting and investigating conflicts of interest. The government should consider establishing an effective inspection system, a co-ordination centre to monitor the implementation of programmes, and clearly defined regulations, sanctions and authority in charge of implementing sanctions.

Germany: The German approach is simple, based mainly on the idea that every public office-holder, especially when he/she is acting in an administrative procedure, should declare or inform about any private interest (pecuniary or even non-pecuniary) that might reasonably be thought by others to influence his/her public actions. Only the head of the department or the hierarchically superior body can decide whether the person who has declared his/her bias is to be excluded or not. In the event that the person is excluded from an administrative procedure, he/she may not participate in any activities, which could influence the decision concerning that procedure.

In addition, three noteworthy features of the German approach include:

1) The importance of the juridical system. It is impossible to understand the German model without considering that Germany is a legal state (*Rechtstaat*). Its policies are based on legal principles and must be developed according to the legal system. The most important principle for our purposes is that the law must be applied equally and the procedures must be fair. The relation between public administration and private persons is governed by the administration's obligation to support the private person in exercising his/her rights.

2) It is important in Germany, as in the UK, not only to avoid any real conflict of interest, but also to avoid the impression of wrongdoing. The public official is obliged to avoid all activities that could give the impression that he/she is prepared to commit violations of duties and laws.

3) All decisions of the courts and of the public administration must be motivated when they interfere with rights and freedoms. The motivation requires that the judge or public official reflect in writing what he intends to decide. This is referred to as "function of a warning" or "self-control".

To guarantee the principle of equality and avoid the impression of wrongdoing, the German model has established a detailed system of recusal and abstention. All persons acting on behalf of the administration must be excluded from the production of an administrative act or establishment of an administrative contract whenever, for example:

- The person is involved in the administrative procedure on behalf of the administration and as the concerned person;
- The person is a relative of a person concerned by the administrative procedure;
- The person is acting for someone who is concerned by the administrative procedure;
- The person is a relative of someone who is acting for a person concerned by the administrative procedure;
- The person is an employee of a person concerned by the administrative procedure (this regulation aims to avoid conflict of loyalty and interest);
- The person has delivered an expertise on topics that are relevant for the decision on the administrative procedure.

In Germany, the detection of conflicts of interest is based on hierarchical control and the citizen's right to appeal. If the person concerned considers that a biased public official participated in the procedure, he/she can appeal. And if he/she is proved to be right, then the decision or the result of the procedure is unlawful or invalid. Finally, criminal or disciplinary consequences only apply to the involved public official if the violation of conflict of interest regulations was intentional or negligent.

Italy: Italy is the most obvious example of the negative consequences of the absence of a comprehensive conflict of interest regulation. Italy has an acceptable regulation on conflicts of interest for civil servants, judges and locally elected officials. For example, the civil servants' Code of Conduct, enacted by a decree of the Minister for Public Administration on 28 November 2000, states that "the employee shall maintain a position of independence in order to avoid making decisions or carrying out activities related to his duties in situations of real or apparent conflicts of interest. He shall not carry out any activity that is in conflict with the correct performance of the tasks involved in his job and shall undertake actions to avoid situations and conduct that may damage the interests or image of the public administration" (art. 2.3); "The employee shall abstain from participating in decisions or activities that may involve his own interests or those of relatives or cohabitants" (art. 6.1).

The employee "shall abstain, even if there is no actual conflict of interest, if his participation in the adoption of a decision or an activity may generate a lack of faith in the independence and impartiality of the administration" (art. 6.3).

However, the absence of such a regulation for members of government (including the prime minister) has produced very serious distortions in the Italian democracy. The fact that made these problems apparent was the election of the richest man in Italy, and owner of the most important communications holding, as Prime Minister. After a long period of debate and discussion among politicians and public opinion, the issue relating to conflict of interest between political office and the performance of various activities and professions has recently been dealt with in a proper law provision: Law no. 215 of 20 July 2004, which entered into force on 2 September 2004. By virtue of the new law, politicians, in the performance of their duties, will have to take care exclusively of public interests and consequently, in cases of conflict of

interest, will have to abstain from acting as well as from taking part in resolutions of political boards. Pursuant to the law, the Competition Authority and the Communication Authority for specific cases of conflict of interest in the publishing field will be in charge of controlling and preventing conflicts of interest. The combined provisions of articles 1, 2 and 3 of Law no. 215 set out the scope of these control and prevention functions.

Article 1 states that the Prime Minister, ministers, secretaries of state and extraordinary government commissioners are all "government post-holders" (and are therefore the parties to which this law applies). Article 1(1) also imposes on government post-holders the obligation to devote themselves exclusively "to dealing with public interests", and prohibits them from "performing any acts and taking part in any collective decisions in conflict of interest situations".

Article 2 lists all of the activities that are incompatible with holding a government post (for example, any kind of public sector job or private sector job, or the development of professional activities in an area connected with the government office in question). The choice between incompatibility and ineligibility to stand for election has to do with the different purposes of these two institutions in the Italian legal system. The purpose of incompatibility is to guarantee that elected representatives perform their responsibilities properly when they are in personal situations that could, in theory, jeopardise that proper performance.

Article 3 defines the concept of "conflict of interest" with reference to two different and alternative situations (as evidenced by the use of the disjunctive conjunction "or"): “a) the existence of one of the situations of incompatibility listed in article 2; b) when the measure or omission has a specific, preferential effect on the assets of the office-holder or of his or her spouse or relatives up to the second degree, or of companies or other undertakings controlled by them, within the meaning of Section 7 of Law No. 287 of 10 October 1990, to the detriment of the public interest.” It is a noteworthy feature that the action creating a conflict of interest is not only the one performed by the government post-holder, but also the action not performed that should have been performed.

The regulation of conflict of interest is completed by detailing the powers, functions and procedures of the independent administrative authorities responsible for oversight, prevention and imposition of penalties to combat such cases, together with the applicable penalties. For companies in general, this responsibility lies with the Competition Authority, established by Law No. 287/1990 (article 6). For companies in the printed press and media sector, the responsibility lies not only with the Competition Authority but also with the Communications Regulatory Authority, established by Law No. 249/1997.

In theory, the above authorities have wide-ranging powers to conduct investigations and impose penalties in accordance with current legislation. They can also act on their own initiative, guaranteeing the principle of *audi alteram partem* and the rules of administrative transparency.

Their powers do not exclude the powers of the courts or of any other authorities with regard to criminal, civil, administrative or disciplinary offences, and indeed they are required to report any cases of criminal offences to the judicial authorities[6].

There are nevertheless two problems with Law No. 287. The first problem is that the provision of “detriment to the public interest”, required by the last part of the definition, is impossible to verify as it involves an arbitrary evaluation of an intangible object. It will always be possible to identify a public interest that has been protected by a public decision and one that has been sacrificed, but establishing whether the benefit outweighs the sacrifice or vice versa is a political decision and is, as such, arbitrary. The current opposition in Italy has declared its intention to change this ineffective regulation when it comes to power. The second problem raised by different authors and by the Council of Europe is that Law No. 215 does not include the *"ownership as such"* of a company among the cases of incompatibility or cases of conflict of interest. Considering these two deficiencies, we could conclude that the law does not

[6] Bono, Sabrina, “On the Compatibility of the Frattini Law with the Council of Europe Standards in the Field of Freedom of Expression and Pluralism of the Media”, Presidency of the Council of Ministers, Italy.

suffice to solve the problem of the conflicts of interest of the Prime Minister and of members of government in Italy.

Spain: The rules of recusal and abstention are well articulated and very detailed. Whenever there is a conflict between the public interest and the private interest of a public official in an administrative procedure, the public official involved must declare it and ask for permission to abstain from acting in that procedure. Only the head of the department or the hierarchically superior body can decide whether the person who has declared his/her bias is to be excluded or not. The public officials involved are nevertheless subject to disciplinary action if they do not declare their private interest.

Civil service regulations (based on the French model) are also very detailed in the description of duties, offences and disciplinary consequences, although conflicts of interest are not within the scope of their rules. This situation will change if the new Civil Service Statute now being prepared by the government is approved by parliament in the coming months, because it will include a regulatory regime on conflict of interest, as well as a code of conduct. The approach to deal with conflicts of interest of deputies and senators is mainly preventive and formal, based on a written declaration of interests. However, the discipline demanded by parliamentary groups in practice impedes the defence of private interests by individual members of parliament. They are obliged to follow the instructions of the party leader and generally they do not have room to manoeuvre in the defence of their private interests.

In any event, the most interesting feature of the emerging new Spanish model is the regulation for high-ranking officials and members of government. This regulation is provided by two norms: the Code of Good Government of the members of government and of high-ranking officials of the general administration of the state, which is already in force, and the Bill on Conflict of Interest, which is currently in the last stages of the parliamentary process.

As regards the Code of Good Government, it is interesting to note that successive reports of international bodies, such as GRECO 2001, indicated that Spain did not have a code of conduct within its public administration. Even though legal norms existed, no codes of conduct were designed and implemented to orientate and help employees. As a result, the current government, in accordance with an electoral manifesto and guidelines of the OECD on this matter, approved in February 2005 a Code of Good Government. Its objective is to offer to citizens "the commitment that all high-ranking officials in the exercise of their functions should not only comply with the obligations foreseen in the laws, but in addition its actions should be inspired and guided by ethical principles and codes of conduct".

Some of the principles that high-ranking officials are obliged to respect are:

- *Transparency of information*

  High-ranking officials will provide information to citizens about the operation of public utilities they are responsible for and, when they carry out campaigns of information, they will avoid any action that goes beyond an informative content.

- *Documents custody*

  High-ranking officials will guarantee a continuity of documents for broadcast and delivery to new incoming governments.

- *Full-time public service*

  High-ranking officials of the general administration of the state will abstain from accepting posts and executive positions in organisations that limit the availability and dedication of their responsibilities.

- *Austerity in the use of power*

  High-ranking officials will avoid external inappropriate or ostentatious action that can lessen the dignity with which public office should be exercised.

- *Prohibition to accept gifts*

  Any gift will be rejected, as well as any favour or service in advantageous conditions, which goes beyond usual social and courtesy customs and can condition the performance of the official's functions. In the case of gifts of greater importance, these will belong to the patrimony of the state.

- *Promotion of the cultural environment*

  The protection of the cultural environment and of linguistic diversity will inspire the actions of high-ranking officials undertaken in the exercise of their competences.

- *Protection and respect for gender equality*

  In their administrative actions and particularly in the adoption of decisions, high-ranking officials will promote respect for gender equality and remove any obstacles that could create difficulties in this regard.

- *Objectivity*

  The actions of high-ranking officials will lay the foundations for objective considerations oriented toward the common interest, as opposed to any other factor expressing corporate, family or personal positions or any other positions in opposition to this principle. They will abstain from all kinds of business that could compromise the objectivity of the administration.

- *Impartiality*

  In their actions, high-ranking officials will abstain from undertaking any private activity or interest that could constitute a risk because of a conflict of interest with their public position.

- *Neutrality*

  High-ranking officials will not speed up or influence the resolution of paperwork or administrative procedure without a good reason.

The Secretary of State of Public Administration is to report annually to the Cabinet on the eventual breaches of these ethical principles, in order to correct the erroneous procedures and to propose convenient measures to ensure the objectivity of the administration's decisions. The sanctions could include dismissal.

Regarding the second norm, the objective of the government Bill on the Regulation of Conflicts of Interest of Members of the Government and of High-ranking Officials of the General Administration of the State is "to establish the obligations that are incumbent on to the members of the government and to the high-ranking officials of the general administration of the state to prevent situations that can originate conflicts of interest".

This bill was prepared in view of the limitations of the current law in force. After an evaluation of the application of the regulation on incompatibility for high-ranking officials since 1995, it was recognized that an urgent reform was needed. The regulation establishes an absolute incompatibility with any another position, as well as a direct prohibition to possess directly or indirectly more than 10% of shares in a company that is under contract with the public sector. In addition, it obliges the official to make the following declarations: a statement of activity upon taking up office, a statement of goods and rights, and an annual statement of income.

However, this norm has enormous gaps that could impede its practical application. A breach of this norm is sanctioned by a mere communication in the Official Bulletin of the State, and the investigation of the presumed irregular action is carried out by a unit without any organic or functional independence from the government. Certainly, the main existing problem is that the control of what is declared and the investigation of incompatible activities have been given to an inadequate body. Irrespective of the recognition of the professionalism of officials of the Inspection of Services of the Ministry of Public Administration, it is evident that this unit has no real capacity to declare the incompatibility of a minister or

secretary of state. The officials of the Inspection occupy positions with the rank of deputy director, and they are bound to the principle of hierarchy. Besides, they neither have the capacity to investigate nor the possibility to require the presence and statement of high-ranking officials. Consequently, the role of the Inspection is that of registering documents, which it cannot even analyse.

In view of all of these circumstances, the Spanish Government considered it important to proceed to reform. The most important characteristics of the current government bill now being discussed in parliament are as follows:

1. Incompatibilities regulatory regime: stricter, more demanding and clearer

High-ranking officials will exercise their functions with absolute dedication and will not be able to combine this activity with any other position, whether of a public or private nature, on their own or with others, for which they could receive remuneration.

2. Limitations to the exercise of private activities

For a period of two years after their cessation of activity, high-ranking officials will not be able to work in businesses or private companies directly related to the competences carried out under public service. It is considered that a direct relation exists in any of the following cases:

- In the case of high-ranking officials, this applies to their superiors and to all heads of dependent bodies, by delegation or substitution, which have made decisions concerning the companies involved.
- It also applies whenever the above persons had been involved in a collegiate commission session where an agreement was reached on those companies.

Members of government and high-ranking officials will not be breaching the incompatibility regulation when they return to the private company in which they had worked prior to being appointed to public service as long as the activity they will carry out in the private sector is not directly related to the competences of their previous office or as long as they cannot take decisions related to that office.

3. Statements of goods and rights

The declaration of assets that secretaries of state and ministers will have to present in the Registry of Activities, Goods and Patrimony will be published in the Official Bulletin of the State. In addition, high-ranking officials will provide statements of goods at the beginning and end of their activity, and annually they will fill in a tax statement on income and capital gains taxes.

4. Control and management of values and financial assets

Financial assets of high-ranking officials will be managed in a "blind" fund, without the knowledge of those interested.

5. Management bodies, vigilance and control

The Office of Conflicts of Interest has been created as part of the portfolio of the Ministry of Public Administration. It will be the body responsible for the management of the Registry of Activities, Goods and Patrimony, and it will be responsible for the custody, security and integrity of the data and documents filed in the Registry. It raises reasonable doubts as to whether this Office will have sufficient independence to fulfil its responsibilities, as the Office is under the hierarchy of the government.

6. Sanctions regime

Special sanctions, the launch of proceedings, publication in the Official Bulletin of the State, and a special communication to the business contractor are applied to any high-ranking official who breaches the incompatibility regulation. Any officials infringing the regulation will be dismissed if they are still in office, they will lose the right to a compensatory pension, and they will be obliged to return the quantities received.

The business contractor will cease working with central, regional and local governments if he/she decides to proceed with the contracting of a former high-ranking official who has infringed the incompatibility regulation during the applicable period (two years after leaving office). High-ranking officials who infringe this regulation will not be able to hold a public position for a period of five to ten years.

Both norms aim to obtain the same outcomes: improving citizens' trust in their government and administration, and preventing any breaches of the principles of impartiality, neutrality and objectivity that the Spanish Constitution and laws proclaim on behalf of the government and the administration. However, the most important challenge will be to implement these norms and to make sure that everyone who violates the laws will be punished. The experience in Spain in terms of implementation and application of disciplinary actions has not been very satisfactory.

An interesting development is taking place in the Spanish autonomous community of Catalonia, where the parliament is debating a law on the creation of an anti-fraud and anti-corruption office reporting to parliament. The Catalan office design has taken its inspiration from the European Anti-Fraud Office (OLAF).

III. SUMMARY OF THE NINE CASES

United Kingdom: The British regulation on conflict of interest is the oldest one. The Prevention of Corruption Act dates from 1889. The British approach is based on the idea that conflicts of interest are an aspect of ethical standards in the public sector. The Seven Principles of public life apply to all holders of public office, and the Committee on Standards in Public Life makes recommendations for all of them.

Portugal: The Portuguese approach has a strong British influence, but it also has different measures that are not very protective of privacy, such as the declaration of income and assets and their publication. The reason for this stringent approach is the public dissatisfaction with the cases of corruption that have been discovered in Portugal in recent years, and the public's lack of confidence in the capacity of the administration and the judiciary to act effectively.

Latvia: Conflict of interest regulations in Latvia are part of a broader policy to prevent and combat corruption. The Latvian approach is based on the existence of a very powerful Bureau responsible for detecting, investigating and prosecuting corruption cases.

France: What is most distinctive about the French approach is its concern with the post-employment activities of civil servants. It is also remarkable for its penal sanctions for private interest-seeking in public office and for post-employment activities in companies, which have been controlled during the past five years.

Hungary: Hungary has a complete system of rules and regulations concerning incompatibilities, but it lacks a regulation on conflict of interest as well as an independent body that is needed to detect and investigate conflicts of interest with impartiality.

Poland: Poland is the country with the highest corruption perception of all the countries studied in this report. The reasons for this are complex and difficult to summarise, but there is one issue that it is important to consider: Polish society does not connect conflict of interest with corruption. That is probably one of the reasons why the legal system that has been enacted has not yet been fully implemented and why there is certain impunity whenever public officials break conflict of interest rules. Social and legislative improvements are needed, and the new government must face them.

Germany: The German model is the best example of a good juridical approach to dealing with the problem of conflict of interest. Obviously, it would be necessary to have a very developed and sophisticated administrative law framework in order to introduce such an approach in another country.

Italy: Italy is the country with the highest score of perceived corruption of the more developed nations. It also now has another specific feature, which is the fact that the richest man in the country — and the owner of the most important communications holding — has been elected as prime minister. Finally, most Italian public sector jobs have been privatised and been made subject to collective negotiation since 1993, although the duties of public sector employees are still unilaterally defined by the public employer, in accordance with article 54 of the Constitution, which states that citizens entrusted with public functions must perform them with discipline and honour. In any case, collective labour agreements are responsible for defining offences and disciplinary measures, and they do not normally foresee sanctions for conflicts of interest.

Spain. Spain has made a serious effort to regulate conflicts of interest. The Spanish regulation, with very few exceptions, imposes limitations on public officials in terms of access to contracting processes, etc. On the other hand, high-ranking officials must declare their activities and interests, and they must also complete detailed forms stating their goods and assets, not only when they take up duty, but also annually and when they leave their public positions. Likewise, they are required to communicate the private activities they will assume when their cease their public functions. Finally, the new law mentioned above will require high-ranking officials to declare where they have previously worked, including as a consultant,

or were involved in any way. This also applies to their spouse and to any other person with whom they have lived in an analogous personal relationship, and to second-degree relatives (e.g. brothers and sisters) during the two years prior to their appointment as high-ranking officials. However, the implementation of the laws on conflict of interest and incompatibilities has proved to be very inconsistent in Spain. As a result, the most important changes that need to be fulfilled involve the effective implementation of old and new programmes of conflict of interest

IV. CONCLUSIONS AND POLICY RECOMMENDATIONS

1. A comprehensive anti-corruption strategy: Although it is not an extended common practice in pre-2004 EU Member States, it seems to be useful —according to the experiences of Germany, Hungary, Latvia and Poland and other post-2004 Member States — to include conflict of interest policies in a broad strategy or a nationwide political agreement to prevent and combat corruption, that is based on political consensus that is as inclusive as possible. This strategy should consider the structural framework, prevention measures, detection and investigation bodies and procedures, and the penal system. Conflict of interest policies —as any other public policy-- cannot be successfully formulated and implemented if there is no effective strategy for building a winning coalition with key stakeholders7: The formulation and implementation of an effective conflict of interest policy is difficult and challenging work, but if a government wants to increase public trust in democratic institutions and political actors and to build a better and more efficient democracy, this work is not only necessary but unavoidable.

2. A set of clear ethical standards in public life: It is useful not only to have a broad strategy to prevent and combat corruption, but also to set clear and common ethical standards in public life. A basic and comprehensive ethics code must guide the actions of public officials. The British approach is the best example to follow, although an appropriate adaptation would be needed to suit the laws and conventions of the country concerned.

3. Good administrative and criminal law frameworks: It is necessary to develop a good administrative and criminal law framework within which conflict of interest policies could be effectively implemented.

4. A professional civil service and an independent judiciary: However, these frameworks also need a professional civil service and an independent judiciary in order to be effective. The German model of administrative and criminal law could be of interest, but the French approach is also very interesting concerning civil servants, although less so concerning politicians.

5. Carefully regulated recusal and withdrawal in public decision-making: One of the cornerstones of a good conflict of interest programme is to have a solid regulation on recusal. This requires a complete and detailed list of the causes of abstention or withdrawal. The French, German and Spanish approaches can be very useful in regulating recusal.

6. Limitation or even prohibition for public officials to hold jobs outside the administration: Strict restrictions on ancillary employment are absolutely necessary for members of government and public officials. It is nevertheless also advisable to establish such restrictions for civil servants and judges. If these restrictions are provided, civil servants and judges should be given appropriate salaries. In addition, if locally elected officials receive a public salary, they should be subject to restrictions that are similar to those for civil servants and political appointees. The Spanish model could be helpful in terms of political appointees, the French model for civil servants, the German model for the judiciary, and the British model for locally elected officials. No public official should be permitted to hold dual-paid public posts, to engage in any business partnership or to hold positions as directors of private company boards.

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7 Pfeffer, Jeffrey (1992), *Managing with Power*, Harvard Business School Press, Boston, proposes the following steps in deciding any strategy. Although they are proposed in the private sector context, some of them can be adapted to the public sector: 1) Decide what your goals are, what you are trying to accomplish; 2) Diagnose patterns of dependence and interdependence; i.e. what individuals or groups are influential and important for achieving your goal?; 3) What are their points of view likely to be? How will they feel about what you are trying to do? ; 4) What are their bases of power and influence?; 5) What are your bases of power and influence? What bases of influence can you develop to gain more control over the situation?; 6) Which of the various strategies and tactics for exercising power that seem more appropriate and are likely to be effective, given the situation you confront?; 7) Based on the above, choose a course of action to get something done; 8) Finally, do not forget to evaluate as from the beginning of the process; it is very important to learn by doing and by interacting.

7. Income declaration: Declaration of income is not absolutely necessary if there are declaration of assets and declaration of interests, but it could be helpful in controlling political appointees and locally elected officials. It is too costly to oblige all civil servants to declare income, and it probably would be sufficient to oblige only senior executives to do so. The Spanish and Portuguese approaches could be useful in regulating such declarations.

8. Asset declaration: Declaration of assets can be very helpful in detecting and controlling conflicts of interest of locally elected officials, members of parliament and political appointees. However, obliging all civil servants to declare assets may not be necessary and may be too costly; it would be sufficient to oblige senior executives and civil servants who are in categories and sectors at risk. The Hungarian approach — as well as the French, Portuguese and Spanish approaches — could be useful in regulating this issue.

9. Family income declaration: Declaration of family income and assets is a measure that is too strict and probably difficult to sustain constitutionally. Probably the best solution is to establish it on a voluntary basis or to obligate only the higher public officials in government and other high state institutions.

10. Declaration of gifts: It is better to have clear and strong restrictions on gifts and benefits than to oblige their declaration. Gifts can be the first step to bribery, and consequently they should be completely forbidden, especially whenever a) they are given in appreciation for something done by a public official in carrying out his/her functions, and are neither requested nor encouraged; b) they cast doubts about the public official's independence and freedom to act; and c) they cannot be declared transparently to the organisation and to citizens. Official gifts to members of government and political appointees should belong to the patrimony of the state. Courtesy gifts (e.g. pins or pens) could be accepted only if their monetary value is very low.

11. Use of inside information: The private use of inside information should be criminally sanctioned, at least whenever this involves pecuniary benefits for the public official or his/her family. To detect this abuse, it could be useful to have a national or regional register of public officials at risk. Periodic and random checking of assets of these public officials could be helpful.

12. Declaration and registration of personal interests: Declaration and registration of personal interests constitute another cornerstone of a good conflict of interest policy. Members of government, members of parliament, locally elected officials and political appointees should declare their interests in a formal document that is renewed every time these interests change. High-ranking civil servants and civil servants in categories and sectors at risk should also be compelled to declare and register their interests. The British model is a good example to follow.

13. Publicity of declarations: Declarations of interests and assets of elected officials and political appointees should be open to public scrutiny, while at the same time respecting security rules and the protection of privacy. However, it would be preferable in the case of civil servants that their declarations and disclosures be available only to the relevant agency head or to the body in charge of control and register. The Portuguese and Latvian models are interesting, although they would need certain improvements in line with the criteria indicated above.

14. Limitations to employment after leaving office: It is necessary to restrict and control post-employment business or NGO activities, because public officials are expected to refrain from taking improper advantage of a public office or official position which they have previously held, including privileged information, when seeking employment or appointment after leaving public office. Here the British and French approaches are very interesting for civil servants, and the Spanish and Portuguese models for political appointees.

15. External activities while in public office: External, concurrent appointments in NGOs, trade unions or political parties — even if they are not paid — could cast doubts about the impartiality

of public officials. As a consequence, such employment should be regulated and considered in any good conflict of interest policy. France, Germany and especially the UK have sound rules that could inspire a sensible regulation in this regard. Normally, elected officials and members of government are members of political parties, and this is good and unavoidable in a democracy, but a differentiation should be made between institutional politics and party politics in the accomplishment of official duties.

16. Owning shares in private companies: The Italian case shows us the importance of personal and family restrictions on property titles of private companies. Private companies that are under the control or subject to decisions of a public official should not be owned by this public official. Public officials should not own private companies that contract or have partnerships with the public sector. Private interests in these cases could compromise the proper performance of a public official's duties. Ownership of a small percentage of shares in large companies could be admitted when they are part of private investments and do not influence the policies of these companies, but this should be studied on a case-by-case basis, depending on the position occupied by the public official. Divestment, either by sale or by establishment of a blind management agreement, is the best solution whenever there is a conflict of interest involved with company ownership. The British, French, Portuguese and Spanish models are interesting.

17. Detection and investigation system, including an independent specialised body: The regulation of conflict of interest in Europe does not differ very much from country to country, and some countries even have very similar regulations, but the consequences are not always the same. The reasons for these differences have their roots in the implementation of policies. To effectively implement a conflict of interest policy, it is necessary to have a reliable system of detection. A public interest disclosure law could help considerably in detecting violations of conflict of interest rules. Such a law should provide people with a way of reporting wrongdoing in the public sector when they believe on reasonable grounds that the information is true; the law should also establish penalties for providing knowingly false or misleading information and should provide long-term protection for whistle-blowers. The British and German programmes could be very helpful in designing this policy. However, it is absolutely necessary to have an independent body responsible for the detection system —, an organisation that is adequately staffed and with sufficient powers to investigate and prosecute when needed. The Latvian Bureau could serve as a solution for analysis and adaptation to the culture and laws of the country. The Spanish anticorruption prosecution office could also be inspiring.

18. Compatibility and complementarity of penal and administrative punishments: When it has been proven that a violation of law has occurred, it is necessary to have a system of sanctions, with no exceptions. Penal sanctions and disciplinary sanctions are both needed. The French model is a good example to analyse, as are the German and Polish systems. To successfully execute penal sanctions it is necessary, however, to have good investigation and prosecution. As indicated above, Spain has a special Public Prosecutor's Office against Corruption. This Office is supported by several specialised units, as well as by public prosecutors specialised in economic criminality and tax fraud from the Attorney's Office. It is worthwhile studying this model and attempting to introduce similar offices. Disciplinary administrative sanctions are also necessary. The Spanish model of administrative sanctions for violations of the law by political appointees is interesting, in particular the prohibition of being appointed to a public post for up to ten years following such a violation. Disciplinary administrative sanctions nevertheless also need a good investigation and prosecution system, which is the reason why internal inspectors should be trained in these issues as part of a co-ordinated programme. Sometimes a few sanctions against "big ones" may have the long-term effect of voluntary compliance by the majority.

APPENDIX 1

Data\countries	LATVIA	POLAND	HUNGARY	UK	ITALY	FRANCE	GERMANY	PORTUGAL	SPAIN
Part of a broader policy?	Yes, policy to prevent and combat corruption	Yes, policy to prevent and combat corruption	Yes, part of regulations against corruption	Yes (part of the ethical standards in the public sector)	No.	No	Yes, there is a broader policy against corruption since 1995.	Yes	No
Preventive approach?	Preventive and cure	Preventive and cure	Preventive and cure.	Yes, with advice in certain cases.	Preventive.	Preventive and cure	Mostly preventive.	Yes	Preventive
<u>Prevention measures</u> 1. Restrictions on additional employment. a. Government and Political Appointees b. Civil servants. c. Judiciary d. Parliaments e. Local elected officials.	1.a Yes, some 1.b Yes, some 1.c Yes 1.d Yes 1.e No	1.a Yes, very strict 1.b Yes 1.c Yes 1.d Yes, but compatible with private employment. 1.e Yes	1.a Yes 1.b Yes, different rules. 1.c Yes 1.d Yes, but compatible with private employment. 1.e Yes, but compatible with membership of Parliament.	1.a Yes 1.b Yes 1.c Yes 1.d May exercise certain others 1.e May exercise certain others	1.a Yes. 1.b Yes, some 1.c Yes 1.d Yes, some 1.e Yes, some.	1.a Yes 1.b Yes, very strict. 1.c Yes 1.d Yes, but compatible with private employment. 1.e Yes, but compatible with membership of Parliament	1.a Yes, very strict. 1.b Yes 1.c Yes 1.d Yes, only for certain public employments. 1.e. Depending on the Länders' laws.	1.a Yes 1.b Yes 1.c Yes 1.d May exercise certain others 1.e May exercise certain others	1.a Yes, very strict. 1.b Yes 1.c Yes 1.d Yes, very strict 1.e Yes, if they opt for a full-time job.
2. Declaration of personal income. a. Government and Political Appointees b. Civil servants. c. Judiciary d. Parliaments e. Local elected officials	2.a Yes 2.b Yes 2.c Yes 2.d Yes 2.e Yes	2. a Yes 2. e Yes	2. d Yes	2.d Yes, if more than 1% of salary	2.a (before employment, sources of income from three months before) 2 d Yes	2. No	2.d Yes (payments of more than 10.000 euros must be declared).	2.a, d, e Yes	2.a Yes, annually. 2.b No 2.c No 2.d Yes (they only declare paid activities) 2.e Yes, before employment.

Data\countries	LATVIA	POLAND	HUNGARY	UK	ITALY	FRANCE	GERMANY	PORTUGAL	SPAIN
3. Declaration of family income. a. Government and Political Appointees b. Civil servants. c. Judiciary d. Parliaments e. Local elected officials	3. No	3. a and e Yes (Spouses)	3. No	3.a,b,c,d,e: No	3. a Yes (entrepreneurial activities)	3. No	3. No	3. No	3.a Voluntarily (spouses)
4. Declaration of personal assets. a. Government and Political Appointees b. Civil servants. c. Judiciary d. Parliaments e. Local elected officials	4.a Yes 4.b Yes 4.c Yes 4.d.Yes 4.e Yes	4.a Yes 4.b Yes 4.c Yes 4.d. Yes 4.e Yes	4.a Yes 4.b Yes, Senior Executives. 4.d Yes	4.a,b,c,e: No 4.d: Yes if it's worth more than 59.000 Pounds	4. a Yes (Before employment, entrepreneurial assets) 4. d Yes	4.a Yes, included public companies. 4. b No. 4.d Yes 4.e Only some of them	4.b It is only necessary a statement from the civil servant candidates, recognising that they do not have high debts.	4.a, d, e Yes	4.a Yes 4.b No 4.c No 4.d Yes 4.e Yes
5. Declaration of family assets. a. Government and Political Appointees b. Civil servants. c. Judiciary d. Parliaments e. Local elected officials 6. Declaration	5. No	5. a and e Yes (spouses).	5. a Yes, family who live with the appointee. 5. b Yes, only senior executive family members.	5. No	5.a Yes (entrepreneurial assets).	5. No	5. No	5. No	5.a Only voluntarely (spouses).

Data\countries	LATVIA	POLAND	HUNGARY	UK	ITALY	FRANCE	GERMANY	PORTUGAL	SPAIN
of gifts. a. Government and Political Appointees b. Civil servants. c. Judiciary d. Parliaments e. Local elected	6.a Yes 6.b Yes 6.c Yes 6.d Yes 6.e Yes	6.a and e Yes	6.d Yes	6.a Yes 6.d Yes, if it is worth more than 1% salary	6 No	6. d Yes	6.a Yes 6.d Yes, when it is worth more than 5000 Euros.	6. NA	6.a Yes
7. Security and control in the access to inside information. a. Government and Political Appointees b. Civil servants. c. Judiciary d. Parliaments e. Local elected	7.a Yes 7.b Yes 7.c Yes 7.d Yes 7.e Yes	7. b Yes, but only confidential, there are not restrictions on using official information for personal profits.	7. b and d Yes	7.a Yes.	7 NA	7. b Yes	7 NA	7. NA	7.a Yes 7.b Yes 7.c Yes 7.d Yes
8. Declaration of private interests relevant to the management of contracts. a. Government and Political Appointees b. Civil servants. c. Local elected	8. a Yes 8.b Yes 8.c Yes 8.d Yes 8.e Yes	8. No	8. No	8.a Yes 8.b Yes 8.c Yes (Includes family interests and closely associated persons)	8. a. Before employment, entrepreneurial and private interests.	8. No	8. c Yes	8.a Yes (three years prior) 8.c Not compulsory	8.a Yes (two prior years). 8.c Yes
9. Declaration of private interests relevant to	9. a Yes 9.b Yes	9. No	9. d Yes	9. a Yes	9. a Before	9. No	9. d. Yes	9.a Yes (three	

Data\countries	LATVIA	POLAND	HUNGARY	UK	ITALY	FRANCE	GERMANY	PORTUGAL	SPAIN
decision making or voting. a. Government and Political Appointees b. Civil servants. c. Judiciary d. Parliaments e. Local elected	9.c Yes 9.d Yes 9.e Yes			9.b Yes 9.c No 9.d Yes 9.e Yes (Includes family interests and closely associated persons)	employment, entrepreneurial and private interests.		9. e Yes	years prior) 9.d Yes 9.e Not compulsory	9.a Yes (two prior years). 9.d and e Yes.
10. Declaration of private interests relevant to participation in preparing or giving policy advice. a. Government and Political Appointees b. Civil servants. c. Local elected	10. No	10. No	10. No	10.a Yes 10.b Yes 10.c Yes (Includes family interests and closely associated persons)	10.a Before employment, entrepreneurial and private interests.	10. No	10. c Yes	10.a Yes	10.a Yes (two prior years). 10. c Yes.
11. Public disclosure of declarations of interests, income and assets. a. Government and Political Appointees b. Civil servants. c. Judiciary d. Parliaments e. Local elected	11. Yes	11. Yes, but only e	11. No	11.a Yes of gifts. 11.d Yes, of interests	11. d Yes	11. No	11. d Yes	11.a, d, e Yes of income and interests	11.a Yes, only members of Government and Secretaries of State. 11. d and e Yes, but only upon request.

Data\countries	LATVIA	POLAND	HUNGARY	UK	ITALY	FRANCE	GERMANY	PORTUGAL	SPAIN
12. Restrictions and control of post-employment business or NGO activities. a. Government and Political Appointees b. Civil servants. c. Judiciary d. Parliaments e. Local elected	12. Yes	12. a (must obtain a consent) 12. b and e (one year after leaving).	12. No	12.b Yes for two years and they must report approaches	12. b Yes (some)	12. a Yes 12. b Yes (5 years). 12. d Very few (saving institutions or government subsidised corporations) 12. e Yes	12. No	12.a Yes for three years	12.a Yes (two years).
13. Restrictions and control of gifts and other form of benefits. a. Government and Political Appointees b. Civil servants. c. Judiciary d. Parliaments e. Local elected	13. Yes	13. a and e Yes.	13. d Yes	13.a Only value under 140 Pounds may be retained. 13.b Yes 13. d Yes, when valued more than 125 pounds must be disclosed.	13. No	13. No control, but restrictions yes, when affect independence.	13. a and b Yes	13. NA	13.a, b, c, d, and e Yes.
14. Restrictions and control of outside concurrent appointments (For example, a NGO or Party). a. Government and Political Appointees b. Civil	14.a Yes – Government appointees, No- Political appointees 14.b Yes 14.c Yes 14.d No	14. a, b, c Yes	14. b Yes. Not allowed to be in top positions in political parties 14. c Yes	14.a Yes 14.b Yes 14.c Yes 14.d Yes 14.e Yes	14. c Yes	14. Yes, when the NGO,s are under control of the public official. 14. c Yes	14. a Yes. Law bans appointments in honorary positions.	14. NA	14.a yes 14. b Only certain civil servants as military. 14. c Yes

Data\countries	LATVIA	POLAND	HUNGARY	UK	ITALY	FRANCE	GERMANY	PORTUGAL	SPAIN
servants. c. Judiciary d. Parliaments e. Local elected	14.e No								14. e Yes (NGO).
15. Recusal (routine withdrawal) a. Government and Political Appointees b. Civil servants. c. Judiciary d. Parliaments e. Local elected	15.a Yes 15.b Yes 15.c Yes 15.d Yes 15.e Yes	15. a, b, c, e Yes	15. NA	15.a,b,c,e Yes	15. a, b, c, e Yes	15. a, b, c, e Yes	15. a Yes 15. b Yes 15. c Yes 15. e Yes	15. a, b, c, e Yes	15. a Yes 15. b Yes 15. c Yes 15. e Yes
16. Personal and family restrictions on property titles of private companies. a. Government and Political Appointees b. Civil servants. c. Judiciary d. Parliaments e. Local elected	16.a Yes 16.b Yes 16.c Yes 16 d Yes 16.e Yes	16. a and b (no more than 10% of shares in a company established under commercial law). 16. e Not allowed to own private businesses.	16. b Yes. No problem with property titles, only incompatibility with senior positions and Boards membership.	16.a,b,c,d,e: Yes	16. d and e Yes, when they are under control or decision.	16.a, b, c and e Yes, when they are under control or decision.	16. No	16. a, b, c, d, e, Yes	16. a, b, c, d, e, Yes
17. Divestment either by sale or by the establishment of a trust or a blind management agreement. a. Government	17. No	17. a, b and e could be necessary after declaration of	17. No	17.a Yes	17. e Divestment could be a solution to conflicts of interest in local	17. Yes	17. No	17. NA	17.a Yes

Data\countries	LATVIA	POLAND	HUNGARY	UK	ITALY	FRANCE	GERMANY	PORTUGAL	SPAIN
and Political Appointees b. Civil servants. c. Judiciary d. Parliaments e. Local elected		private interests.			elected, but not in national government. Blind trust illegal.				
<u>Detection</u> 1. Whistleblower protection? 2. Independent Body?	1. No 2. (CPCB) Corruption Prevention and Combating Bureau (it enjoys a certain degree of independence).	1. No 2. No independent body. Detection through hierarchy (supervision by prime minister and ministers in central government; governors and Self-Government Board of Appeal in local gov.). Also Supreme Chamber of Control, and Ombudsman help in detection. State	1. Yes. 2. No independent Body. Detection through hierarchy.	1. Yes 2. Committee on Standards in Public Life; Parliamentary Commissioner for Standards; and Standards Board for England (with regional offices) for local Government	1. No 2. Italian Competition Authority and Italian Communication Authority only for members of Government. Civil servants and judiciary: through hierarchy. Parliamentary: Presidents of Chambers. Also High Commissioner for	1. No 2. Political Financing Transparency Commission (PFTC) (not independent) controls declaration of assets. Three Professional Ethics Commissions control post-employment business.	1. Yes 2. No. Detection through hierarchy.	1. NA 2.Constitutional Court	1. No 2. For Gov. and political appointees: Office of Conflicts of Interest (enjoys certain independence). Civil servants and judiciary: through hierarchy. Members of Parliament: Presidents of Chambers.

Data\countries	LATVIA	POLAND	HUNGARY	UK	ITALY	FRANCE	GERMANY	PORTUGAL	SPAIN
		Treasury checks local government.			the Prevention and Combat of Corruption and other forms of Offence in Public Administraton.				Local elected: Through complains
Investigation 1. Who? 2. Bank accounts 3. Tax Records	1. CPCB 2 and 3 Yes	1. Public prosecutors if crime. Also Police and Internal Security Agency. If not, hierarchy (prime minister and ministers in central government; governors and Self-Government Board of Appeal in local gov.). State Treasury investigates declaration of local public officials	1. Assets Declaration Register and Control Bureau (ADRCB). 2 and 3. Yes.	1.Parliamentary Commissioner for Standards and Standards Board (local governments) 2 and 3. Only in criminal investigation	1. Italian Competition Authority and Italian Communication Authority. In criminal cases Public Prosecutors. 2 and 3 Yes but it is necessary the order of a judge.	1. Judges (criminal), Commission Against Money Laundering (TRACFIN) and PFTC 2 and 3 only judges can decide.	1. Public prosecutors if there is a crime. Tax inspectors if there is tax fraud. 2 and 3 Only judges. Tax inspectors can also control data on bank accounts.	1.Constitutional Court, and judicial power (Central Directorate on Investigation of Economic and Financial Crime and Corruption). 2 and 3 only in criminal investigation	1. Gov. and political appointees: Office of Conflicts of Interest. The Office can investigate tax records. Civil servants and judiciary: Internal inspectors. When crimes: Public prosecutors (special Public Prosecutor's Office against Corruption). 3. Only judges.
Prosecution Judicial or administrative	CPCB: Administrative Judicial: Public Prosecutors	Judicial; public prosecutors. Administrative: Hierarchy and supervisory body.	ADRCB: Administrative prosecution. Judicial only if bribery.	Both	Judicial: When there is corruption. Administrative: Through hierarchy.	Only Judges: Criminal. Administrative: Inspectors for civil service	Only Judges: Criminal. Administrative: Inspectors for civil service	Only Judges: Criminal. Administrative: Inspectors for civil service	Crimes: Only judges. Administrative: Inspectors and Office of Conflicts of Interest.
Sanctions 1. Penal 2. Disciplinary 2.1 Suspension	1. Yes, up to 5 years in prison if substantial	1. Penal: Yes. Local public officials up to	1. No.	1. Penal: Yes for local elected and members of	1. Only when crime of corruption. But	1. Yes, up to 5 years of prison and fines of	1. Penal: only when criminal intention.		1. Penal: Only when crime (i.e. bribery).

Data\countries	LATVIA	POLAND	HUNGARY	UK	ITALY	FRANCE	GERMANY	PORTUGAL	SPAIN
of salary a. Government and Political Appointees b. Civil servants. c. Judiciary d. Parliaments e. Local elected 2.2 Dismissal a. Political Appointees b. Civil servants. c. Judiciary d. Parliaments e. Local elected 3. Administrative a. Political Appointees b. Civil servants. c. Judiciary d. Parliaments e. Local elected	harm. 2.1 b, c Yes 2.2 a,b,c,d,e Yes 3. Yes, fines and moral sanctions.	three years in prison for false declaration. 2.1. b and e yes 2.2. a, b, c and e yes	2. 2 a, b.	regional parliaments for no recusal when due and for non-disclosure of pecuniary interests (transitional period) 2. Disciplinary: 2.1.b Yes 2.1.d Yes 2.2.b Yes	also possible when members of Government do not send the Declaration of Interests o send it with false information, after requirement of the authority in charge. 2. 1 b and c Yes 2.2. b and c Yes 3. A report to the Presidents of the Houses of the Parliament is foreseen for violations of the law by members of Government.	75.000 Euros for Unlawful Interest Seeking. 2. Disciplinary, 2.1 b and c Yes 2.2 a, b and c Yes 3. a, b, c and e Unlawful additional employment, fines up to 1500 Euros.	Crimes: Accepting of advantage (such as money or jewellery), Perversion of justice and Bribery. 2.1. b Yes 2.1 c Yes 2.2. b Yes 2.2. c Yes 3. Members of parliament violations of conflict of interest rules: Publication in the Parliament's Official Gazette.	2.2.a, b and c Yes 3.a Prohibition to hold public offices for three years.	2. Disciplinary 2.1.b Yes 2.1.c Yes 2.2.a. Yes 2.2.b Yes 2.2.c Yes 3. Gov. and political appointees: Violation of the law implies publication in the "Official Bulletin of the State". When serious offences: Prohibition of being appointed for a public post for up to 10 years. Restitution of money illegally taken.