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Conflict of interest legislation in Brazil, South Korea and the European Union: International case studies

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About this report

This Working Paper is published in the context of the USAID Indonesia Integrity Initiative (INTEGRITAS) project, which supports the Government of Indonesia in preventing corruption via enhancing civic engagement and strengthening integrity in the public and private sectors. The case studies and analysis will be of value to anyone interested in drafting, revising or monitoring conflict of interest legislation in any context.

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Executive summary

Effectively managing conflicts of interest in the public sector is crucial to mitigate corruption risks. It is also fundamental to building well-functioning institutions and to generating trust in government. How are different states doing this? What models exist? What are the challenges?

To answer these questions, this Working Paper analyses conflict of interest legislation and management in three case study contexts: South Korea, Brazil and the European Union. The three case studies share, to varying degrees, democratic regimes, competitive elections and advanced economic performance. At the same time, they differ in the shape of their institutional architecture, spanning a fairly centralised system (South Korea), a federal state (Brazil) and a supranational entity (the EU).

The study is based on the international standards in the 2020 guide *Preventing and Managing Conflicts of Interest in the Public Sector*, produced by the World Bank Group, OECD and UNODC at the request of the G20 Anticorruption Working Group.

Similar in principle

Developing mechanisms to manage conflicts of interest is recognised as crucial for good governance in all three contexts – even if building a conflict of interest management system is not *per se* a guarantee of eradicating it.

The three systems are based on a **shared idea of what it means to prevent and manage conflicts of interest.** Common elements include:

- mechanisms for reporting financial interests, properties and personal relations;
- remedial actions for managing conflict of interest situations and administrative and penal sanctions for punishing violations;
- thresholds and prohibitions for gift giving and hospitality;
- protocols for managing post-employment terms and revolving doors mechanisms.

The **level of specificity of the legal framework matters**. Higher specificity clarifies what is permitted and not, as well as the consequences for violating the law. However, a very broad, detailed and demanding law might be challenging to enforce in complex bureaucracies. A proper balance needs to be found.

… different in practice

Despite the underlying similarities, the systems look quite different in each case study context.

This happens when international standards enter into contact with the functional, operative and informal characteristics of **different social, political, bureaucratic and business environments**. Differences in the institutional architectures of the three contexts have also impacted the characteristics of the systems aimed at managing conflict of interest situations.

Another difference concerns the origin of legal frameworks on conflicts of interest. For example, South Korea built its conflict of interest infrastructure *ex novo* after corruption scandals emerged. Meanwhile, Brazil has built its system on top of solutions already developed in the early 1990s for regulating the duties of politicians and bureaucrats. Both of these strategies have pros and cons:

- Starting from zero allows legislators to build a conflict of interest framework that integrates the most innovative solutions. But there is a need to train public officials to follow the new practices, push against the pressure of doing business as usual, and instil new preferences in the bureaucracy.
- Building on pre-existing laws and regulations can be a resource-saving strategy. But there is a risk of duplication or overlapping of functions and mandates, as well as legal opacity and unnecessary red tape due to excessive cross-referencing with previous acts or codes.

Differences between the contexts are also visible in the **harshness of the penal and administrative sanctions.** The South Korean model imposes very strong sanctions, such as several years of imprisonment in the most serious cases. Implementation of these penalties also appears to be severe in contrast to the Brazilian and EU models.

Implications

The findings from the analysis underline how critical it is to **build a flexible, adaptive and proactive policy-making approach to regulating these sensitive issues.** Policymakers and legislators must also be able to integrate input and feedback from citizens and the business community to continuously update their legal infrastructures.

In addition, the analysis reveals:

1. It is not enough to define vague procedures to address situations of conflict of interest; **specificity is also necessary**. At the same time, adding too many details risks generating issues with implementation of the law for enforcers and investigators.
2. The **severity of the sanctions** is a critical deterrent and preventive factor, as well as a key support for enforcement and investigative activities. This has to be balanced with respect for the rule of law and human rights.
3. A **minimum common ground** is helpful for conflict of interest legislation, at least touching all points in the *Preventing and Managing Conflicts of Interest in the Public Sector* guide. But specific technical solutions need to be tailored to the local context.
4. Incrementally reforming and amending existing frameworks for conflict of interest can result in a fractionalised architecture with mutually incoherent pieces, such as disconnected or duplicative acts, regulations and codes of conduct. It is helpful to try to **build the infrastructure around one major piece of legislation** and align the rest around it as best as possible.
5. **Robust systems and protocols** must be in place to handle the complexity of managing conflicts of interest. This needs investment in both institutions and governance capacity, but also functional rationalisation to avoid overly bloating the bureaucracy.
6. **A risk-based approach** is needed to prioritise the greatest risks of conflict of interest, identify areas that deserve more attention and ease effective implementation of the management system. This means using tools to assess the risks of corruption and conflict of interest along the governance chain.

Addressing gaps – campaign financing

A key conflict of interest pattern behind grand corruption schemes involves connections between electoral campaign financing by particular business interests and subsequent decisions on the award of valuable public contracts. It is noteworthy that **such issues are not adequately covered by the legal and regulatory frameworks** described in this report.

Very often, data collected on the financing of the electoral campaigns is not used to detect and red-flag suspicious connections between electoral financial flows and the subsequent distribution of public contracts and procurements. Matching data on electoral financing and public procurement procedures with the goal of revealing suspicious situations could contribute to improving the prevention of one of the most pernicious forms of conflict of interest.

Legislating more closely how electoral donations must be reported and made transparent would be a step in the direction of addressing some of the most important conflict of interest and, ultimately, corruption risks.

Investing in innovation

The analysis shows the challenge – and opportunity! – to **make productive use of the huge amount of data generated by public systems**. This includes data on public officials' financial assets, real estate and social relations, as well as data from land, property or vehicle registers, campaign finance transactions, procurement transparency systems and beneficial ownership registers. Connecting these would be a good start.

Going forward, new and better data management solutions are crucial for effective implementation of conflict of interest management systems and other anti-corruption measures. Designing artificial intelligence or machine learning tools to mine data and cross-reference databases to red-flag suspicious connections and exchanges should be in the research agenda going forward. The generation of high-quality and comparable databases is a goal that must be further emphasised.

1 Introduction

This report presents international case studies of legal frameworks addressing conflicts of interest and highlights common challenges, opportunities and lessons for practitioners and other interested stakeholders. The report covers three contexts: two national (South Korea, Brazil) and one supranational (the European Union (EU)). These represent jurisdictions characterised by stable democratic regimes, competitive elections and a solid economic performance. At the same time, the three cases differ in the shape of their institutional architecture, spanning a fairly centralised system (South Korea), a federal state (Brazil) and a supranational entity (the EU).

The main analytical focus is on the characteristics of the legal framework. Where discussed, implementation and enforcement issues are more incidental than empirical. The analysis is based on the international standards in *Preventing and Managing Conflicts of Interest in the Public Sector*, a good practices guide prepared in 2020 by the World Bank, OECD and UNODC at the request of the G20 Anti-corruption Working Group (henceforth "the good practices guide").[1] Drawing on this guide, a conceptual matrix has been developed to analyse the conflict of interest legal frameworks in Brazil, South Korea and the EU.

Table 1: Defining conflict of interest

Types of conflict of interest	• Actual/apparent/potential • Financial / Non-financial

Policy & legislative framework	• Primary or secondary legislation
	  ○ Ordinary legislation
	  ○ Financial legislation
	  ○ Civil service legislation
	  ○ Criminal or anti-corruption legislation
	• Codes of Conduct or Ethics
	• Circulars, orders or other internal documents
	• Public contracts or collective agreements in the public sector

Three main sections comprise the conceptual matrix:

[1] The guidance document can be found at: http://documents.worldbank.org/curated/en/950091599837673013/Preventing-and-Managing-Conflicts-of-Interest-in-the-Public-Sector-Good-Practices-Guide.

An introductory section sets out the types of conflict of interest and the legal provisions designed to counter them (see Table 1).

The second section deals with the characteristics of the systems built for managing situations of conflict of interest and is split into four sub-sections. The first sub-section highlights the main models for monitoring bodies identified by the good practices guide, from the more centralised to the more decentralised (see Table 2a).

Table 2a: Models of conflict of interest monitoring bodies

Models of conflict of interest monitoring bodies	• Primary body for each branch of government • Central agency with ethics officers in each line ministry or government agency • One primary, specialised body for all branches of government • Centralised agency with satellite offices at the local level

A subsequent section describes the mechanisms and procedures for declaring, reporting, collecting, managing and using the financial and non-financial information submitted by bureaucrats and politicians. Table 2b lists what information is to be declared, by whom, via which procedures, and to which public body or entity.

Table 2b: Duties and obligations in terms of declarations and reporting mechanisms

Declarations and reporting mechanisms	What to declare:
	• Financial interests:
	  ○ Income and salaries
	  ○ Financial assets & investment
	  ○ Real estate properties
	  ○ Securities, stocks & trusts
	  ○ Beneficial ownership
	  ○ Liabilities
	• Gifts and sponsored travel
	• Memberships and positions
	• Outside activities
	• Pre-tenure employment and activities

	Who should declare: • Candidates for appointed or elected offices • Spouses or partners • Lineal ascendant / descendant • Business partners
	When to declare: • Before the appointment or election • During the office terms (routine or ad hoc) • After leaving the position
	To whom: • Recruiting agency • Competent branch of Parliament • Internal ethics or monitoring body • Conflict of interest or anti-corruption body • Court of audits

The third sub-section is devoted to post-employment regulations, i.e., rules regulating the opportunities and limitations for former public officials once they have left their public role due to retirement or simply for new professional opportunities (see Table 2c). The main indications concern the length of the cooling-off period, the types of post-employment activities forbidden for public officials and politicians, and the sanctions imposed for a violation of revolving doors regulations.

Table 2c: Duties and obligations in terms of post-employment mechanisms

Post-employment mechanisms	• Cooling-off period • Types of activities forbidden or restricted • Sanctions and punishment in case of violation

Table 2d: Remedial actions and sanction modes

Remedial actions and sanctions	Remedial actions:
	
	• Strategies focusing on private interests
	  o Divestiture or alienation of an external interest
	  o Resignation from an outside position
	  o Establishing a blind trust
	• Strategies focusing on a public official
	  o Recusal
	  o Reassignment
	  o Voluntary/involuntary service termination

	Sanctions:
	
	• Disciplinary offence
	  o Reprimand or warning
	  o Withholding part of the salary
	  o Suspension of the right to promotion
	• Administrative offence
	  o Pecuniary fines
	  o Compensation for damages
	  o Return of proceeds
	  o Forfeiture of property
	• Criminal offence
	  o Criminal fines
	  o Incarceration
	  o Confiscation of profits and property
	  o Bar on holding future public office
	• Complementary sanctions
	  o Sanctions for parties associated with the violation
	  o Sanctions for supervisors or managers
	  o Sanctions for not reporting or resolving conflict of interest situations
	  o Sanctions for accepting or holding prohibited private interests or positions

As shown in Table 2d, the fourth sub-section identifies the types of remedial actions and sanctions, distinguishing between a focus on the private interests or the public roles of these actors. It then digs deeper into the administrative and penal sanctions that can be delivered.

Finally, it analyses the complementary sanctions applicable to those violating the conflict of interest regulations. This includes sanctions for business people associated with a violation or supervisors who fail to meet their obligations.

Finally, the third section (see Table 3) deals with the regulation of gifts, gratuities and hospitality. This section presents the prohibitions and thresholds identified in the legislative systems for gifted goods and the procedures for managing their disposal.

Table 3: Managing gift giving

Gratuities, gift giving and hospitality	• Definition and threshold and prohibitions for:
	  ○ Gifts
	  ○ Gratuities
	  ○ Hospitality
	• Gift management system:
	  ○ Procedures for handling received gifts
	  ○ Public bodies entitled to receive gifts

2 South Korea

2.1 Context

In the last 10 years, South Korea has seen various judicial cases involving accusations of corruption and conflict of interest. First, the investigations into the sinking of the Sewol ferry in April 2014, which resulted in 304 deaths, uncovered a situation of "revolving doors"[2] between regulatory agencies and the private sector which presumably resulted in inadequate safety standards and oversight.[3] This case disclosed the informal ties characterising the South Korean shipping industry, concretely the connections of the business players with the

[2] With the term "revolving doors", we refer to the movement of mid- and high-ranking public officials from the public to the private sector, and vice versa.

[3] Lee, D. S. (2016). South Korean anti-graft law misses revolving door. *Nikkei Asia*. https://asia.nikkei.com/Politics/David-S.-Lee-South-Korean-anti-graft-law-misses-revolving-door; Yu, K.-H., Kang, S.-D., & Rhodes, C. (2020). The Partial Organization of Networked Corruption. Business & Society, 59(7), 1377–1409. https://doi.org/10.1177/0007650318775024.

public actors responsible for safety checks and ship verifications.[4] The investigations have implicated two shipping trade organisations responsible for vessel safety checks and the Korean Register involved in certifying vessels.

In a second case, accusations of corruption, conflict of interest and gift giving led to the impeachment of former South Korean President Park Geun-hye and the arrest of the acting head of Samsung, Jay Y. Lee, in 2017. In this case, former President Park was convicted of receiving more than USD 20 million from the so-called "*chaebols*", i.e., the family-run business conglomerates dominating the South Korean economy. On top of the original conviction for bribery, in 2019 ex-President Park and Jay Y. Lee were retried in court as revelations about Samsung's gifting of three horses worth USD 2.8 million to the daughter of a member of then-President Park's inner circle were also considered as an additional bribery crime.

Finally, in 2020, the media disclosed a real estate speculation plot involving Korea Land and Housing Corporation officials. Officers of this corporation, responsible for public land development and housing construction, were alleged to have exploited insider information to purchase land worth more than USD 8 million in two areas before they were announced as the sites for new major housing development projects.[5]

These judicial cases made regulating conflict of interest a political priority as the revelations involving clientelism, gift giving and revolving doors stained the reputation of the otherwise prosperous South Korean state. Thus, the *Improper Solicitation and Graft Act,*[6] which came into effect in September 2016, was sparked by the Sewol ferry investigation[7] while the 2021 *Act on the Prevention of Conflict of Interest Related to Duties of Public Servants* [8]

[4] Kim, J., & Park, J. (2014). Korea ferry disaster exposes cozy industry ties, soft penalties. Reuters. https://www.reuters.com/article/us-korea-ship-blame-idUSBREA3T05720140430;

[5] ACRC. (2021). The Act on the Prevention of Conflict of Interest in Public Office drafted by the ACRC was passed. ACRC. https://acrc.go.kr/board.es?mid=a20301000000&bid=62&tag=&act=view&list_no=13098&nPage=9; Kim & Chang. (2021). National Assembly Passes Conflict of Interest Act. https://www.kimchang.com/en/insights/detail.kc?sch_section=4&idx=23374; Wu-sam, S. (2021). National Assembly passes conflict of interest bill, 8 years after its introduction. https://english.hani.co.kr/arti/english_edition/e_national/993401.html;

[6] See the text of the Improper Solicitation and Graft Act at: https://elaw.klri.re.kr/eng_service/lawView.do?hseq=41954&lang=ENG;

[7] Lee, D. S. (2016). South Korean anti-graft law misses revolving door. *Nikkei Asia*. https://asia.nikkei.com/Politics/David-S.-Lee-South-Korean-anti-graft-law-misses-revolving-door

[8] See the text of the Prevention of Conflict of Interest Act at: https://elaw.klri.re.kr/eng_service/lawView.do?hseq=57427&lang=ENG;

(subsequently: *Prevention of Conflict of Interest* Act) gained new momentum after the land speculation scandal. [9]

These two Acts are complemented by the *Code of Conduct for Public Officials*[10] (approved in 2003 and significantly reformed in 2010) and the *Public Service Ethics Act*[11] (approved in 1981 and repeatedly amended in subsequent years). The former prescribes the standards of conduct that public officials must obey. The latter seeks to strengthen the ethics of public officials by preventing a conflict of public and private interests through property registration and disclosure.

2.2 Defining conflict of interest

Altogether, the South Korean legal framework addresses both actual and potential conflicts of interest. Article 2 of the Prevention of Conflict of Interest Act specifies that "conflict of interest" refers to situations where the private interests of public officials compromise – or are likely to compromise – the adequate performance of their duties.

The South Korean legal framework protects the public sphere from conflict of interest risks arising from both financial and non-financial private interests. While the *Public Service Ethics Act* focuses almost entirely on financial interests, the *Code of Conduct for Public Officials* covers the risks arising from private relations with relatives, acquaintances or former colleagues. Furthermore, public officials are obliged to report the ownership and purchase of real estate property according to the *Prevention of Conflict of Interest Act,* which also includes the requirement to disclose work activities conducted in the private sector, and to report personal contact with retired public officials.

The scope of the *Prevention of Conflict of Interest Act* is broad. It includes national institutions (e.g., the national assembly, courts and central administrative agencies), local authorities

[9] This Act had first been submitted by the Anti-Corruption and Civil Rights Commission (ACRC) in 2013 to the 19th National Assembly. It was finally passed into law eight years later by the 21st National Assembly, with a favourable vote of 248 out of 252 attending lawmakers See: Wu-sam, S. (2021). National Assembly passes conflict of interest bill, 8 years after its introduction. https://english.hani.co.kr/arti/english_edition/e_national/993401.html; ACRC (2021). The Act on the Prevention of Conflict of Interest in Public Office drafted by the ACRC was passed. https://acrc.go.kr/board.es?mid=a20301000000&bid=62&tag=&act=view&list_no=13098&nPage=9#:~:text=The%20Bill%20on%20the%20Prevention,finally%20came%20to%20the%20fruition.; Kim & Chang. (2021). National Assembly Passes Conflict of Interest Act. https://www.kimchang.com/en/insights/detail.kc?sch_section=4&idx=23374

[10] See the text of the Code of Conduct for Public Officials at: https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=49321&type=part&key=5;

[11] See the text of the Public Service Ethics Act at: https://elaw.klri.re.kr/eng_service/lawView.do?hseq=45491&lang=ENG;

(e.g., executive organs and legislative councils), as well as educational administrative agencies, bureaucratic administrations and public schools.

The *Prevention of Conflict of Interest Act* includes a wide-ranging list describing those who fall under the category of "public servants." These include central state and local-level public officials, the heads of those public institutions listed under *Article 3-2 of the Public Service Ethics Act* – e.g., Bank of Korea, public enterprises and organisations receiving contributions from central and local governments – and public institutions under Article 4 of the Act on the Management of Public Institutions, as well as teachers and staff of national and public schools.

High-ranking public servants are given special attention as these actors are forbidden from performing their duties when an actual or potential conflict of interest is present., The high-ranking public servants that are identified under the *Prevention of Conflict of Interest Act* are the President and the Prime Minister; the members of the National Assembly; the heads of local governments; foreign service officials; judges in high courts; and prosecutors in the Supreme Prosecutors' Office.

2.3 Conflict of interest management system

2.3.1 Monitoring bodies and functional roles

The South Korean conflict of interest framework follows the model of a strong central dedicated agency with ethics officers in line ministries and other government agencies. This agency, the Anti-Corruption and Civil Rights Commission (ACRC), is responsible for coordinating the design and implementation of the systems to manage conflict of interest. In exercising its functions, it is supported by dedicated conflict of interest prevention officers, who are responsible for applying the relevant legal framework in each governmental and administrative body.

Since its establishment in 2008 through the *Act on the Prevention of Corruption,*[12] the ACRC has played a crucial role in building the infrastructure to address conflicts of interest. In 2010, the ACRC was mandated to reform the *Code of Conduct for Public Officials* and align it with Article 8 of the *Anti-Corruption Act*, which includes critical matters such as the prohibition to

[12] See the text of the Anti-Corruption Act at: https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=59638&type=part&key=5;

all public officials from receiving entertainment, money or goods from any person related to their duties, as well as intervening in personnel affairs, influence peddling or soliciting another person for their good offices. In 2012, the ACRC led the introduction of a legislative bill on gift giving and hospitality to the National Assembly, which became the *Improper Solicitation and Graft Act*. Additionally, the Commission spearheaded the *Prevention of Conflict of Interest Act*.

The ACRC also has a technical role in managing situations of conflicts of interest. As per Article 17 of the *Prevention of Conflict of Interest Act*, the ACRC can formulate and implement a plan to prevent conflicts of interest among public servants, which serves as a reference for the activities of all public bodies. In addition, the ACRC assists public entities in receiving and processing public officials' reports and declarations.

Moreover, the *Code of Conduct for Public Officials* states that the ACRC is to be notified by agency heads when they establish or amend their codes of conduct. Where the codes are inappropriate or incoklete, the ACRC can recommend specific actions.

The institutional architecture built around the ACRC is complemented by the tasks assigned to governmental and administrative agencies at the central and local levels of the state. The *Code of Conduct for Public Officials* places the responsibility for managing the Code of Conduct for their respective institutions on servants and managers heading, among others, central administrative agencies, executive organs of local governments, local councils and education institutions.

The 2021 *Prevention of Conflict of Interest Act* mandates that all public agencies and institutions must appoint a Conflict of Interest Prevention Officer. This new role involves, among other tasks, providing guidance regarding conflict of interest prevention procedures, managing reports on persons related to their private interests, receiving recusal reports on the possession or purchase of real estate and disclosing information concerning high-ranking public officials. The Act makes the appointment of a Conflict of Interest Prevention Officer mandatory for many public entities, such as national institutions, local authorities, educational administrative agencies, bureaucratic administrations and public schools.

2.3.2 Declaration and registration mechanisms

The *Public Service Ethics Act* identifies the properties that public officials must declare, such as real estate, mining rights, movables, securities and debts. The legal requirement to report extends to properties belonging to a spouse or lineal ascendants and descendants. The Act states that public officials shall register owned property no later than two months after

entering office or starting a new position. Changes in the registered properties taking place during any given calendar year shall be reported no later than the end of February of the following year. This rule applies to a broad range of actors, including, among others, state public officials in political service for national and local governmental institutions, high-ranking state public officials, local public officials, judges and public prosecutors and presidents and vice presidents of universities and graduate schools.

The 2021 *Prevention of Conflict of Interest Act* made the reporting requirements stricter. When public servants become aware that persons related to their duties are tied to private interests, they have to file a report to the head of the institution within 14 days of becoming aware of the situation (Article 5). When public servants, or their spouse or a lineal ascendant/descendant, possess or purchase real estate related to the duties of public institutions (e.g., a building rented to a public entity), the public officials have to report this to the head of the institution within 14 days of becoming aware of the situation or from the date of completing the property's registration (Article 6). When public servants become aware that they, their spouse, their lineal ascendants/descendants or related business entities have been engaged with a person that relates to their public duties, they have to report the situation to the head of the institution within 14 days of becoming aware of it (Article 9).

The legal framework also regulates pre-employment conditions. Article 10-2 of the *Public Service Ethics Act* determines that a person wanting to be a candidate for President, member of the National Assembly, head of a local government or member of a local council has to register their property before the end of the preceding year.

The second provision stems from Article 9 of the *Prevention of Conflict of Interest Act*, which regulates the disclosure of high-ranking public servants' activities in the private sector. Specifically, information should be disclosed on the name of any corporation for which a high-ranking public servant has served and the details of their duties, any role performed as agent, consultant or advisor and any additional information about business and profit-making activities undertaken by the high-ranking public official. This information must be submitted to the competent head of the institution within 30 days of the appointment or commencement.

Along with these requirements, the 2021 *Prevention of Conflict of Interest Act* determines other limitations for the activities of public officials. Specific limits are introduced for outside activities, the employment of family members and the conclusion of negotiated contracts. Prohibitions are imposed on the private use of goods and public institutions, the making of profit from these and the use of confidential information in performing duties.

2.3.3 Revolving doors regulations

The *Public Service Ethics Act* regulates post-employment terms and revolving doors dynamics. In this regard, no former public official shall be employed by for-profit private enterprises, law, accounting and tax accounting firms, foreign legal consultant offices, marked-based public corporations or educational foundations and private schools within three years of retirement. The functional roles subjected to these limitations include those related to providing financial assistance (including allocating or paying grants, incentives and subsidies); the issuing of authorisations, permissions and licenses; tasks for undertaking inspections and audits; and duties related to assessment, imposition and tax collection.

Other limitations for retired public officials and servants include that no public official, executive officer or employee of a public service-related organisation may request an unfair favour or assistance from executives or employees of an agency with which they were affiliated before retirement.

2.3.4 Remedial actions and sanctions

Violating duties and restrictions can lead to remedial actions, administrative fines or sanctions on public servants. The scope and detail of the sanctioned behaviours specified in the Korean legal framework are extensive. Some of these corrective mechanisms force public officials to alienate financial or business interests to address a conflict of interest. For example, Article 14-4 of the *Public Service Ethics Act* requires public officials – when they and their partners have stocks of a certain value – to either sell the stocks or create a trust.

Other remedial actions limit the tasks and functions of public servants in situations of conflict of interest. Article 22 of the *Public Service Ethics Act* states that competent public service ethics committees may demand the dismissal or discipline of a public official, executive officer or employee of a public organisation when they fail to abide by the rules, such as if they fail to register their property or report changes to it.

The *Public Service Ethics Act* identifies the administrative fines applicable to public servants. Any person who performs the duties of an agency with which they were affiliated in violation of the restrictions on the activities of retired public officials shall receive a maximum administrative fine of KRW 50 million (approx. USD 38,000). Those who submit false data in response to a request for vindication by the relevant public service ethics committee shall be punished by an administrative fine not exceeding KRW 20 million (approx. USD 15,000). Furthermore, a penalty not exceeding KRW 20 million (approx. USD 15,000) applies to a person who fails to vindicate or submit requested materials without good cause and the same

fine also applies to the head of an institution that rejects a request to submit data. Finally, an administrative fine not exceeding KRW 10 million (approx. USD 7,000) applies to persons who fail to submit a statement as well as to the head of an institution which rejects a demand for dismissal.

Criminal penalties can be imposed on public officials who fail to comply with their obligations. The *Public Service Ethics Act* indicates that when they fail to register a property without any justifiable reason, they shall be imprisoned for a maximum of one year or a maximum fine of KRW 10 million (approx. USD 7,000). It also states that when candidates for public office fail to submit a report on any property without justifiable reason, they are to be imprisoned for a maximum of six months or pay a maximum fine of KRW 5 million (approx. USD 4,000). When a person fails to sell held stocks or place them into a trust, they are imprisoned for one year or pay a maximum fine of KRW 10 million (approx. USD 7,000). When the head of an institution, organisation or enterprise submits a false report or fails to submit a report, they are imprisoned for one year or pay a maximum fine of KRW 10 million (approx. USD 7,000). Finally, retired persons engaging in a business they are directly involved in during their service are to be imprisoned for a maximum of two years or a maximum fine of KRW 20 million (approx. USD 15,000). The same applies to those who requested an unfair favour from an agency official with whom they were affiliated before retirement.

The 2021 *Prevention of Conflict of Interest Act* completes this framework. Article 7 states that the head of an institution must act where a public servant's duties is deemed compromised by a conflict of interest situation. Such actions may include:

- Ordering the temporary suspension of the performance of duties;
- Designating a person to perform tasks on behalf of or jointly with the public servant;
- Reassigning the responsibilities to another public servant;
- Transferring the public servant to another office or task.

The *Prevention of Conflict of Interest Act* states that a maximum administrative fine of KRW 30 million (approx. USD 23,000) should be delivered to public servants who order, induce or connive in the employment of their family member or order, induce or connive in the conclusion of a negotiated contract with a related person. The same administrative fine applies to persons who refuse to submit materials, make an appearance or a statement or submit a written statement. An administrative fine not exceeding KRW 20 million (approx. USD 15,000) is given to public servants who fail to file a report on persons related to private interests, the possession and purchase of real estate and transactions. The same administrative sanction applies to individuals who engage in outside activities related to their

duties, use or profit from the goods and information of a public institution for personal purposes, and fail to implement a decision to take appropriate measures. Finally, an administrative fine of up to KRW 10 million (approx. USD 7,000) applies to high-ranking public servants who fail to submit the details of their activities and public servants who fail to file a report on personal contact with a retiree of the affiliated institution who is a person related to their duties.

For the penal sanctions, the *Prevention of Conflict of Interest Act* states that public servants who acquire or allow a third party to acquire goods or property gains using confidential information obtained while performing official duties shall be punished by imprisonment for up to seven years or a maximum fine of KRW 70 million (approx. USD 53,000). For a person who is provided with any information by or from a public servant while knowing that it is confidential and uses such information to acquire goods or property gains, the sanction is fixed in imprisonment for up to five years or by a fine not exceeding KRW 50 million (approx. USD 38,000). A punishment of imprisonment of up to five years and a fine not exceeding KRW 50 million (approx. USD 38,000) applies to individuals who reveal personal information on a reporting person to others. Persons who hinder the filing of a report shall be imprisoned for up to two years or a fine not exceeding KRW 20 million (approx. USD 15,000). Finally, imprisonment up to three years or a fine not exceeding KRW 30 million (approx. USD 23,000) shall be imposed on:

- public servants who use confidential information for personal benefits
- persons who take a disadvantageous measure against a reporting person or fail to take protective measures to support them,
- persons who divulge confidential information obtained while performing duties.

2.4 Gratuities and gift giving

The culture of gift giving is deeply rooted in South Korean society. Koreans enjoy giving gifts and supporting others. For example, providing family members, friends, colleagues and business partners with small cash gifts during weddings or funerals is customary. Significant holidays, such as Seollal (Lunar New Year) and Chuseok (aka the Korean Thanksgiving), also provide an occasion to give gifts to business partners, colleagues and clients. These can include items such as gift cards, fruit, wine, tea sets or exotic foods. Paying restaurant bills and giving gifts and cash donations are also customary practices between counterparts when doing business. There is also a Korean term – *ttokkap,* which can be translated as 'rice-cake expenses' – indicating the money offered to buy rice cakes. Traditionally, this money was offered to show hospitality and gratitude and is now considered essential for

nurturing business relations. An entire industry around this traditional practice has emerged, comprising flower shops, restaurants and gift box producers.

Despite its social roots, the gift-giving tradition has problematic implications for the South Korean economy and politics. These negative impacts have been the primary motivation for the legislative efforts to regulate this issue via codes of ethics and dedicated laws. In this regard, the *Code of Conduct of Public Officials* gives clear definitions about what is meant by gift giving. First, it defined the term "gift" as goods, marketable securities, lodging, tickets, membership cards, admission tickets or other equivalents offered without solicitation of any favour. Separately defined is the "gift of entertainment" which includes cuisine, golf trips, transportation and accommodation facilities. The Code established that public servants should not receive money, valuables, real estate, gifts or entertainment. They shall also not accept cash and other articles from other officials, past duty-related persons and officials in connection with past duties. At the same time, the Code states that the public servants shall also prevent the spouse and lineal ascendants/descendants from receiving money and other prohibited articles.

The Code defined the duties to be followed by low- and high-level public officials when they become aware of instances of gift giving and improper solicitations. Specifically, when these officials receive an improper solicitation, they shall notify the individual who offered the solicitation that this is an improper proposal and the offer should be rejected. In this situation, the public official must return the illegally gifted goods or money. If the proposal is repeated more than once, the public official must report the fact to the head of the institution. Improper solicitation must also be notified when a public official becomes aware that their spouse has received prohibited money or goods, a promise or an expression of intention to offer such advantages. Affected public officials must report gift giving cases and improper solicitations to a supervisory institution, the Board of Audit and Inspection, an investigative agency or the ACRC.

The legal framework to address gift giving was finalised in 2016 with the approval of the *Improper Solicitation and Graft Act*. This Act defines the different types of "gifts", such as financial interests, entertainment, accommodation and other tangible and intangible benefits. It states that public servants shall not allow an improper solicitation to influence their performance in their official roles; it also prohibits offering anything of value to public officials when the action is related to their formal duties. When not associated with a public official's duties, the Act sets caps for accepting gifts of KRW 1 million (about USD 760) per instance or KRW 3 million (about USD 2,000) in aggregate per fiscal year.

As relevant public bodies, to which its provisions are applicable, the *Improper Solicitation and Graft Act* lists constitutional institutions, central administrative agencies, local governments, municipal or provincial offices of education, public service-related organisations, private and public schools of various levels and educational corporations. Regarding individuals, the principles of the Improper Solicitation and Graft Act apply to public officials of national and local government, heads of organisations and institutions related to public service, directors and faculty members of schools of each level, representatives, executive officers and employees of the press organisations.

Moreover, the *Improper Solicitation and Graft Act* defines 15 types of solicitation that are considered illegal. This is an exhaustive list; which means that if an activity does not fall under it, it does not violate the law. Among those identified by the Act, the most significant solicitations are those aimed at obtaining:

- The processing of authorisations, permissions, licenses, patents, approvals, inspections, qualifications, tests, certifications or verifications;
- The mitigation or remittance of administrative dispositions or punishments;
- The exertion of influence for the appointment, promotion, assignment or reassignment of public servants;
- The disclosure of confidential information on tenders, auctions, patents, military affairs and tax documents.

Concerning the definition of a gift-giving threshold, the Act imposed the so-called "3-5-10" restriction. This threshold specified that food, drinks and snacks would only be permitted up to KRW 30,000 (approx. USD 23), gifts up to KRW 50,000 (approx. USD 40), congratulatory, condolence money, flowers and wreaths up to KRW 100,000 (approx. USD 80) in value. This maximum value includes VAT but not shipping expenses. Any items in the same category will contribute to determining the total accepted value. So, if food and drinks were to be provided with gifts, then the maximum value permitted for all items combined would be KRW 50,000 (approx. USD 40), as long as the value of the food and drinks does not exceed KRW 30,000 (approx. USD 23).

Although Koreans favourably welcomed the approval of the *Improper Solicitation and Graft Act*, they also viewed these limitations as too strict. Overall, complaints and protests came from business people, such as restaurant or flower shop owners, who claimed their businesses had a significant contraction due to the restrictions.

Therefore, decision-makers revisited the Act in December 2017. The price limits on gifts comprising at least 50 per cent of agricultural or fisheries products were doubled to KRW

100,000 (approx. USD 80) and the allowance for congratulatory or condolence money fell to KRW 50,000 (approx. USD 40). In 2021, the limits were relaxed further: the limits on gifts of agricultural, livestock and fisheries products were increased to KRW 200,000 (approx. USD 160) for weeks corresponding to the Lunar New Year and Chuseok holidays. A further amendment in January 2022 specified the validity period of these new limits as ranging from 24 days before these holidays until five days after their conclusion.

The *Improper Solicitation and Graft Act* defines the applicable sanctions. Any person soliciting a public official or relevant person through the mediation of a third party is subject to a fine for negligence not exceeding KRW 10 million (approx. USD 7,500). A person who improperly solicits the public official for another person can receive a penalty for negligence of a maximum of KRW 20 million (approx. USD 15,000); if the intermediary is a public official, this sum can be increased to KRW 30 million (approx. USD 23,000). Finally, a public official who violates the prohibitions of performing their duties under the condition of improper solicitation is to be punished with two years of imprisonment or a fine not exceeding KRW 20 million (approx. USD 15,000).

3 Brazil

3.1 Context

In the last decades, Brazil has built an advanced legal framework for preventing and managing situations of conflict of interest. Currently, this framework consists of a law dealing specifically with conflict of interest, which is complemented by other acts, codes and regulations that govern reporting mechanisms, remedial actions and sanctions, hospitality and gift-giving thresholds, and post-employment obligations.

This process began in the mid-1990s with the approval of laws regulating civil servants' and politicians' activities and duties, such as Law 8.429/1992[13] and Law 8.730/1993.[14] Then, the *Code of Conduct for the High Federal Administration*[15]*,* approved in 2000, established the

[13] See the text of the Law 8.429/1992 at: http://www.planalto.gov.br/ccivil_03/leis/L8429.htm;

[14] See the text of the Law 8.730/1993 at: https://www.planalto.gov.br/ccivil_03/leis/l8730.htm;

[15] See the text of the Code of Conduct for the High Federal Administration at: https://www.gov.br/planalto/pt-br/assuntos/etica-publica/legislacao-cep/codigo-de-conduta-da-alta-administracao-federal;

basic rules on the conflict between public and private interests and the limitations on professional activities once officials have left public office. The legal framework has been complemented and strengthened with Law 12.813/2013,[16] which defines the dispositions for addressing conflicts of interest of public officials working for the federal executive power. Finally, Decree 10.889/2021[17] regulates the subject of gift giving, gratuities and hospitality.

Despite the pre-existence of a legal framework governing conflicts of interest, numerous judicial cases have erupted in the past 20 years. These scandals can be viewed as the backdrop against which the Brazilian conflict of interest policy-making process emerged and evolved. The most famous of these judicial cases is the Lava Jato scandal, which came to light in the second half of the 2010s and involved numerous politicians, bureaucrats, state-owned enterprises and business conglomerates in Brazil and throughout Latin America.[18] This scandal showed the harmful impact of high-level corruption and conflict of interest in the oil and gas and infrastructure sectors.

3.2 Defining conflict of interest

Law 12.813/2013 states that conflict of interest risks arise in connection to both financial and non-financial motivations and involve social ties connecting public officials with families and business people. The law regulates the situations constituting a conflict of interest, the restrictions for public officials who have access to privileged information, and the transgressions that would impede the exercise of a position in public office.

The law defines a conflict of interest as a situation generated by the confrontation between public and private interests, which may compromise the collective good or improperly influence the performance of general duties. The law addresses both actual and potential conflict of interest situations.

The Brazilian legal framework identifies the circumstances constituting a situation of conflict of interest. Those circumstances include the disclosure of confidential information obtained due to a public position and the engagement in activities that involve the provision of services

[16] See the text of the Law 12.813/2013 at: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12813.htm;
[17] See the text of the Decree 10.889/2021 at: https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2021/decreto/d10889.htm;
[18] Costa, J. (2022). The nexus between corruption and money laundering: Deconstructing the Toledo-Odebrecht network in Peru. *Trends in Organized Crime*. https://doi.org/10.1007/s12117-021-09439-6;

to an external legal entity interested in a decision by the public agent. Similarly, performing an act for the benefit of a legal entity in which the public agent – or the spouse, partner or relatives, in a direct or collateral line, up to the third degree – has a benefit or interest also represents a conflict of interest. This is also true for exercising activities incompatible with the formal position and providing services to companies whose activities are controlled by the entity to which the public agent is linked.

The scope of the law is broad, as established by the conjunction of articles 2 and 10 of the Law: all the public servants at the state's different administrative and political levels are subject to it, including ministers of state, presidents, vice presidents, directors of public foundations and SOEs, and senior managers.

3.3 Conflict of interest management system

3.3.1 Monitoring bodies and functional roles

In Brazil, two main entities are responsible for the conflict of interest management system, namely the Public Ethics Commission and the Federal Comptroller General. Article 8 of Law 12.813/2013 states that the two bodies are in charge of determining rules, procedures and measures for preventing or eliminating situations of conflict of interest. Other tasks concern the management of the controversies about the interpretation of the legal framework concerning conflict of interest and the authorisation for public officials to carry out private activity.

The main difference between the two bodies is their scope. The Public Ethics Commission is responsible for public officials in high administrative roles such as ministers, directors, while the Federal Comptroller General is responsible for the non-high-level public officials of the federal power.

As stated by the Inter-Ministerial Disposition n. 333/2013,[19] consultations about a conflict of interest are held with the Federal Comptroller General. According to Law 8.730/1993, the Office of the Federal Comptroller General shall receive the disclosure of interests of all federal public officials within the executive branch.

[19] See the text of the Disposition n. 333/2013 at: https://repositorio.cgu.gov.br/bitstream/1/44844/16/PORTARIA%20INTERMINISTERIAL%20N%c2%ba%20333.pdf;

After introducing the mechanisms to prevent conflict of interest with Law 12.813/2013, the Federal Comptroller General has developed the Electronic System for Preventing Conflict of Interest.[20] This tool has enabled public officials to electronically send their requests for consultation and approval of private external activities.

The Public Ethics Commission manages conflict of interest situations for high-level public servants and plays an advisory role to the President and the Ministers on public ethics. According to the *Code of Conduct for the High Federal Administration*, this body is responsible for managing the application of the Code and resolving doubts about situations of conflict of interest.

Interpretative Resolution n. 8/2003 specifies that public bodies must inform the Public Ethics Commission about each conflict of interest situation that may arise concerning high-level officials and the Public Ethics Commission is to give an opinion on the relevant measures to be adopted. Law 12.813/2013 reaffirms the Commission's role in controlling conflicts of interest for high-level public servants, who shall share asset declarations and information about their business interests. In addition, the public servants have to update the Commission on any changes in their assets and shares; in case of doubts, the Commission can also demand additional evidence.

3.3.2 Declaration and registration mechanisms

Brazil has considerable experience in designing tools and procedures for declaring assets and relations of public officials. Since the 1990s, Laws 8.429/1992 and 8.730/1993 have represented the cornerstones of the declaration mechanisms. Article 2 of Law 8.730/1993 mandates that a broad range of public servants declare their real estate properties, shares and securities, rights over motor vehicles, vessels or aircraft, money and financial investments. Additionally, the law demands that public officials declare their roles as directors exercised in private or public sector companies in the two years prior to occupying public office.

[20] For more information on SeCI, please see at: https://seci.cgu.gov.br/seci/Login/Externo.aspx?ReturnUrl=%2fseci%2fSite%2fDefault.aspx;

Normative Instruction TUC 67/2011 [21] provides additional details to the duties already indicated by the 1993 law, clarifying that all public servants shall annually declare their assets and incomes to their agency. Declarations must also be made upon the official's inauguration, entry into office, end or termination of the contract, and when requested at the discretion of the internal control body or the Court of Accounts.

Building on this previous legal framework, Law 12.813/2013 specifies the duties of public servants to a) declare their financial situation, shares and professional activities; b) identify any spouse, partner or relative, by blood or marriage, in a direct or indirect line, up to the third degree, involved in the exercise of activities that may give rise to a conflict of interest; c) communicate to the Public Ethics Commission or the human resources unit of the respective body the exercise of a private activity or the receipt of a job proposal.

Public officials can update their annual asset declarations independently or authorise the Office of the Comptroller General and Court of Accounts to access the annual tax form from the Revenue Service directly. The Office of the Comptroller General receives the disclosures of all the federal public officials within the executive branch. In contrast, the Court of Accounts receives the financial disclosures of high-level public officials, such as the President of the Republic and the Ministers of State.

3.3.3 Revolving doors regulations

The *Code of Conduct for High Federal Administration* defines the basic rules limiting public officials' professional activities after their term has been served. The Code prohibits former public officials from: a) acting on behalf of an individual or legal entity in a process or business in which they have participated as a public servant; b) providing advice to individuals or legal entities; c) using information not publicly disclosed regarding the programmes or policies of the federal administration body to which they were linked in the six months before the end of the public service.

The Code also states that, in the absence of a law providing for a different period, the interdiction period for activities incompatible with the position previously held will be four months, starting at the time of dismissal.

[21] See the text of the Normative Instruction TUC 67/2011 at: http://www.progep.ufu.br/sites/proreh.ufu.br/files/conteudo/legislacao/leg_instrucao_normativa_tcu_no_67_-2011.pdf;

Furthermore, Law 12.813/2013 regulates the revolving doors subject for the servants of the federal state. These actors are forbidden from disclosing and using information obtained to exercise their functions. Additionally, in the six months following the conclusion of their contract, they are prohibited from providing any service to an individual or legal entity with whom they have established a relevant relation due to their formal position. Furthermore, they cannot develop a professional relationship with an individual or legal entity that performs activities related to their area of competence or intervene in favour of a private interest before the body in which they had held a position.

3.3.4 Remedial actions and sanctions

The Brazilian legal framework on conflict of interest has different remedial actions and sanctions for rule-breaking. Law 8.730/1993 states that the failure to submit the declaration of goods and relations will result in a crime of responsibility for the President and Vice-President of the Republic, the Ministers of State and other high-ranking authorities, and in a political-administrative infraction, functional crime or serious disciplinary misconduct for the other low- and mid-ranking public officials.

The 2000 *Code of Conduct for High Federal Administration* states that violations of the rules entail specific measures, such as a warning or ethical censorship. These sanctions are to be implemented by the Public Ethics Commission, which, depending on the case, may forward a suggestion of dismissal to the competent authority.

The Public Ethics Commission, ex officio or due to a complaint, investigates a violation of the Code's provisions. Interpretative Resolution n. 8/2003 – which specifies the operative substance of the Code of Conduct – lists the remedial measures applicable to resolve a conflict of interest risk. Among others, these measures include giving up the activity or leaving the position. In cases where the conflict of interest arises out of a non-transitory circumstance, such as ownership of problematic assets, the resolution dictates disposing of the ownership of the assets or transferring the management thereof to financial institutions or the securities portfolio managers. In the event of a transitory conflict of interest, the public official should communicate the situation to the hierarchical superior or the other members of a collective body and, in the case of a joint decision, abstain from voting or participating in all discussions where the conflict of interest would be relevant. At the same time, the public official shall disclose the schedule of appointments and identify activities unrelated to the public function.

On top of that, Article 12 of Law 12.813/2013 has added violations of the conflict of interest rules as one of the instances where disciplinary penalties are applicable for public officials,

autonomous entities and public foundations, as provided for in Article 127 of Law 8.112/1990. Those penalties include, depending on the nature and gravity of the offence, warnings, suspensions, dismissals, cancellation of retirement, dismissal from a commission and removal from functions.

3.4 Gratuities and gift giving

The legislation on gift giving and hospitality forbids public officials from receiving gifts, transportation, accommodations, compensation or any other favours and accepting invitations for luncheons, dinners and social events. Officials may participate in workshops, conferences or similar circumstances if the organisers have no potential interests that could be exploited in relation to the officials' functions. There are two exceptions: if the giver is a family member or personal friend or when foreign authorities make the offer under diplomatic circumstances.

The 2000 *Code of Conduct for High Federal Administration* indicates that government officials must refrain from accepting presents or benefits when the offeror is any individual or company that is subject to the jurisdiction of the agency for which the government official works; has any personal, professional or corporate interests with the governmental official; maintains a business relationship with the agency in which the official provides services; and represents third parties that have interests with the agency in which the official is employed.

Following the Code, public officials may accept small gifts given for advertisement or the celebration of events of historical and cultural nature, but their total value per company may not exceed BRL 100 (approx. USD 20) per year. Moreover, the gifts' distribution must be generalised (that is, not offered specifically to the public official), and the gifts must not be offered more than once every year to the same governmental official.

The rules on the issue of gift giving and hospitality have been recently renewed by Decree n. 10.899/2021, which covers functional roles that are determined via election, appointment, designation or hiring in the federal executive power. The Decree defines the types of gratuities, i.e., hospitality, *brinde* (small gift) and *presente* (normal gift). The first is an offer of service or expenses in transport, food, accommodation, courses, seminars, congresses, fairs or entertainment activities granted by a citizen or business person to a public servant in the institutional interest of the body in which it operates. The second (*brinde*) is an item of low economic value distributed as a courtesy or advertising. The third type (*presente*) is a good, service or advantage received from anyone interested in the public servant's decision. Expenses for transportation, food, accommodation, courses, seminars, congresses, events,

fairs or entertainment activities granted by a private agent to a public official but not related to the exercise of functions fall into this category.

The Decree also provides for the creation – under the control of the Federal Comptroller General – of the Electronic System of Agendas of the Federal Executive Branch, also known as *e-Agendas*.[22] This system serves for registering and disseminating information on the meetings of the public officials covered by the Decree. Information is made available to the Public Ethics Commission, thus enabling its monitoring competencies as dictated in Law 12.813/2013.

Regarding hospitality and gifts received from a private agent as a result of the public function, the Decree requires that public officials publish these details via e-Agendas: the position, role or public job occupied at the time of receipt; date of receipt; the good, service or advantage received; and the identification of the private agent. Information on travel carried out in the exercise of a public function where expenses are covered, in whole or in part, by a private agent must be registered via e-Agendas. Details include the purpose of the trip and its date, the place of origin and destination, and the value of the expense borne by the private agent.

The Decree forbids public servants of the federal executive branch from receiving *presentes* from anyone interested in their functions; at the same time, this disposition does not apply to low-value *brindes* (Article 17). When the refusal or immediate return of a gift is unfeasible, the public official must relinquish it – within seven days from the gift receipt – to the appropriate department of their entity, which will take the appropriate measures regarding its destination.

Hospitality may be granted, in whole or in part, by a citizen or entrepreneur, provided that it is authorised within the scope of the public entity. The authorisation must comply with the institutional interests of the entity and the potential risks to its integrity. The hospitality items must: be directly related to the purposes of the public office; be given under appropriate circumstances of a professional interaction; have a value compatible with the standards of the federal public administration; and not involve a personal benefit to the public servant. The citizen or entrepreneur may pay out hospitality in compensatory amounts directly to the

[22] See more information on the e-Agendas at: https://eagendas.cgu.gov.br/;

public official if the competent authority authorises this. Finally, the public servant may not receive remuneration from a private agent due to the exercise of institutional representation.

4 The European Union

4.1 Context

The EU's institutional space has been greatly exposed to the risks of mismanagement of conflict of interest situations. For example, tensions have recently emerged between EU institutions and the Czech Republic because of a conflict of interest affecting Czech Prime Minister Andrej Babiš.[23] As stated by the EU legal framework, such a conflict of interest must be addressed by ensuring that Prime Minister Babiš no longer has interests falling within the scope of EU regulations.

The EU has also been affected by the "revolving doors" phenomenon involving commissioners and European parliamentarians. The case of the former Commission President José Manuel Barroso is interesting, having been appointed, after leaving his role, as non-executive chair and Brexit advisor at Goldman Sachs.[24] In addition, many Commissioners and Members of the European Parliament have been recruited by organisations that lobbied EU policymakers.[25]

The EU framework comprises a combination of regulations, namely Regulations n. 966/2012[26] and n. 2018/1046,[27] and codes of conduct. The regulations represent the reference for the legal efforts of the member countries. Meanwhile, the codes of conduct are the regulatory tools for operationalising the obligations of EU bureaucrats and politicians. These codes cover the definition of conflict of interest, restrictions on revolving doors, gift

[23] European Parliament. (2021). Conflict of interest and misuse of EU funds: The case of Czech PM Babiš. https://www.europarl.europa.eu/news/en/press-room/20210517IPR04145/conflict-of-interest-and-misuse-of-eu-funds-the-case-of-czech-pm-babis

[24] Guardian. (2018). European commission rebuked over ex-chief's Goldman Sachs job. https://www.theguardian.com/world/2018/mar/15/european-commission-rebuked-jose-manuel-barroso-ex-chiefs-goldman-sachs-job

25 Corporate Europe Observatory. (2022). Revolving Door Watch. Corporate Europe Observatory. https://corporateeurope.org/en/revolvingdoorwatch;

26 See the text of the Regulation n. 866/2012 at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:298:0001:0096:en:PDF;

27 See the text of the Regulation n. 2018/1046 at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1046&from=EN;

thresholds, procedures for declaring assets and financial interests, and remedial actions and sanctions.

The shape of the institutional architecture has influenced the design of this framework. The EU is supranational, and its legislative and regulatory activities also affect its member states. In this sense, the Union covers the conflict of interest issue for its own representative and bureaucratic bodies as well as those of the member states.

The alignment of interests between the EU space and the member states is a critical factor for innovation in the legal and regulatory framework. The states have a voice in the legislative process, given that the EU institutions have to consult them on directives and regulations.

The reform process is suitably supported by the technical skills of the EU bureaucracy, which is generally well prepared to implement this kind of reform. Indeed, the roles of bureaucratic bodies in the reform processes highlight that the EU is both a political and technical body. Approaching reform topics, such as targeted conflict of interest measures as technical issues make their discussion, approval and implementation easier.

4.2 Defining conflict of interest

Conflict of interest in the EU is treated as a financial issue related to efficient, impartial and transparent fiscal budget management; in fact, Regulation n. 2018/1046 applies to the Union's budget. These regulations then reverberate on the management of public procurement and staff contracts. As stated by Article 61 of Regulation n. 2018/1046, a conflict of interest situation exists where the impartial exercise of the functions of those involved in managing the European budget is compromised for reasons involving family, emotional life, economic interest or any other personal interest. In this sense, both financial and non-financial interests are considered as potentially detrimental to exercising the public duties of officials and politicians.

The scope of this legal framework has changed over time. Regulation n. 966/2012 did not cover the shared management between the EU and the member states, neglecting the functions related to the Structural and Cohesion Funds. More recently, Regulation n. 2018/1046 enlarged the scope of the conflict of interest regulations to any actor (both at the supranational and national level) involved in managing the EU budget. The rules now apply to direct and indirect management, member states' authorities and to any person implementing EU funds under shared management.

The EU legal and regulatory framework covers all types of conflict of interest – i.e., actual, apparent and potential. For instance, Regulation n. 2018/1046 explicitly covers actual and perceived conflicts of interest, stating that situations that "*may objectively be perceived as a conflict of interest*" should be addressed. The 2012 *Code of Conduct for Members of the European Parliament*[28] defines a conflict of interest as a personal interest that could influence the performance of the parliamentarians, indicating attention to actual and potential conflicts of interest. The 2014 *Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community*[29] states that the candidate for an official position shall inform the appointing authority of any actual or potential conflict of interest. The 2015 *Code of Conduct for the President of the European Council*[30] states that the President must avoid any situation which may give rise to a conflict of interest (iactual and potential), adding that they should also refrain from situations perceivable as a such (apparent conflict of interest). The 2018 *Code of Conduct for the Members of the European Commission*[31] states that the Commissioners should avoid any situation that may give rise to Conflicts of Interest or reasonably be perceived as such.

4.3 Conflict of interest management system

4.3.1 Monitoring bodies and functional roles

The EU institutional architecture is unique compared to the previous case studies, being a supranational entity established between the members via international treaties. As such, there is a lack of autonomous sovereignty and monopolising authority. The EU model for addressing conflicts of interest is not based on any centralised body. Instead, it builds on the collaboration between the bodies within each branch of government and administration. As such it represents a decentralised system based on multiple accountability lines and checks and balances provisions.

[28] See the text of the Code of Conduct for Members of the European Parliament at: https://www.europarl.europa.eu/pdf/meps/201305_Code_of_conduct_EN.pdf;

[29] See the text of the Staff regulations at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01962R0031-20140501&from=EN;

[30] See the text of the Code of Conduct of the President of the European Council at: https://www.consilium.europa.eu/media/21274/sn04357-re01en15.pdf;

[31] See the text of the Code of Conduct for the Members of the European Commission at: https://www.europarl.europa.eu/pdf/meps/201305_Code_of_conduct_EN.pdf;

EU regulation n. 2018/1046 stipulates that individuals identifying a conflict of interest risk shall refer this matter to their hierarchical superior. Similarly, Article 11a of the 2014 staff regulation states that any official with personal interests impairing their independence shall report to the appointing authority. The *Code of Conduct for the Members of the European Commission* demands that commissioners declare their private and personal interests to the Office of the President of the European Commission. In turn, the President – assisted by an Ethical Committee that has the role to advise the Commission on ethical issues related to the Code – shall ensure the proper application of duties and obligations.

The *Code of Conduct for Members of the European Parliament* states that any parliamentarian with a conflict of interest that cannot be solved shall report it to the President of the European Parliament immediately after being elected. In cases of ambiguity, the European parliamentarians can also seek advice from the Advisory Committee on the Conduct of Members. When suspecting that a member of the European Parliament has breached the Code, the President may task the Advisory Committee to examine the circumstances of the breach, hear the parliamentarian and make a recommendation. The activities of the President can also be supported by the Committee of Legal Affairs of the European Parliament. The Legal Affairs Committee is responsible for monitoring situations of conflict of interest that involve members of the European Parliament, Commissioners-designate and the President of the European Commission.

4.3.2 Declaration and registration mechanisms

The EU space has built a comprehensive infrastructure to enable public officials and elected persons to comply with their reporting duties before, during and after their employment terms. Although defined by the various public bodies, their systems have several common characteristics regarding what must be declared, by whom and to which body.

The 2012 *Code of Conduct for Members of the European Parliament* states that the parliamentarians with a conflict of interest shall report it to the President of the Parliament. The Code affirms that the members of the Parliament must disclose any existing conflict of interest by the end of the first session after elections or within 30 days of taking up office with the Parliament. The declaration of the members of the Parliament shall contain information on any positions held or activities taking place during the three years before starting the mandate in Parliament. Mandatory reporting covers membership in boards or committees of companies, non-governmental organisations, associations or other bodies, any salary received for the exercise of a mandate in another parliament and any regular remunerated activity undertaken alongside the public position. In addition, the parliamentarians shall

declare membership in the boards of companies, non-governmental organisations or associations; any occasional externally-remunerated activity and holdings in any company or partnership; as well as any other financial interests which might influence their performances.

The 2014 *Staff Regulations of Officials and the Conditions of Employment of Other Servants of the EEC and EAEC* states that, before recruiting an official, the appointing authority must examine whether the candidate has a private or personal interest that could affect its independence. Similarly, the EU staff shall report to the appointing authority when they intend to engage in outside activities or any assignment outside the Union. The EU staff shall also note to the appointing authority when their spouse is in gainful employment, which can affect duties and obligations.

The *Code of Conduct for the President of the European Council* mandates that the President declare any situation that may provoke a conflict of interest or be perceived as such. The President must also report the professional posts held over the last ten years, including in foundations and educational institutions, governing bodies, and professional and commercial activities. Additionally, the President must declare ownership of companies and shares of companies, assets and financial interests of spouses and partners. During the office term, this declaration has to be updated annually.

The *Code of Conduct for the Members of the European Commission* regulates the declarations concerning the Commissioners and the Commission President. These actors must declare any financial and other interests or assets which might affect their duties. The declaration shall also include the interests of spouses, partners and minor children. The declaration must have a complete list of information. On the financial side, it requires declaring economic interests with a value of more than EUR 10,000 and accounting for those of spouses, partners, minor children and any real estate property.

The Commissioners must also list their roles as company board members, members of a foundation and honorary positions; at the same time, they shall also disclose the membership of associations, political parties, trade unions and non-governmental organisations. Finally, they have to declare the ongoing professional activities of spouses or partners, the nature of their activities, the position held and the employer's name. These declarations must be re-submitted on an annual basis on 1 January. If there are changes in the information declared during a Commissioner's term of office, a new declaration must be submitted no later than two months after the change in question.

4.3.3 Revolving doors regulations

Regarding post-employment terms, the Commissioners and the Commission President, the President of the European Council and EU administrative staff are all subject to revolving doors obligations. In contrast, the members of the European parliaments are not covered by any revolving doors duty. In 2016, the EU parliament postponed a bill for new transparency rules for parliamentarians, including introducing a cooling-off period of 18 months. In 2018, Transparency International, in a policy brief titled *The European Parliament Through the Looking Glass,*[32] listed the introduction of a six-month cooling-off period as a significant measure needed for addressing conflicts of interest in the European Parliament.

The post-employment subject is covered in the Codes and regulations clarifying professional duties and obligations within the different EU institutions. In this sense, the *Code of Conduct for the Members of the European Commission* limits the activities of former Commissioners for two years after ending their office, imposing the obligation to consult the Commission on any professional activities they intend to undertake. Even stricter limits have been set on former Commission Presidents, as their cooling-off period is extended to three years.

The 2014 staff regulation frames the post-employment rules for administrative personnel, affirming that the officials shall inform the institution about their wish to engage in a new job position within two years after leaving the service. If that activity is related to the work carried out by the officials during the last three years of service, the appointing authority may either forbid or approve their undertaking. For instance, if a work request comes from former senior officials, the appointing authority must, in principle, prohibit this within 12 months after leaving the service. This rule applies, for example to engaging in lobbying activities vis-à-vis staff of their former institution for their business, clients or employers, on matters for which they were responsible.

The *Code of Conduct for the President of the European Council* regulates the post-employment terms for the Presidents of this institution. It affirms that for 18 months after the end of their office, they may not lobby or advocate with members of the EU institutions or their staff for matters concerning their business, clients or employers. Should the former Presidents intend to engage in an occupation within 18 months after ceasing their office, they

[32] See the Transparency International report at: http://transparency.eu/wp-content/uploads/2016/09/Revolving-Doors-TI-EU-Policy-Brief.pdf;

must inform the incumbent President of the European Council in good time, as far as possible, and with a minimum of four weeks' notice.

4.3.4 Remedial actions and sanctions

Violating conflict of interest obligations can lead to the imposition of remedial actions, administrative fines and penal sanctions on the offenders. The 2014 staff regulation states that, once informed of a conflict of interest, the appointing authority must take appropriate measures to solve it, for example by relieving the official from his or her responsibilities in the matter. The public officials should also inform the appointing authority of their institutions that their spouses are in a gainful employment. When the nature of the employment is considered to be incompatible with the official's role – and if the official is unable to give an undertaking that it will cease within a specified period – the appointing authority shall decide whether the official shall continue in his post or be transferred to another role.

The 2012 *Code of Conduct for Members of the European Parliament* specifies the remedial actions and penalties to apply in case of violating the obligations contained in the Code. If the President concludes that a parliamentarian has breached the Code, the following measures can be adopted: a reprimand; forfeiture of daily subsistence allowance for a period of between two and ten days; temporary suspension from participation in all or some of the activities of Parliament for a period of between two and ten consecutive days; submission of a proposal for the Member's suspension or removal from one or more of the offices.

Finally, the remedial actions for the members of the European Commission who break the conflict of interest regulations are presented in Article 4 of the *Code of Conduct for the Members of the European Commission.* This states that the President of the Commission must take the measure they consider appropriate, such as reallocating a file or practice to another Commissioner or the responsible Vice-President or requesting for sale – or placing in a trust – of the financial interest that creates a conflict with the Commissioner's duties and responsibilities.

4.4 Gratuities and gift giving

The EU legislative framework regulates limits and obligations concerning managing the gratuities received by public officials and staff. In this sense, the Commissioners and Commission President, the members of the European Parliament and the President of the European Council are all subject to limitations in their capacity to accept gratuities.

Once again, this issue is regulated in the codes of the various EU institutions. The 2012 *Code of Conduct for Members of the European Parliament* states that European parliamentarians are allowed to accept gifts with a maximum value of EUR 150, while those exceeding this value shall be handed over to the Office of the President of the Parliament. The *Code of Conduct for the President of the European Council* generally discourages the President from accepting gifts, but it also states that they can accept gifts up to a value of EUR 150. All gifts received with a value up to this threshold shall become the property of the General Secretariat of the Council (GSC). Similarly, the President of the European Council should decline offers of hospitality unless they are in line with protocol practices or motivated by diplomatic reasons.

Finally, the *Code of Conduct for the Members of the European Commission* regulates the acceptance of gifts by the members of the European Commission. The threshold for accepting gifts is fixed at EUR 150, while gifts with a higher value must be handed over to the Commission's Protocol Department. The Code also regulates the issue of hospitality for the members of the European Commission, stating that Commissioners shall not accept hospitality except when following diplomatic and courtesy usage.

4.5 Technologies and conflict of interest: the Arachne Risk Scoring Tool

Risk-scoring systems are a promising solution that helps EU institutions identify the risk of conflicts of interest in specific sectors. Risk indicators are intended to make staff and managers more vigilant in taking preventive or combatting actions, highlighting situations that may need to be monitored with due diligence.

The European Commission offers, free of charge to managing authorities, a data mining tool called Arachne Risk Scoring Tool. The goal is to help EU and member states' authorities identify projects that might be at risk of a conflict of interest or other misbehaviours such as fraud or misadministration. Arachne makes project selection and management checks more efficient. It enriches relevant data with information available in the public domain to identify, based on risk indicators, projects, beneficiaries and contracts which can be at risk of fraud, conflicts of interest or other irregularities.

However, it does not assess the individual conduct of fund recipients or managers and does not serve to exclude any beneficiaries from EU funds automatically. Thus, while the tool provides valuable risk alerts for verifications, it does not supply any proof of irregularity or fraud. In this sense, Arachne helps prevent potential irregularities, resulting in lower error rates and applying an effective and proportionate anti-fraud measure.

5 Comparative analysis and conclusions

The report has explored three legal and regulatory frameworks for conflict of interest in East Asia (South Korea), Latin America (Brazil) and Europe (the EU). The following discussion helps focus better on the main findings of the analysis.

Tackling conflicts of interest has been crucial for good governance and increased quality of institutions in all three case studies and underscores the notion that uncontrolled conflict of interest is an obstacle to development and economic growth. The analysis has highlighted how different countries have approached reforming their bureaucracies and political systems to defend their reputations from corruption and other misbehaviours. Strongly addressing conflict of interest furthermore impinges on how industrial and business powers can position themselves in the global market as trustworthy and mature business actors, not prone to behaviours rooted in informality.

The dimension of informality and the informal ties connecting political and business interests are critical when studying the characteristics of conflicts of interest. Informal connections between politicians and the business sector may facilitate grand corruption schemes and lead to loss of life. Clearly, this reinforces the argument for having robust conflict of interest management systems.

Finally, the evidence suggests that there is no single optimal solution for establishing such strong conflict of interest systems. In the next sections, we will discuss the similarities and differences that characterise the case studies while offering some implications that can be useful for other countries.

5.1 Comparing the case studies

5.1.1 Similarities

The three systems for managing situations of conflict of interest are based on a core of common issues:

- mechanisms for reporting financial interests, properties and personal relations;
- remedial actions for managing conflict of interest situations and administrative and penal sanctions for punishing violations;
- thresholds and prohibitions for gift giving and hospitality;

- protocols for managing post-employment terms and revolving doors mechanisms.

What seems to emerge is the convergence between these experiences around a standard model of what it means to manage, prevent and combat conflict of interest.

Another common insight is that building a conflict of interest management system is critical but insufficient for effective enforcement. The level of specificity of the legal framework matters. Higher specificity clarifies what is permitted and not, as well as the consequences for violating the law. This could make the stages of implementation and enforcement of the legal and regulatory framework easier. However, a highly demanding law that is broad in scope and extensive in the detail might be challenging to enforce in complex bureaucracies. A proper balance between these different elements needs to be found.

Speaking of specificity, the three case studies provide a high level of detail about the types of goods and relations that must be reported by public officials and politicians and about the degree of proximity to which the financial and business interests of the public official should be declared. This is also true for the way the three legal frameworks elaborate on the bodies and committees that have critical responsibilities for managing conflict of interest systems.

5.1.2 Differences

The analysis also reveals the differences characterising the systems aimed at managing conflict of interest across the three cases. The research has shown that there is not just one model for coping with conflict of interest risks. Instead, the legal solutions emerge from transferring best practices and international standards within the national contexts. At the local level, these merge with the realities of the political and bureaucratic spaces and the social meanings and legitimisation processes characterising these social and political environments. The differences in the institutional architectures of the three contexts have had their own impact on the characteristics of the systems aimed at managing conflict of interest situations.

A relevant difference concerns the origin of the conflict of interest legal frameworks. For example, South Korea built its conflict of interest infrastructure *ex novo* after corruption scandals emerged. Meanwhile, Brazil has built its system elaborating on solutions already developed in the early 1990s for regulating the duties of politicians and bureaucrats.

Both these strategies present pros and cons. In the first case, the chance is given to start from zero to build a legal framework that integrates, from the designing stage, the most innovative solutions in terms of managing conflict of interest. At the same time, this solution

comes with the need to train public officials to follow the new practices, break negative feedback due to the pressure of doing business as usual, and instil new preferences in the bureaucracy.

In the case of building on pre-existing solutions, this can be a resource-saving strategy. Building up the legal framework from experiences and solutions accumulated in time is possible. The risks include possible duplication or overlapping of functions and mandates, as well as legal opacity and unnecessary red tape due to excessive cross-referencing with previous acts or codes.

Other differences are in the harshness of the penal and administrative sanctions. Of all the cases, South Korea stands out for the details regarding the actions and omissions that are punishable by law and administrative sanctions. South Korean legislators have identified a detailed list of behaviours that lead to mismanagement or exploitation of conflict of interest, as well as the related consequences. In addition, South Korea imposes heavy sanctions, such as years of imprisonment and high monetary fines.

The South Korean combination of clearly identified behaviours that breach the law and severe sanctions is unparalleled in the Brazilian and European context. These two models do not seem equally harsh, which could give way to risks of an implementation gap. The European model has been recently shocked by accusations of corruption and conflict of interest involving members of the Parliament. This scandal shed light on the problems that characterise the EU conflict of interest system. Commentators have expressed surprise that a limited staff is in charge of controlling declarations of the European parliamentarians regarding interests in NGOs or gifts received by donors.

Differences among the models also characterise the regulation of gift giving. The EU model is the simplest regarding gift giving; it imposes a standard threshold of EUR 150 and similar rules for disposing of the gratuities among Parliament, Commission, European Council and administrative entities.

The issue is treated differently in South Korea and Brazil; both these systems have more detailed models for managing gift giving. For example, both differentiate between gifts, with the distinction between small (*brinde*) and normal (*presente*) gifts in Brazil or the one between food products and condolence gifts in South Korea. Different prohibitions and thresholds follow these various types of gifts.

5.1.3 Tailoring to the context

As we have seen above, one of the most important results of the analysis is showing how relevant it is for countries to tailor and adapt their legal and regulatory framework to the characteristics of the local context.

South Korea has been very effective in adapting its legal framework to the local context. This is evident for the gift-giving mechanisms; in this case, the decision-makers have tried to differentiate requirements and obligations for moments and situations while regulating traditional gift-giving customs during particular celebrations or events. The goal has been to regulate these behaviours' adverse and vicious effects, being firm but not overly punitive. This has meant, e.g., determining different thresholds for the various products and flexible limits for the business sectors behind them. On top of that, South Korean legislators have been able to receive and integrate feedback from citizens and business interests to adapt the legal framework to make it more compatible with prevailing social norms and traditions.

A similar but different example concerns the reporting duties of individuals surrounding public officials. As we have seen in the previous sections, the Brazilian model provides for reporting requirements for family members and relatives up to the third degree. This goes much deeper than the South Korean and European cases and is probably due to the nature of the social context.

Both these examples underline how critical it is to build a flexible, adaptive and proactive policy-making approach to regulating these sensitive issues. At the same time, decision-makers and legislators must be able to receive and operationalise inputs and feedback from citizens and business interests to continuously update their legal infrastructures.

5.1.4 Key implications

The points raised above have several implications. First, it is not enough to define vague procedures to address situations of conflict of interest, but specificity is also necessary. At the same time, adding too many details risks generating issues with implementation of the law for enforcers and investigators. Both opacity and excess of details are enemies of effective implementation. The legislators will have to move like tightrope walkers, balancing this awareness when working on this issue. Evidence-based, adaptive and iterative policy-making mechanisms can represent the pole for maintaining the balance between extremes.

Second, the severity of the sanctions is undoubtedly a critical deterrent and preventive factor, as well as a key support for enforcement and investigative activities. Clearly, this severity

has to come to terms with respect for the rule of law and the human rights of citizens and public officials. The risks of slipping into blatant violations of these democratic principles are just behind the corner regarding severe penal measures. Around this point, there are differences between political traditions mirrored in the case studies analysed here. For example, the South Korean severity would be inconceivable for the European model.

Third, the analysis opens the question as to whether it is possible to elaborate a minimum common ground of solutions to address conflicts of interest. On one hand, the insights suggest that perhaps the minimum requirement that a legal and regulatory framework must address is to somehow be responsive to all the elements that have been identified by the Good Practices guide and upon which the assessment matrix for this report was based, namely:

- Define what conflict of interest is, including all its modalities;
- Establish a system for implementing and monitoring conflict of interest rules encompassing public institutions, state-owned enterprises and independent authorities;
- Specify what exactly needs to be declared, by whom, to whom and when;
- Establish rules that regulate public officials' post-employment activities;
- Spell out remedial actions as well as sanctions for not abiding with the rules;
- Regulate gifts, gratuities and hospitality exchanges involving public officials.

On the other hand, suggesting specific technical solutions cannot be done without systematically studying the local context's characteristics. As we have seen above, the specific measures emerge from bringing the international standards down to the local level. In this sense, the identification of concrete actions moves through the knowledge of the characteristics, strengths and weaknesses of the context.

This starts by analysing the traits of the existing legal framework to highlight the challenges to its implementation, the institutional capabilities and the nature of the relations between different governmental and administrative entities. Being aware of all these dimensions is an invaluable support for tailoring the solutions that can be adopted to effectively deal with situations of conflict of interest.

5.2 Underlying drivers

Many factors drive the evolution of legal solutions for countering conflicts of interest. As shown by the South Korean case, the disclosure of scandals and judicial cases can be key for promoting the topic up the agenda of the decision-makers. This is due to the internal and external risks that these situations can generate and with causes rooted in the cultural

mindset. For example, several Asian societies – and South Korea is one – attach great relevance to concepts like shame, reputation and losing face. When a scandal comes to light, all these values can become a pressuring factor in bringing about the required legislative measures to address the issues that gave rise to the scandal. In South Korea, for example, the disclosure of judicial cases of corruption and conflict of interest reactivated a process that the legislators had put on standby without a clear time horizon. The scandals generated electoral and social pressures on the decision-makers, as well as reputational risks for business actors operating abroad, all of which contributed to creating space for conflict of interest issues on the political agenda.

The trajectory of incremental reforms can also be used to make space on the political agenda. The power of an incremental reforming process should not be underestimated. In addition, as emerging from the EU case, the combination of a decision-making process able to bring together the voices of the constituent members with the elements of technical skills and professionality that characterise the EU bureaucratic system can help create the conditions for adopting high-quality legal and regulatory solutions.

5.3 A common challenge

The common challenge facing governments around the world lies in moving towards a proactive, sustainable and mature policy-making model that takes care of developing the legislative frameworks to aptly manage situations of conflict of interest.

A shared risk is that incrementally reforming and amending existing frameworks for conflict of interest can result in a fractionalised architecture comprised of mutually incoherent pieces, such as disconnected or duplicative acts, regulations and codes of conduct. To some extent, this is in the order of things. But decision-makers should at least try to build this infrastructure around one major piece of legislation and then align as best as possible the rest around it.

To ensure that consolidated conflict of interest frameworks remain updated and relevant, governments should adopt measures that avoid one-shot and/or short-term interventions, simplify the legal and normative framework wherever it is possible and increase the integration and consistency between different legal and regulatory pieces to generate synergies and add real value.

5.4 Addressing gaps

Research on corruption strongly suggests that a key conflict of interest pattern that drives grand corruption schemes involves connections between electoral campaign financing by

particular business interests and subsequent decisions on the award of valuable pubic contracts.[33] It is noteworthy that such issues are not adequately covered by the legal and regulatory frameworks described in this report. Very often, the data collected on the financing of the electoral campaigns is not used for revealing and red-flagging suspicious connections between electoral financial flows and the subsequent distribution of public contracts and procurements.

Matching the data concerning electoral financing and public procurement procedures with the goal of revealing suspicious situations can contribute to improving the prevention of one of the most pernicious forms of conflict of interest. Legislating more closely how electoral donations must be reported and made transparent would be a step in the direction of addressing some of the most important conflict of interest and, ultimately, corruption risks.

5.5 Dealing with complexity

The study has revealed that the regulation of conflicts of interest and the establishment of appropriate mechanisms can be significantly complex. This emerging complexity must be handled by proper systems and protocols. An investment in reforming institutional architecture and expanding governance capacity is hence welcomed.

The accumulation of duties and obligations for public officials (as individuals) and public entities (as collectives) represents a growing burden on the public space. This is true regarding the tasks and functions attributed, the technologies needed and the protocols implemented to manage the conflict of interest issue. Somehow, states should react to this mechanism with processes of functional rationalisation.

A state that wants to manage conflict of interest seriously must be ready to invest in this strategic commitment in terms of resources, personnel, infrastructures and competencies. This investment will promote the adoption of new methods and the innovation of rules, protocols and technologies. Simultaneously, an investment in resources and infrastructures

[33] Fazekas, M., & Cingolani, L. (2017). Breaking the Cycle? How (Not) to Use Political Finance Regulations to Counter Public Procurement Corruption. *The Slavonic and East European Review*, *95*(1), 76–116; Titl, V., De Witte, K., & Geys, B. (2021). Political donations, public procurement and government efficiency. *World Development*, *148*, 105666.

is the best way to avoid the risk that the entire infrastructure will lack implementation and practical impact.

Given that globally we deal with vast public sectors and limited resources, it is important to prioritise who should declare, what and to whom with the most details. Especially for countries that are not high-income and have limited and low-skilled human resources, having a vast reporting burden can create misreporting and implementation gap risks. This prioritisation should be driven by tools designed to assess the risks of corruption and conflict of interest along the governance chain, which can contribute to identifying those areas that deserve more attention. The Arachne Risk Platform developed by the EU is an example of that tool. Digitalisation can contribute to making the prioritisation process more accessible, spotlighting risky areas via cross-checking large amounts of information.

5.6 Investing in innovation

One of the most significant lessons from this report is that it is crucial to develop protocols and procedures for making a productive use of the amount of data generated by public systems. A more intense recourse to innovative solutions in the data management sector is crucial for minimising the risk of an implementation gap.

The conflict of interest systems give rise to comprehensive databases on financial assets, real estate properties and social relations. The challenges posed by technological innovations for data collection, storage and usage are therefore relevant. At the same time, they represent a unique opportunity for those countries that want to implement effective anti-corruption measures. Examples such as the European Arachne platform for using and matching different data sources, or the e-Agendas and the Electronic System for Preventing Conflict of Interest in Brazil, are essential in showing what can be done for applying technological solutions to the entire cycle of data management in the administrative space. On the other side, the lack of capacity to cross-check the data concerning electoral campaign financing and public procurement, as described above, tells us that much has still to be done in terms of digitalising public infrastructures and procedures.

Designing artificial intelligence or machine-learning tools to mine data and cross-reference databases to red-flag suspicious connections and exchanges should be in the research agenda going forward. The generation of high-quality and comparable databases is a goal that must be further emphasised. The capacity to efficiently connect databases that already exist, such as land, property or vehicle registers, campaign finance transactions, tenders and contracts winners, beneficial and legal owner registers, is also critical. In parallel, a considerable effort should be made in designing, piloting and operationalising digitalised

systems to report anomalies in the data. The combined application of artificial intelligence, machine learning and enriched data mining tools can contribute to clarifying stages for data generation, collection, management and analysis as well as validating specific tools.