

Comparative analysis of conflict of interest in V4 countries + Estonia

Main findings

- There is no universal definition of conflict of interest (COI) among the examined states. Each state approaches the issue differently.
- The legal provisions concerning COI tend to be fragmented. It is not uncommon that the COI has no legal definition or unified basis in the laws like in Estonia and Poland. Instead there are various laws (up to 30 in Hungary) that operate with issues closely related to COI. It is the various different public functions that are regulated separately by different laws rather than one encompassing law that would include all.
- Given the fact that COI regulation is not unified, there is usually no singular oversight body that would deal with COI in the respective country. Institutional oversight is unfortunately poor in the majority of the examined countries. There is a general lack of internal audits, control mechanisms tend to be ineffective, and mandatory declarations of assets are often not published correctly.
- Sanctions do exist in the examined states, but the lack of centralized oversight bodies prevents effective control. Sanctions, if utilized at all, tend to be very mild and present no real threat in case the public official does not comply with the COI regulations.
- There are some efforts to guide and train public officials about issues related to COI, but besides Estonia's Council of Ethics of Officials, which provides substantial support to public officials regarding COI, there is little effort to actually do so. Estonia also has two functioning portals for education on COI related issues and laws. The situation in other countries

is grim, as there are no systematic efforts to educate and guide neither public officials, nor the general public.

- Transparency and public oversight is an issue as well. Estonia is currently adopting a new transparent system for the publication of online asset declarations, however the situation in other countries is not favourable. The Czech example is apparent, as there is a lack of a central register and the publication of relevant information is unnecessarily complicated. Published info is often unsatisfactory, as is the case in Poland and Slovakia. Despite direct involvement of some media outlets or NGOs in Hungary, there are very few examples of public officials where a case would be started against their misconduct.

Legal background of conflict of interest

How can one understand the conflict of interest? Is there one universally accepted definition among the examined states? The state analyses suggest that there is no unified view on conflict of interest (COI). There are many different approaches to the problem and many different opinions that stem from the different moral standards of the examined countries. Differences can be found throughout the EU, where an overwhelming majority of states has its own definitions, sets of regulations and potential sanctions. There are however general recommendations and rules made by international organizations. OECD for example defines three levels:

1. Actual conflict of interest: Current duties and responsibilities of a public official are in direct conflict with his or her private interests;
2. Apparent conflict of interest: It seems that the private interests of a public official could improperly influence the performance of his or her official duties and responsibilities, but this is not the case;
3. Potential conflict of interest: Private interests of a public official represent a potential influence if the duties of the public official concerned the interests in question.

The conflict of interests therefore happens when a public official acts in his personal interest, even though he is supposed to primarily defend the public interest. Since there is a regular connection between the public and private sector, the conflicts of interest might and do happen on a regular basis. Regulations, which ensure impartiality of the public official and his or her actions in public interest, are therefore necessary. Effectively enforced regulations may prevent biased actions and decisions by public officials, nepotism and abuse of power. It can further help to prevent misuse of public finances and confidential information for private gains.

This part of the analysis will thus focus on the definition of conflict of interest in different states, on the laws regulating conflict of interest and the public officials regulated by those laws.

The Czech analysis recognizes the definition of conflict of interest according to the Czech law on COI (159/2006 Col.) and the law on municipalities and regions. Those two definitions are however not fully compatible. Other legal provisions usually mention impartiality and bias, which are terms closely connected to the problem of COI. The Czech analysis therefore defines COI as a *“risk threatening the impartiality of decision-making”*.

Czech law 159/2006 on COI regulates the conflict of public and private interests of various public officials such as members of parliament, senators, members of government, mayors, deputy mayors, full-time members of regional local administration as well as heads of organisational units of the state and members of statutory, monitoring or controlling bodies of legal persons founded by law, etc. Special norms can be also found for judges, public prosecutors, representatives on the municipality level, and employees of the state.

There is no single law that would regulate all the abovementioned officials and representatives. Instead there are partial provisions in several different laws that apply to various groups of persons. The legal regulations are therefore

fragmented and even though the various laws do present a clear effort to define conflict of interest for individual groups of public officials, there is no single definition of COI in the Czech legal system. In general, public officials are by definition responsible for acting and deciding without prejudice and for defending and promoting public interest. Specific duties are then different for each category of public officials. However, it is not uncommon that more than one law regulates the duties of public officials in regard to COI.

There are some standard measures such as disclosing private interest (withdrawing due to partiality), a ban on certain combinations of public functions (MP cannot be a member of senate, or a judge, etc.) and forbidding any gainful activities other than scientific, literary or educational activities, etc. Czech law does define some limitations for people leaving public functions. However only few groups of public officials, in particular elected representatives (MPs, full-time regional and local politicians), are obliged to submit declarations of personal assets. Monitoring mechanisms are unfortunately very limited and so are the potential sanctions. The only group with relatively thorough process mechanisms are judges and public prosecutors under specific legislative regulation.

The lack of solid process mechanisms is very apparent in the case of civil servants in central state administration, particularly those with executive or financial powers. Only top public servants fall under the Conflict of Interest Act. Currently, new legislation, the Public Service Act, has been adopted, which applies to the public servants at state administration level. The lack of conflict of interest management was expressed by the European Commission in May 2014, nevertheless, no changes in the draft were made. The public servants are obliged to fulfil their duties in an impartial manner, to avoid conflict of interest, not to accept gifts and to follow the rules of public servant ethics. A violation falls under disciplinary proceedings. The legislation comes into effect in January 2015, and therefore no relevant data on its implementation are available.

COI in Hungary is generally understood as incompatibility. Incompatibility should ensure that the relevant public official acts: *“independently, free from any unlawful or unacceptable political, economic or other influence. Official incompatibility also serves the functioning of the separation of powers by excluding the concentration of authorities. Further, incompatibility is to ensure the transparency of the income and property status of the state officials.”*

The Hungarian analysis recognizes more than 30 laws regulating issues related to the conflicts of interest of various public officials. There is no general overarching law that would specify the general understanding of COI in Hungary, but instead there are specific laws for each and every position, similarly to the Czech situation. There is a difference in the degree of elaboration on COI in these laws, and there is a lack of cross-reference in some cases. Despite this complexity, one usually has to consider only the legal acts regulating the public official's current position and the position that person seeks. According to the analysis, the public officials can be divided in several groups such as constitutional actors, heads of government offices and district offices, civil servants (judges, prosecutors, attorney-at-laws, members of law enforcement, servicemen, etc.), members of local self-governing bodies, mayors, etc.

The different laws then recognize different types of COI such as: incompatibility of the position held by the public official with other official positions, abuse of position to get unlawful advantages, incompatibility with holding economic positions, restrictions on possession of shares and other assets, obligation to declare them, demerit and other various forms of incompatibility.

It is important to mention that the degree to which specific laws regulate COI varies. Some official positions therefore are more specifically regulated than others. This creates a complex system that is difficult to assess properly. The Hungarian analysis lists several examples, where the complexity and lack of clarity in the definition and understanding of COI create potential issues.

For example, there is an exhaustive list of incompatible positions, but that means the positions not mentioned are by definition compatible, which leads to public officials who hold positions from different branches of power. A member of the National Assembly could thus be: a minister, parliament member mayor, member of local government and head of capital or county governmental office.

This unfortunately created a logical incompatibility: one person can take part in both the drafting of regulation, and the enactment and implementation of the law.

A recent amendment of the conflict of interest regulation was past. Since May, 2014, the members of the National Assembly cannot be a mayor, member of local government and the head of capital or county governmental office. The new regulation also declares the general incompatibility with any other state or local government office. As an exemption, an MP can be a minister.

The analysis mentions that the softening of incompatibility seems to be taking place in the current legislative cycle, i.e. there are more opportunities for COI.

The Polish law does not refer to the concept of COI in any way; there is no definition of this term in any Polish act of law. There are however regulations referring to various manifestations of this phenomenon, but they are dispersed and inconsistent. These regulations include the incompatibility of posts (positions), the incompatibility of financial interests, and the obligation to declare assets.

The incompatibility of posts is set forth in the Constitution (Dz.U. 1997 No 78 pos. 483) and in other legal acts referring to specific public officials. For example, deputies and senators are regulated by laws concerning the exercise of their duty (Law on exercising of the Parliament Members and Senators mandate, Dz.U. 1996 No. 73 pos. 350) and by the election code (Dz.U. 2011 No. 21 pos. 112). Furthermore, the lower house Sejm has an ethical code in regard to the legislative process, whereas the Senate has no such code. There is also no revolving door mechanism.

The so-called Anti-Corruption Act (Dz.U. 1997 No. 106 pos. 679) regulates the general rules for conflict of interest among persons holding managerial positions in state administration and among other high-ranking officials. Provisions of this act apply to constitutional actors such as the President, the Prime Minister, speakers of both chambers of parliament, heads of key government agencies and other senior officials on managerial positions in state and local government

institutions (ministers, heads of offices, heads of communes, mayors, members of boards of state-owned companies, etc.).

The Anti-Corruption Act further regulates persons heading local government authorities and members of local councils. There are then separate provisions, such as more rigorous regulations concerning asset declarations, which apply to these officials. Finally, laws concerning the functions of the Polish courts (Law on Common Courts Organization, Dz.U. 2001 No. 98 pos. 1070) regulate judges and prosecutors.

Despite the various forms of position-specific regulations, the Polish analysis is very sceptical about the enforceability of these measures.

The basic provisions on COI in Slovakia are – similarly to other countries – based in the Constitution. Constitutional Act No. 357/2004 then lays out more specific provisions. It defines COI as follows: *“for the purpose of this act, conflict of interest shall mean a situation where a public official in the performance of his office prefers personal interest to public interest.”* This act further defines the broad list of the public officials (MPs, ministers, judges of the Constitutional Court, ombudsman, mayors, etc.) who are regulated. It also specifies the list of duties (declaration of assets, impartiality, etc.), restrictions (incompatibility of posts and incompatibility of financial interests, restrictions following departure from public office – revolving door mechanism) and potential sanctions.

Despite the broad scope of the Constitutional Act, which encompasses the whole issue of COI in Slovakia, the compliance with COI rules is implemented in different legislations in relation to personal scope of the respective act. Rules in these different acts are fragmented, not complex, and rules are declared without necessary explanation and applicable tools. This legal approach has a strong negative impact on the effectiveness of COI rules in respective acts.

Similar to Poland, the Estonian laws or regulations have no specific legal definition for COI. However, various law provisions address different manifestations of conflict of interest. The Anti-Corruption Act regulates potential cases of COI concerning elected, politically appointed, and other higher officials. Civil servants and local government officials then also have their specific legal

provisions. Types of COI described in these laws are then very similar to other countries mentioned in this analysis and measures include: incompatibility of posts, declarations of assets, incompatibility of financial situation; restrictions on usage of government property, confidential information, self-dealing, and other typical COI issues.

Institutional oversight

The basic legal provisions on COI in the analysed countries show that overarching definitions of COI usually don't exist, and if they do, enforcement of compliance with rules concerning COI is fragmented among various laws and institutions. The institutional oversight is unfortunately generally low in the examined countries. There is a lack of internal audits, assets are often declared inadequately, and the control mechanisms often lack effectiveness.

In the Czech Republic, there is no single institution monitoring conflict of interest, even though there are several thousand recordkeeping bodies. Their role is to archive declarations of public officials, verify their completeness, provide access to them and act upon suspicion of violation of the law by a public official. There are regulatory mechanisms for the MPs and full-time local representatives, but there is no institutional system to control COI among part-time local representatives.

The Czech analysis is very critical of the current state of the affairs and is particularly concerned about the utter lack of investigations by the record-keeping bodies upon their own initiative, despite their responsibility to do so. Oživení has analysed several hundred public official's declarations of assets and it unfortunately had to conclude that institutional monitoring of the Conflict of Interest Act fails completely and is essentially non-existent.

Furthermore, a declaration of assets does not have to be presented when the public official enters office. It is therefore impossible to compare assets amassed while in office with publicly available information on the official's income. The

Czech analysis mentions that the institutional oversight on judges and public prosecutors is satisfactory, albeit not perfect.

In Hungary, the institutional oversight is usually conducted by the body/person that elects or appoints the public official suspected of COI. The public official is bound by law to withdraw from his or her position due to partiality, however, if that is not the case, any person may institute a procedure to investigate general incompatibility by notifying the respective organization. Similarly, anyone may institute a procedure of the declaration of assets.

According to the analysis, there are very few, if any incompatibility procedures at the level of high-ranking officials including the members of the National Assembly. Media outlets and various public officials have raised questions regarding some declaration of assets. However, a formal procedure to investigate the questionable declarations has not yet been launched.

The Polish institutional oversight on COI is divided among the respective institutions and laws. In the parliament, there is no separate body responsible for monitoring and resolving situations of COI. There are some control mechanisms, such as the Sejm Deputies' Ethics Committee, tax office and the central Anti-Corruption Bureau that control declarations of assets. Those declarations are available online, but they are often insufficiently filled-in and are not published in machine-readable format.

Deputies are also obliged to disclose information on all sources of income, donations and gifts into the Register of Interests. There is however no sanction if the deputies ignore the obligation. Because of this, the register does not contribute to transparency regarding COI.

The standards concerning COI in the legislative process, which are regulated by the code of ethics, are insufficient. The Deputies' Ethics Committee has not produced a single resolution in cases related to the violation of the principles of impartiality or transparency. Finally the Anti-Corruption Act has also failed to institute an effective oversight over public officials and local government representatives. The Central Anti-Corruption Bureau has conducted several

hundreds audits based on the provisions of the act, but there is no information on the results of these audits.

The Slovakian institutional oversight mechanisms are designed separately for national politics, local politics and the public administration. It is therefore the respective body and corresponding law that regulate the specific public official. Similarly, the judges and civil servants are obliged to follow the rules set by their respective legal regulations.

The Committee of the National Council of the Slovak Republic is the oversight body of the Slovakian MPs. However, the scope of this committee is limited as it is under direct political influence. Capabilities are insufficient and the committee has not yet produced significant results. Furthermore, there is no external auditing of assets declaration. Those declarations are not sufficiently clear and specific. Public oversight is therefore very limited.

It is the special commissions; local government commissions, relevant ministers and public legal persons' council that control adherence to COI related laws in Estonia. Those control bodies have the right to require explanation if the public official in question fails to declare assets. They can furthermore make inquiries and have to report these to the prosecutor's office or to the police authorities. For example, The Estonian analysis unfortunately does not mention any specific cases, which would demonstrate the effectiveness of these oversight mechanisms since its establishment in 2013, the Council of Ethics of Officials has received several complaints. Some of those have been redirected to the appropriate institution; others have received replies or have needed an official decision by the Council. Adherence to the Anti-Corruption Act, according to analysis, is dependent on self-regulation, i.e. it is the public official's responsibility to report about possibly corrupt income. The system thus relies on the honesty and high morals of officials. Again, no specific data is available.

Sanctions

The only sanction defined by the Czech Conflict of Interest Act is for breaching duties in submitting declarations, particularly if they are incomplete, inaccurate or false. There is also a limited sanction if the public official does not disclose personal interest. There is no single register of COI and because all recordkeeping bodies may impose sanctions, the total number of actual imposed sanctions is difficult to calculate. Nevertheless, based on the available evidence gathered, there have been only 26 known penalties. 6 cases ended with reprimand and 18 with very insignificant financial penalties. The Czech analysis emphasizes the need for an investigation to determine the number of lacking sanctions and the lack of severity of the sanctions. The respective laws define sanctions for judges, constitutional judges and public prosecutors. However, there were very few cases based on threats on the impartiality of the judges and prosecutors. It is therefore difficult to make conclusive remarks.

The Hungarian analysis mentions the termination of the position of the public officer in question as the legal consequence for the violation of the incompatibility rules (i.e. COI has been proven). It is a general rule that the public official under investigation may not exercise his or her office and cannot participate in the decision-making process of the respective body. This person is not entitled to remuneration or other benefits until having fulfilled his or her obligation.

Sanctions in Poland are to a certain extent similar to the Czech ones. They are few in place and have solid legal basis, but they are rarely, if ever, used. Sanctions concerning the declaration of assets and incompatibility of financial interest have not been used in the last parliamentary cycle. Furthermore, there were only two cases of sentencing in 2010 under the provision of the Anti-Corruption Act concerning public officials.

The Slovakian sanctions have an exhaustive list of strict penalties, if the public official should breach his or her duties, impartiality, postemployment

restrictions, incomplete or incorrect data in his or her declaration of assets, etc. Effectiveness of these sanctions is nevertheless limited by lengthy and complicated procedures. The political power still has influence on these procedures. The Committee of the National Council of the Slovak Republic on the Incompatibility of Functions, which controls the COI of MPs, consists of MPs in whose interest is to support “non-aggression” oversight policy, since they are controlling also themselves. The most imposed penalty is then for failing to submit a declaration in time. The analysis though, mentions several cases where public officials were fined one year’s salary because of a COI. Sanctions concerning public servants and local government representatives are very rarely implemented. While 133 mayors broke COI law, only four of the offenders were punished by the competent municipal parliaments.

Estonia has a complex system of sanctions regulated by the laws relevant for the public official in question. The penalty is usually in the form of a fine, rarely imprisonment (only in repeated cases of embezzlement, etc.). The analysis mentions that, in some cases, the fines are not high enough considering the responsibilities of the public officials.

Guidance

There is no institution providing consultations for issues related to COI and related laws in the Czech Republic. There is no mandatory education in this field and no institution regularly provides it. There is no methodological guidance, nor official consultation bodies. Public officials therefore have to seek knowledge from their colleagues and other sources that might not provide the correct information. The Conflict of Interest Act does not define a duty to provide consultations for any of the record keeping bodies or the Supreme Administrative Court. It is also debatable if the public officials seek education on COI at all. There is one course offered by an educational body of the Ministry of Interior. Apparently, the interest in this course is not very high. There are codes

of ethics, but they are more commonly relevant for civil servants and less often for elected representatives.

The Hungarian situation is far from ideal. Besides guidance issued by the Ministry of Interior provided to members of local self-government assemblies and mayors, including presidents and members of minority self-governments, no other organization issued any kind of guidance in this field.

There is some form of educational activity concerning COI in Poland. The Central Anti-Corruption Bureau conducts training primarily for local self-government assemblies. There is also some training provided by the National School of Public Administration. However, there is no well-developed system that would provide systematic education and guidance on issues related to COI. Specialized units or officers are still rare. There was a pilot program in 2006, but there has not yet been any significant follow-up.

The Slovakian analysis mentions only initial training for new MPs at the beginning of their term. This training focuses on compliance with declaration obligations. No other assistance or guidance is provided.

Guidance and educational support in Estonia is far more developed than in the four remaining countries. The new Public Service Act of 2013 created the Council of Ethics of Officials. One of its primary tasks is to provide guidance to officials who are unsure about their work ethic or who need advice on how to make an ethically sound decision. It also explains the implications of the Code of Ethics of Officials, provides an opinion about the compliance of an official's actions, and participates in drafting development plans for COI related legislation and for determining strategic development directions of the public official's ethics. The council has considerable powers, which enables it to involve experts and gather necessary information to provide a settlement on issues and form working groups.

The Ministry of Justice then runs a separate website, which provides a further in-depth description of the most common issues related to COI. Civil Service has its

own similar website operated by the Ministry of Finance. It is the Ministry of Finance which is responsible for the coordination of ethics management in Estonia. The ministry also provides ethics trainings for public officials, which include topics related to COI. There are also guidelines written by Transparency International Estonia. Despite the objectively better situation in Estonia, the analysis suggests some partial improvements such as clearer division of responsibilities among the various institutions involved.

Transparency and public involvement

The availability of information on the personal interest of public officials is a key condition for functional public oversight. The Czech situation however, is unfavourable. The practical experience outlined by the Czech analysis has shown that the recordkeeping bodies are unable to provide access to requested information quickly and efficiently. The bodies often provide information reluctantly and in such a manner that it is difficult to assess it properly. Furthermore, the access to the declarations of assets is needlessly complicated and limits the options of public monitoring. Information regarding COI is typically published in non-machine readable format and there is generally a low level of user-friendliness of the individual registries. This combined with the fact that there is no central registry that gathers all the published information, creates a complicated and non-transparent environment.

The Hungarian analysis mentions scarce methods of public oversight. Essentially anyone may notify the National Assembly about the existence of potential COI, but it is a member of the National Assembly who has to initiate in writing the establishment of incompatibility (COI). Incompatibility is otherwise established by standing committees or two thirds of the National Assembly. The other bodies adjudicate incompatibility according to their own rules of procedures. Similar rules then apply for the declaration of assets. As mentioned before, there is very little, if any, public oversight on COI of the high-ranking public officials. The

analysis does not mention public involvement other than comments by the media outlets, which raise questions regarding the publicly available declarations of assets. There have been a dozen cases in the press in the recent years, but a formal procedure has not yet been launched. It is therefore apparent that public involvement and transparency are not ideal.

In Poland, declarations of MP's assets have to be made available in an electronic form on the websites of the Sejm and the Senate. They are fairly easily available, but they are not sufficiently accessible, as they are usually scanned copies of hand-filled documents. There is also a centralized Register of Interests which gathers information about sources of income and gifts received by the deputies, senators, minister, heads of local government or local government officials. This register is placed on the website of the State Election Commission and is again easily available to the public. This measure however does not contribute to the improvement of transparency, since there is no sanction for not publishing the data. It is not uncommon that the data include blank documents.

The Slovakian analysis comes to similar conclusions. Even though the declarations of assets and public property declarations are published online, the real value for public control and transparency is limited. The provided information is often insufficient for actually evaluating the financial gain of the public official during an electoral term. Public property declarations need to be more detailed in order to achieve better transparency. Furthermore, while citizens are furthermore entitled to file a motion to start COI proceedings and sessions of the committee on incompatibility, most of the proceedings are stopped without the breach of COI being properly analysed or punished.

There is a transition period in Estonia at the moment as the new regulations are taking effect this year. From 2014 and onwards the public officials will have the opportunity to declare their assets in a new online register. This way the public officials who are obliged to submit a declaration can do it together with submitting their declarations of income tax. The system, however, is not fully operational and needs improvements and the previous form for publication on

paper will still likely be used. It is important to mention that not all declarations of assets and interest will be made public. The current provisions of the Anti-Corruption Act states that only council chairmen of local self-governing units, mayors, members of the council, members of local rural municipality governments and rural municipality secretaries are bound to declare their assets. Assets of other public officials are declared internally. The system thus relies on mutual trust and shared moral values.