

Codes of Conduct and Conflicts of Interest at any governance level of the management of EU Funds

Budgetary Affairs



Policy Department D for Budgetary Affairs

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Codes of Conduct and Conflicts of Interest at any governance level of the management of EU Funds

STUDY

Abstract

This study reviews the Member States' experience with codes of conduct and conflicts of interest affecting the partnership arrangements under the European Structural and Investment Funds. The focus is on conflicts of interest affecting the Monitoring Committees under the European Regional Development and European Social Fund. The study reviews the rules and other approaches to deal with conflicts of interest, discusses best practices and ends with conclusions and recommendations advocating a complementary rule and value based approach supported by transparency and ethical leadership.

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LIST OF ABBREVIATIONS

BG	Bulgaria
CF	Cohesion Fund
CoI	Conflict of Interest
CPR	Common provisions regulation ¹
CZ	Czech Republic
DE	Germany
DG	Directorate General
DR	Delegated Regulation
DG EMPL	Directorate General Employment, Social Affairs and Inclusion
DG REGIO	Directorate General for Regional and Urban Policy
EAFRD	European Agricultural Fund for Rural Development
EAGF	European Agricultural Guarantee Fund
EC	European Commission
EE	Estonia
EEA	European Economic Area
EMFF	European Maritime and Fisheries Fund
EP	European Parliament
ERDF	European Regional Development Fund
ES	Spain
ESF	European Social Fund
ESI Funds	European Structural and Investment Funds
EU	European Union
EUR	EURO
FMO	Financial Mechanism Office

¹ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006

FR	Financial Regulation ²
MA	Managing Authority (for the ERDF and/or ESF)
DG MARE	Directorate General Maritime Affairs and Fisheries
MC	Monitoring Committee (for the ERDF and/or ESF)
MS	Member State
NL	The Netherlands
NO	Norway
NPM	New Public Management
OECD	Organisation for Economic Co-operation and Development
OLAF	European Anti-Fraud Office
OP	Operational Programme
PL	Poland
RAP	Rules of Application (of the Financial Regulation) ³
SME	Small and Medium-sized Enterprise
TFEU	Treaty on the Functioning of the European Union
US	United States

² Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002

³ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union

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EXECUTIVE SUMMARY

Introduction

The preparations for the 2014-2020 programming period have witnessed an increased concern over conflicts of interest (Col) affecting the deployment of European Union (EU) funding under shared management. Promoting the introduction of Col policies was considered an important element in strengthening the protection of the EU financial interests.

This study aims to understand how the Member State (MS) administrations involved in the shared management of EU funding, and more specifically the European Structural and Investment (ESI) Funds, ensure the integrity of relevant decision-making and management processes. The study takes an interest in both, 'soft' and 'hard' law approaches, e.g. regulation and codes of conduct on the prevention of Col. The study aims not only to establish an overview of the existing approaches to addressing Col, but also takes an interest in their effectiveness, and in possible future improvements, drawing, inter alia, on practices in and outside the EU.

The thematic focus is on the prevention of Col in the specific sphere of shared management, and more specifically, two of the ESI Funds, i.e. the European Regional Development Fund (ERDF) and the European Social Fund (ESF). To add genuine value to existing research, it was also decided to apply a narrow definition of the concept of Col. Indeed, this study focuses on Col affecting the members of the Monitoring Committees (MC) (and any related sub-committees) established to provide strategic orientations for, and oversee the implementation of the Operational Programmes (OP), and embodying the partnership principle.

Findings

The following pages briefly present the main findings with regard to the framework of Col prevention at the EU and MS levels, the effectiveness of Col prevention and best practices.

Framework for Col prevention

The framework for addressing Col as affecting the partnership arrangements under the ESI Funds comprises the EU regulatory basis and related guidance and relevant MS responses in the form of implementation arrangements to deal with Col.

The EU-level framework is set out in the Financial Regulation (FR) (Article 57), and the Common Provisions Regulation (CPR) (Article 5, as supported by the European Commission (EC) Delegated Regulation (DR) on the European code of conduct on partnership in the framework of the ESI Funds).

There is some degree of uncertainty as to whether the FR's Article 57 can be considered of direct application to shared management. Indeed, Article 57 is considered to primarily address Col under direct management. This explains the EC's proposed revision of Col requirements in the FR, with a new article on Col (Article 59) clearly establishing the application of Col requirements to all forms of budget implementation, i.e. including shared management.

The EU-level regulatory framework is supported by a series of guidance documents prepared by different EC services. Reviewing this documentation, it is worth noting the increasing prominence of Col. It is also worth noting the EC's substantial dissemination effort on anti-fraud measures including Col.

The MS adopted different approaches to operationalising the Col requirements under the ESI Funds, including legal instruments, codes of conduct and / or by addressing Col requirements in the rules of procedure of the MCs or in other relevant documentation.

There are different scenarios with regard to the use of legal instruments to address Col under the ESI Funds: MS with specific legislation addressing the issue of Col under the ESI Funds; MS with 'horizontal' legislation addressing the issue of Col in general terms for the entire public administration sector; and MS with both, specific and horizontal legislation.

Several MS have adopted codes of conduct to address Col affecting the public administration sector. These codes often complement the regulatory framework. However, case study and survey work indicate that there are no specific codes of conduct addressing Col scenarios under the ESI Funds. Stakeholders consider that existing codes governing the conduct of civil servants already sufficiently address Col scenarios, including such that might arise under the ESI Funds.

Several MS address Col issues under the ESI Funds in the rules of procedure of the MCs or relevant sub-committees. However, there is no homogeneous approach, e.g. whilst some MC rules of procedure appear to address Col somewhat cursorily or not at all, other MC rules of procedure have established more elaborate Col requirements.

Effectiveness of Col prevention

As the case studies show, the biggest challenge is not the lack of rules and codes, but the lack of awareness about potential Col, the lack of ethical leadership in MCs, the lack of transparency, and the poor management and limited institutionalisation of Col policies in the MCs. In most cases, more regulation is not required in those situations or countries where high levels of public trust exist. The existing rule-based approaches are necessary, but must be complemented by soft approaches, ethical leadership and investments in transparency. A transparent system that can be observed by everyone as a matter of course will also demonstrate to members of the public and others who deal with the implementation of the ESI Funds that the MCs perform their role in a way that is fair and unaffected by improper considerations. Therefore, protocols and voting behaviour should be published and Col more intensively discussed. The latter requires an active role by the MC chairperson.

The study is critical as regards the effectiveness of codes and guidelines. Adopting a code of conduct is not sufficient. In most MCs, EU-level guidelines are not well known. At the national level, too much time and energy is usually spent on designing, formulating, and adopting a code but many institutions stop here. The code remains a 'paper tiger' and is never implemented or monitored. The future challenge should be to 'utilise the dynamics' which have emerged from the formulation of the code. This will support a continuous process of reflection on the central values and standards contained in the code. Thus, it would be important, if politicians and public servants meet on a regular basis and discuss (and update) the existing code (s).

Overall, Ethics and Col policies should not be a 'plug-in policy' that fills the gaps that other policies and other governance logics produce. It is time to acknowledge that ethics is not only a normative question. It is a practical, daily-life issue.

Most important is to have a credible monitoring and control mechanism in place, the crucial issues being transparency and accessibility of information, monitoring and enforcement. While we do not suggest the introduction of more rules and more codes, we believe that countries should invest in monitoring (the effectiveness of their own) Col policies and nominate existing bodies (e.g. the ombudsman) to carry out regular Col tests and reports.

Col policies are an expression of distrust. We believe that in the future, the public will continue to question practices where public institutions and/or politicians regulate their own ethical conduct. Any form of self-regulation will continue to cause suspicion. This also relates to the MCs. Therefore, our evidence suggests that it may be advisable to establish an independent Col commission and/or independent compliance officer who should carry out these tasks.

Best practices

For many years, international research on ethics and integrity has focused on the characteristics and prevalence of high performance ethics infrastructures. Much of this literature assumes that high performance ethics infrastructures constitute 'best practice', although a distinction can be drawn between those arguing for a contextual best-fit approach and those arguing for more of a best-practice approach, based on a belief in the more universal advantages of these systems. The best-practice approach is based on the belief that ethics infrastructures can be used in any organisation and the view that all organisations can improve performance if they identify and implement best practices.

In the meantime, there is considerable consensus on what constitutes bad practices, e.g. the absence of codes of ethics, poor leadership, unfair human resource policies, lack of training, and unprofessional performance measurement.

However, it is much more difficult to identify institutional best practices, although the search for benchmarks is becoming ever more popular. Still, it is possible to continue the work on 'common elements' and 'good practices' that really work in the field of Col. The contours of an approach to establishing effective Col policies are steadily coming into view, and comprise aspects such as measurement of Col; strengthening the focus on transparency, openness and accountability; supporting efforts to tackle Col through cycles of awareness raising and learning about the risks of Col; systematic monitoring and evaluation of effectiveness; and paying more attention to implementation, compliance and results and not only the implementation of rules as such.

Overall, the search for best-practice ethics infrastructures is confronted with a context and institution-based, fragmented and pragmatic reality. Institutional differences – notably the levels of budgetary resources, social legitimacy, work systems, labour markets, education and training systems, work organisation and the collective organisation of employers and employees – mediate the impact of converging processes.

Consequently, the proposal for implementing institutional and organisational best practice models such as ethics infrastructures is ambiguous. In fact, the political and institutional world is currently moving away from universal or even European best-practice institutional configurations towards more

specific best-fit context-related models. New developments lean more towards the testing of new innovative organisational models and work systems that fit into the national, regional, local or even organisational context.

Current discussions in the field of Col also turn away from the 'grand old' dichotomy: value-based approaches versus compliance-based approaches. This can best be seen in the field of Col, where countries have started to realise that the management of Col does not work without clear rules, formal procedures, and strong enforcement mechanisms but also not without soft-instruments, awareness raising, strong leadership, independent ethics committees, registers of interest and more and better management capacity. Countries are also starting to test new instruments like staff-assessments on Col and integrity, monitoring integrity policies on the governmental level, and introducing better registers that collect data on Col violations.

Thus, our study concludes that it would not be wise to offer suggestions on the best way how to tackle Col in different contexts, situation, policies, as regards categories of staff and as regards the right choice of policy instruments within the best-fit organisational design of ethics infrastructures. More work is also needed as regards what types of rewards or penalties work best to create incentives for responsible and accountable behaviour, including the search for improvement.

Still, in our study, we were able to identify aspects of the Dutch model as potential 'good practice model'. We have also identified some aspects of the Norwegian model as interesting for other countries. However, we are cautious to interpret these models as superior to others and as 'easily transferable' into other systems and cultures. In fact, this does neither suggest that best practice models disappear. In fact, it seems that the current trends are giving way for new hybrid models which focus more on value management but also a modest 'renaissance' of the classical compliance model.

The following lists the main findings from the European Economic Area (EEA)/Norway Grants case study of conditions or restrictions that might be imposed to manage, reduce, or mitigate Col:

- Appointment of a risk manager for individual programmes or sectors, following-up the entire project cycle in the fund management from selection to evaluation;
- Public disclosure of significant business or financial interests of members of relevant committees in a publicly accessible register or database;
- Disclosure of Col in all internal or external presentations on the project progress or results;
- Raise awareness for nature and potential impact of Col among all stakeholders, as well as of the consequences, sanctions and penalties for breach of procedures;
- Systematically include sections on Col in all protocols on monitoring, reporting and evaluation proceedings; where appropriate, review of reports and protocols by independent reviewers;
- Disqualification from participation in procedures that could negatively affect the programme/project in terms of legal, material or reputational impact; clarify other sanctions and penalties;
- Detailed reporting of detected deviations from standard operating procedures and filing in a publicly accessible 'irregularity register' (also as a soft tool for 'nudging' or 'naming and

shaming', but also to document how reported irregularity cases have been dealt with to serve as a knowledge base and to inform and encourage ethical leadership);

- Systematically involve Col and ethics experts in the design and implementation of Col policies, implementation and training; as well as in the external evaluation of the programmes.

Conclusions and recommendations

Overall, existing rules and standards on Col, including those applying to the ESI Funds, are highly fragmented and dispersed on the international, European, national, regional and local level, amongst sectors, and types of stakeholder. This suggests the need for a comprehensive codification of existing Col requirements.

There are shortcomings in the implementation of EU standards in the field of Col because of the limited number of instruments that have been adopted at the EU level – regulatory approaches, guidelines, self-assessment tools, innovation in data management, monitoring and sanctioning. We suggest to widen the menu of instruments by offering better and more information on best practices in the field, funding training in the field for Col, deepening research on the effectiveness and management of Col policies and collecting information on the use of innovative instruments on the national level.

As regards the MCs under the ESI Funds, we have concluded that:

- a) There is too little awareness about the importance of Col in MCs; there is also too little discussion on Col. Therefore, we suggest to invest in awareness raising instruments, also at the EU level, through ESF-funded programmes in the fields of Public Sector Modernisation and Capacity Building.
- b) Mostly, the MC rules of procedures address Col, if at all, very cursorily. We suggest that each MC should have Col guidelines at hands. There is no need to produce new ones, as best-practices exist, e.g. EU guidelines, Organisation for Economic Cooperation and Development (OECD) toolkits. This is only a matter of better internal distribution and communication.
- c) Frequently, MCs are not transparent as regards the management of Col. We suggest to publish protocols of meetings and voting behavior and, for the purpose of research and scrutiny, to collect these reports in publicly available databases (respecting, of course, existing rules on data protection and privacy).
- d) Often, the chairperson does not discuss Col in the MC because priorities are set elsewhere. This is also due to a lack of ethical leadership and awareness as regards the importance of the issue. Here, ethical leadership is important. Chairpersons need to be trained in the field of Col and should be obliged to discuss Col during committee proceedings.
- e) Involvement of external experts in the proceedings as well as in training and awareness raising can help eliminate blind spots and identify systemic weaknesses. Experts could be consulted in elaborating risk management strategies, providing guidance and instructions as well as distributing roles and responsibilities to identify and mitigate Col risks.
- f) Most countries have no information and data on the development of Col under the ESI Funds. There is also very little monitoring in the field of Col. We believe that monitoring and reporting

on Col is of utmost importance. Without asking for the establishment of a new ethics/Col bureaucracy, we suggest to ask existing authorities and bodies in the field to regularly report on the development of Col. Good practices exist in the Netherlands and in Norway.

1 INTRODUCTION

The European Parliament's (EP) Directorate for Budgetary Affairs contracted Blomeyer & Sanz to conduct this research assignment between September 2016 and January 2017.⁴

This report is based on our understanding of the specifications for the study, a kick-off meeting with the EP on 11 October 2016, exchanges on an interim report, submitted to the EP on 31 October 2016, interviews with relevant representatives at the level of the European Union (EU) and Member States (MS), case study work in Bulgaria (BG), the Czech Republic (CZ), Estonia (EE), Germany (DE), the Netherlands (NL), Norway (NO), Poland (PL) and Spain (ES), and a survey addressed to MS authorities involved in the delivery of funding under shared management.

This introduction presents the research objectives (section 1.1), the methodology and implementation schedule (1.2), and the report structure (1.3).

1.1 OBJECTIVES

This section presents the research objectives.

The preparations for the 2014-2020 programming period have witnessed an increased concern over conflicts of interest (Col) affecting the deployment of EU funding under shared management. Promoting the introduction of Col policies was indeed considered an important element in strengthening the protection of the EU financial interests. Relevant strategy documents thus started giving prominence to Col issues, coinciding with preparations for the 2014-2020 programming period.⁵

This study aims to understand how the MS administrations involved in the shared management of EU funding (e.g. the European Structural and Investment (ESI) Funds), ensure the integrity of relevant decision-making and management processes. The study takes an interest in both, 'soft' and 'hard' law approaches, e.g. codes of conduct and legislation on the prevention of Col. The Specifications for the study rightly emphasise *'the high levels of administration at the regional level'* (p. 2). Indeed, it is at this level, that in many MS most of the relevant decisions regarding the deployment of the ESI Funds are taken, and that therefore require attention to avoiding Col. Finally, the study aims not only to establish an overview of the existing approaches (comparing, inter alia, between legislation and codes of conduct) to addressing Col, but also takes an interest in their effectiveness, and in possible future improvements, drawing, inter alia, on best practices in and outside the EU.

The Specifications clearly define the scope of the study, noting a series of elements, namely *'codes of conduct and legislations related to conflicts of interest at high political and administrative level, both at national and regional level in the framework of shared management of EU finances'* (p. 2):

- The study needs to cover both, 'soft' and 'hard' law approaches to promoting integrity;

⁴ The research team included Dr. Christoph Demmke (assisted by David Hanel), Roland Blomeyer, Dr. Thomas Henökel, Mike Beke, and Timo Moilanen.

⁵ EC (2012) Joint Anti-Fraud Strategy (JAFS) for ERDF, ESF, CF and EFF 2012-2013. Note that an earlier strategy document for the years 2010 and 2011 does not directly mention Col issues (see table 3 below, p. 32).

- The study needs to focus on the national and regional levels most likely to be exposed to Col situations;
- The thematic focus is on the prevention of Col in the specific sphere of shared management of EU funds, i.e. the 80% share of the EU budget that is covered by Article 317 of the Treaty on the Functioning of the European Union (TFEU); the EU's latest consolidated annual accounts (for the year 2015) note EUR 67 billion (43% of total EU budget expenses) under the ESI Funds and EUR 45 billion under the European Agricultural Guarantee Fund (EAGF) (29% of total EU budget expenses).⁶ At the kick-off meeting with the EP on 11 October 2016 it was agreed to focus on the ESI Funds, and more specifically, on the European Regional Development Fund (ERDF) and the European Social Fund (ESF).
- To add genuine value to existing research, and mindful of available resources for this study, it was also decided to apply a narrow definition of the concept of Col. Indeed, this study focuses on Col affecting the members of the Monitoring Committees (MC) (and any related sub-committees) established to provide strategic orientations for, and oversee the implementation of the Operational Programmes (OP), and embodying the partnership principle underlying the design and delivery of support (Article 47, Common Provisions Regulation (CPR)).⁷ Depending on national context, the MC include representatives of relevant stakeholders in the ESI Funds, e.g. national and / or regional authorities, the social and economic partners, and representatives for specific thematic or horizontal interests covered by the specific OP, e.g. research and innovation, gender, the environment etc. (Article 48, CPR). Note that this study's interest in Col affecting the MC members is also aligned with the regulatory framework's very specific interest in preventing Col affecting the partnership arrangements (CPR Article 5.3(d)).
- Finally, it is important to note that this study focuses on a 'type' of Col that does not necessarily imply fraud. It is difficult to clearly locate Col on the 'continuum' established in the context of financial control and fraud prevention under the ESI Funds, and stretching from mere errors, to irregularities and fraud. Existing EC and MS efforts appear to relate mostly to the area of fraud prevention. This study adds value by focusing on types of Col that have been paid somewhat less attention. The following example aims to illustrate this study's interest. Imagine an OP in the area of support for small and medium-sized enterprises (SME), and this OP's MC including (among other economic and social partners) a representative of a regional SME association, who at the same time is the director of an SME; should this MC discuss the design of a call for applications for grant support for SMEs, the SME representative could experience a Col if supporting the design of the call for applications in a direction that favours the eligibility of his own enterprise. The authors of this study understand that it is precisely this type of Col that the new Col requirements focusing on the partnership arrangements are interested in, and that to date, has only received limited attention.

Elaborating on the research interests noted in the Specifications, we address the following three overarching research questions:

⁶ EC (2016) Consolidated annual accounts of the European Union, Financial year 2015.

⁷ EC (2013) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006

- What exists? What is in place in terms of Col policy for EU funding under shared management, looking specifically at the ESI Funds (ERDF and ESF), and what are the existing instruments to ensure the proper management of Col in the sphere of the OPs' partnership arrangements?
- Does it work? What is the existing experience with these instruments, i.e. are the different instruments effective in terms of preventing and mitigating Col?
- What remains to be done? Do existing best practices point the way towards possible further improvements in the way that national and regional authorities involved in the management of EU funding tackle Col?

1.2 METHODOLOGY AND IMPLEMENTATION SCHEDULE OF THE STUDY

1.2.1 Methodology

Several research tools were deployed to answer the research questions, based on both the Specifications for the study and the feedback provided during the kick-off meeting:

- Desk research;
- Stakeholders interviews;
- A survey of MS authorities involved in the management of EU funding;
- Case studies.

Desk research included a review of relevant documentation at EU and MS level, dealing with the issue of Col under the ESI Funds (ERDF and ESF). For example, table 3 below (p. 32) shows an overview of relevant EU-level documentation.

Stakeholder interviews were conducted with representatives of relevant European Commission (EC) services in the Directorates General Regional and Urban Policy (DG REGIO) and Employment, Social Affairs and Inclusion (DG EMPL). The interviews with the EC aimed to establish further insights into the motivations underlying the introduction of Col policy under the ESI Funds, the regulatory framework and guidance on preventing Col under the ERDF and ESF, and experience with MS implementation to date. We also interviewed the European Anti-fraud Office (OLAF) to establish whether there are any insights into the possible effects of the introduction of Col policy. In addition, we consulted with representatives of the European Ombudsman and relevant civil society organisations, considering their role in promoting integrity. Finally, stakeholder interviews were conducted at MS level (see further detail under 'Case Studies' below, table 1, p. 21). The detailed interview questions for EC and MS interviews are noted in Annex I.

Using an existing database of ERDF and ESF Managing Authority (MA) contact details (established in the context of past EP research assignments), we issued a web-based survey on the experience with Col policy under the ERDF and ESF. The survey was only addressed to the MAs in the MS not covered by the case study work. The survey intended to take stock of MS responses and first experience of Col policy under the ESI Funds. The focus was mostly on the first research question (what exists?). The detailed survey questions are noted in Annex I. MAs from 17 MS answered the survey.⁸

⁸ AT, BE, DK, DE, FI, FR, HR, HU, IE, IT, LT, LV, LU, PT, SE, SK, UK

Turning to the second research question (does it work?) we conducted seven in-depth case studies, assessing actual experiences with the operation of Col regimes established for the ERDF and ESF. Table 1 shows the selection of cases, based on the criteria noted in the Specifications. The case studies involved desk research and interviews with relevant MS administrations at the national and / or regional level. In addition to the in-depth case studies we reviewed the experiences of a small number of additional cases, however, without going to the same level of detail as for the selected case studies. The interest in reviewing the approaches of a small number of additional MS is explained with the authors' knowledge of existing experiences and / or best practices in the area of Col policy. Additional research was conducted on the Col approaches under the Operational Programmes in England, Scotland and Wales.

Table 1: Case studies

Country	EU Funding under the ESI Funds (EUR billion, 2014-2020)	Geography				Territorial level		Member State contribution to guidance on Col	EU track record	
		North	South	East	West	National	Regional		Before 2004	After 2004
BG	9.9			✓		✓	✓	✓		✓
CZ	22			✓		✓	✓	✓		✓
DE	27.9				✓	✓	✓	✓	✓	
EE	4.4			✓		✓		✓		✓
ES	37.4		✓			✓	✓	✓	✓	
NL	1.9	✓				✓	✓		✓	
PL	86.1			✓		✓	✓	✓		✓

1.2.2 Implementation schedule

The study commenced on 21 September 2016 and was completed on 6 January 2017. Table 2 presents the study's main milestones, consisting of reports and their deadlines, and meetings with the EP.

Table 2: Study milestones

DATE	REPORTS	MEETINGS
21 September 2016	Order Form	
11 October 2016		Kick-off meeting with the EP
31 October 2016	Interim report	
6 January 2017	Final report	
January-February 2017		Presentation at the EP

1.3 STRUCTURE OF THE STUDY

The study takes the following structure:

- **Chapter 2** focuses on the first research question, i.e. 'What exists?'. What is in place in terms of Col policy for EU funding under shared management, and what are the existing tools to ensure the proper management of Col?
- **Chapter 3** focuses on the second research question, namely 'Does it work?'. What is the existing experience with these instruments, i.e. are the different instruments effective in terms of preventing and mitigating Col?
- **Chapter 4** discusses the third research question 'What remains to be done?'. Do existing best practices point the way towards possible further improvements in the way that national and regional authorities involved in the management of EU funding tackle Col?
- **Chapter 5** provides conclusions and recommendations.

2 FRAMEWORK OF CONFLICT OF INTEREST PREVENTION UNDER SHARED MANAGEMENT

KEY FINDINGS

- The framework for addressing Col as affecting the partnership arrangements under the ESI Funds comprises the EU regulatory basis and related guidance and relevant MS responses in the form of implementation arrangements to deal with Col under the ESI Funds.
- The EU-level framework is set out in the Financial Regulation (FR) (Article 57, as supported by the Rules of Application), and the CPR (Article 5, as supported by the EC Delegated Regulation (DR) on the European code of conduct on partnership in the framework of the ESI Funds; requiring attention to provisions on conflicts of interest in the MC rules of procedure and attention to conflicts affecting the involvement of the partnership).
- EC interview feedback indicates some degree of legal uncertainty as to whether the FR's Article 57 can be considered of direct application to shared management. Indeed, Article 57 is considered to primarily address Col under direct management.
- This explains the EC's proposed revision of Col requirements in the FR. The proposal for a revision of the FR includes an article on Col (Article 59), clearly establishing the application of Col requirements to all forms of budget implementation, i.e. including shared management.
- The EU-level regulatory framework is supported by a series of guidance documents prepared by different EC services. Reviewing this documentation, it is worth noting the increasing prominence of Col. It is also worth noting the EC's substantial dissemination effort on anti-fraud measures, including Col.
- MS adopted different approaches to operationalising the Col requirements under the ESI Funds, including legal instruments, codes of conduct and / or by addressing Col requirements in the rules of procedure of the MCs or in other relevant documentation.
- Case study and survey feedback suggests that there are different scenarios with regard to the use of legal instruments to address Col under the ESI Funds: MS with specific legislation addressing the issue of Col under the ESI Funds; MS with 'horizontal' legislation addressing the issue of Col in general terms for the entire public administration sector; MS with both, specific and horizontal legislation, covering Col under the ESI Funds.
- Several MS have adopted codes of conduct to address Col affecting the public administration sector. These codes often complement the regulatory framework. However, case study and survey work suggests that there are no specific codes of conduct addressing Col scenarios under the ESI Funds. Stakeholders consider that existing codes governing the conduct of civil servants already sufficiently address Col scenarios, including such that might arise under the ESI Funds.
- Several MS address Col issues under the ESI Funds in the rules of procedure of the MCs or relevant sub-committees. However, there is no homogeneous approach, e.g. whilst some MC rules of procedure appear to address Col somewhat cursorily (e.g. simply noting the member's exclusion in cases of Col), other MC rules of procedure have established more elaborate Col requirements. In some MS, the MC rules of procedure fail to address the issue of Col.

This chapter aims to introduce the wider framework established with the intention of addressing Col under shared management. The framework comprises the EU regulatory basis and related guidance (section 2.1) and relevant MS responses in the form of implementation arrangements to deal with Col under the ESI Funds (section 2.2).

2.1 THE EUROPEAN FRAMEWORK

This study takes an interest in Col affecting EU funds delivered via ‘shared management’. Shared management refers to budget implementation in cooperation between the EC and the MS (FR, Article 58.1(b)).⁹ The ESI Funds are implemented via shared management.

With a global financial envelope of EUR 351.8 billion for the years 2014-2020,¹⁰ the ESI Funds comprise five separate funds, namely:

- The European Regional Development Fund (ERDF) with a budget of EUR 196.3 billion;
- The European Social Fund (ESF) with a budget of EUR 86.4 billion;
- The Cohesion Fund (CF) with a budget of EUR 63.4 billion;
- The European Maritime and Fisheries Fund (EMFF) with a budget of EUR 5.7 billion;
- and the European Agricultural Fund for Rural Development (EAFRD) with a budget of EUR 99.3 billion.

As noted in the introduction, this study focuses on the ERDF and ESF.

2.1.1 Regulatory framework

This section provides detail on relevant regulatory requirements on Col, drawing on the following sources:

- The FR (section 2.1.1.1);
- the CPR (section 2.1.1.2);
- the EC Delegated Regulation (DR) on the European code of conduct on partnership in the framework of the ESI Funds (2.1.1.3);
- Section 2.1.1.4 shows survey feedback on the quality of the regulatory framework.

Note that the ERDF and ESF regulations do not refer specifically to Col requirements.

2.1.1.1 Financial Regulation

Interview feedback (EC) confirms that the FR is considered to set out the wider framework for addressing Col under the ESI Funds, i.e. Article 57 on ‘Conflicts of interest’. The FR’s Rules of Application (RAP) provide further detail on the definition of Col (Article 32). The following box reproduces the text of Article 57 (FR) and Article 32 (RAP).

⁹ Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002

¹⁰ All financial figures for the ESI Funds are taken from: <https://cohesiondata.ec.europa.eu/funds> and from EC (2015) European Structural and Investment Funds 2014-2020: Official Texts and Commentaries (‘The Blue Guide’), http://ec.europa.eu/regional_policy/sources/docgener/guides/blue_book/blueguide_en.pdf

Conflicts of Interest in the Financial Regulation

Financial Regulation – Article 57

1. *Financial actors and other persons involved in budget implementation and management, including acts preparatory thereto, audit or control shall not take any action which may bring their own interests into conflict with those of the Union. Where such a risk exists, the person in question shall refrain from such action and shall refer the matter to the authorising officer by delegation who shall confirm in writing whether a conflict of interests exists. The person in question shall also inform his or her hierarchical superior. Where a conflict of interests is found to exist, the person in question shall cease all activities in the matter. The authorising officer by delegation shall personally take any further appropriate action.*
2. *For the purposes of paragraph 1, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient.*
3. *The Commission shall be empowered to adopt delegated acts in accordance with Article 210 setting out what is likely to constitute a conflict of interests together with the procedure to be followed in such cases.*

Rules of Application – Article 32

1. *Acts likely to be affected by a conflict of interests within the meaning of Article 57(2) of the Financial Regulation may, inter alia, take one of the following forms without prejudice of their qualification as illegal activities under Article 141:
(a) granting oneself or others unjustified direct or indirect advantages;
(b) refusing to grant a beneficiary the rights or advantages to which that beneficiary is entitled;
(c) committing undue or wrongful acts or failing to carry out acts that are mandatory.*
2. *Other acts likely to be affected by a conflict of interests are those which may impair the impartial and objective performance of a person's duties such as, inter alia, the participation in an evaluation committee for a public procurement or grant procedure when the person may, directly or indirectly, benefit financially from the outcome of these procedures. FR RAP 84 Financial Regulation applicable to the general budget of the Union and its rules of application 2. A conflict of interest shall be presumed to exist if an applicant, candidate or tenderer is a member of staff covered by the Staff Regulations, unless his participation in the procedure has been authorised in advance by his superior.*
3. *In the event of a conflict of interests, the authorising officer by delegation shall take appropriate measures to avoid any undue influence of the person concerned on the process or procedure in question.*

EC interview feedback indicates some degree of legal uncertainty as to whether the FR's Article 57 can be considered of direct application to shared management. Indeed, Article 57 is considered to primarily address Col under direct management.

This explains the EC's proposed revision of Col requirements in the FR (OLAF, REGIO interview feedback).¹¹ The proposal for a revision of the FR includes an article on Col (Article 59), clearly establishing the application of Col requirements to all forms of budget implementation, i.e. including shared management. Indeed, in a wider context of enhancing legal certainty and supporting simplification, the EC's explanatory memorandum (Recital 175) accompanying the proposed revision explains: *'With a view to ensure sound financial management in **ESI Funds** which are managed under **shared implementation**, and **clarify Member States obligations**, the general principles should explicitly refer to the principles of internal control of budget implementation and of **avoidance of conflict of interests** established in the Financial Regulation'* (highlighting by the authors of this report).

The proposed new Article 59 on Col reads: *'Financial actors as defined in Chapter 4 of Title IV and other persons involved under direct, indirect and shared implementation in budget implementation and management, including acts preparatory thereto, audit or control shall not take any action which may bring their own interests into conflict with those of the Union. They shall also take appropriate measures to prevent conflict of interest from arising in the functions under their responsibility and to address situations which may objectively be perceived as a conflict of interest. For the purposes of paragraph 1, a conflict of interest exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest'*.

2.1.1.2 Common Provisions Regulation

The uncertainties over the application of the FR's Article 57 to shared management explain the presence of Col requirements in the CPR.¹² Notwithstanding, the Col requirements in the CPR have a largely 'guiding' nature. This is explained with the fact that the large majority of ESI Funds is being deployed on the basis of public procurement, and the Public Procurement Directive already fully addresses Col requirements.

The main provisions on Col are set out in Article 5 covering the partnership arrangements for all ESI Funds. Two further references to Col requirements can be found in relation to specific 'delivery mechanisms', namely community-led local development (Article 34) and financial instruments (Article 38).¹³

¹¹ EC (2016) Proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and amending Regulation (EC) No 2012/2002, Regulations (EU) No 1296/2013, (EU) 1301/2013, (EU) No 1303/2013, EU No 1304/2013, (EU) No 1305/2013, (EU) No 1306/2013, (EU) No 1307/2013, (EU) No 1308/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, (EU) No 652/2014 of the European Parliament and of the Council and Decision No 541/2014/EU of the European Parliament and of the Council, 14 September 2016, COM(2016) 605 final

¹² Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006

¹³ Article 34 specifies the arrangements for the 'Local action groups' tasked with the design and implementation of community-led local development strategies. More specifically, Article 34.3.b tasks the local action groups with (underlining by the author) *'drawing up a non-discriminatory and transparent selection procedure and objective criteria for the selection of operations, which avoid conflicts of interest, ensure that at least 50 % of the votes in selection decisions are cast by partners which are not public authorities, and allow selection by written procedure'*. Article 38 establishes Col requirements with regard to the implementation of the financial instruments. Referring to the selection of financial intermediaries, the regulation requires:

Article 5 'Partnership and multi-level governance' under Title I 'Principles of Union Support for the ESI Funds' of the regulation's Part II 'Common Provisions applicable to the ESI Funds' provides for the first explicit reference to Col.

Article 5.3 empowers the EC to adopt a delegated act 'to provide for a European code of conduct on partnership (the 'code of conduct')'. More specifically, Article 5.3 (d) foresees for the delegated act to cover (underlining by the author): '*the main objectives and good practices in cases where the managing authority involves the relevant partners in the preparation of calls for proposals and in particular **good practices for avoiding potential conflicts of interest in cases where there is a possibility of relevant partners also being potential beneficiaries**, and for the involvement of the relevant partners in the preparation of progress reports and in relation to monitoring and evaluation of programmes in accordance with the relevant provisions of this Regulation and the Fund-specific rules*'.

As shall be seen in the discussion of the EC DR, the CPR can be considered more specific than the DR with regard to the definition of a Col. Indeed, Article 5 explicitly refers to the scenario of the same stakeholder being a partner involved in programme delivery, and at the same time, a beneficiary.

It is also worth noting that the CPR limits the sanctioning of infringements of the DR. Indeed, Article 5.5 stipulates '*An infringement of any obligation imposed on Member States either by this Article or by the delegated act adopted pursuant to paragraph 3 of this Article, shall not constitute an irregularity leading to a financial correction pursuant to Article 85*'. This is in line with the CPR's introductory recital concerning the DR: '*The adopted delegated act should allow Member States to decide on the most appropriate detailed arrangements for implementing the partnership in accordance with their institutional and legal framework as well as their national and regional competences, provided that its objectives, as laid down in this Regulation, are achieved*' (Recital 11, second paragraph). This suggests that whilst it was considered necessary to introduce Col requirements in the regulatory framework on the ESI Funds, it was also considered that the actual operationalisation of Col requirements should largely remain within the remit of the MS.

Finally, REGIO also notes the CPR's Article 125.4 (c) on the functions of the MA, namely to '*put in place effective and proportionate anti-fraud measures taking into account the risks identified*' as a basis for preventing Col. In this context, the EC's substantial capacity development effort is noted, including guidance documentation, a conference and 12 seminars in the MS.¹⁴

2.1.1.3 Commission Delegated Regulation

Following up on the CPR's more general provisions, an EC DR has introduced a '*European code of conduct on partnership in the framework of the European Structural and Investment Funds*'.¹⁵

DRs are provided for in Article 290 of the TFEU: '*A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.*' (Art. 290.1 first sentence).

'Financial intermediaries shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflicts of interest'.

¹⁴ http://ec.europa.eu/regional_policy/en/conferences/anticorruption/

¹⁵ EC (2014) Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds

The DR counts 19 articles organised in seven chapters:

- General provisions;
- Main principles concerning transparent procedures for identification of relevant partners;
- Main principles and good practices concerning the involvement of relevant partners in the preparation of the partnership agreement and programmes;
- Good practices concerning the formulation of the rules of membership and internal procedures of monitoring committees;
- Main principles and good practices concerning the involvement of relevant partners in the preparation of calls of proposals, progress reports and in relation to monitoring and evaluation of programmes;
- Indicative areas, themes and good practices concerning the use of the ESI Funds to strengthen the institutional capacity of relevant partners and the role of the commission in dissemination of good practices;
- Final provisions.

The DR primarily aims to operationalise the partnership between relevant stakeholders involved in the delivery of the ESI Funds (at the level of the Partnership Agreement at MS level and for individual OPs).

Chapter 4 on good practices with regard to the membership and rules of procedure for the MC at OP level first touches on the issue of Col. Indeed, Article 11 reads: *'When formulating the rules of procedure, monitoring committees shall take into account the following elements'*, and the seven elements include (under point f): *'the provisions on conflict of interest for partners involved in monitoring, evaluation and calls for proposals'*.

Chapter 5 concerning the involvement of partners in calls of proposals, reports, monitoring and evaluation, again raises the issue of Col. Article 12 reads: *'Member States shall ensure that partners involved in the preparation of calls of proposals, progress reports and in monitoring and evaluation of programmes are aware of their obligations related to data protection, confidentiality and conflict of interest'*. Article 13 emphasises the importance of paying attention to possible Col in relation to the preparation of calls for proposals: *'Managing authorities shall take appropriate measures to avoid potential conflict of interest where involving relevant partners in the preparation of calls for proposals or in their assessment'*.

There is no definition of Col, nor is there any further detail on what exactly the provisions of Col should entail. However, the MAs (Article 17) and the EC (Article 18) are given roles with regard to identifying and addressing needs for related capacity development:

- In the case of the MAs, Article 17 notes that capacity development can take the form of *'dedicated workshops, training sessions, coordination and networking structures'*.
- In the case of the EC, Article 18 foresees the establishment of a cooperation mechanism, i.e. the *'European Community of Practice on Partnership'* with the role of *'exchange of experience, capacity building, as well as dissemination of relevant outcomes'*. Moreover, Article 18 tasks the EC with facilitating examples of good practice.

2.1.1.4 Survey feedback on the quality of regulation

To allow for MS feedback beyond the case study countries, a survey was addressed to all MS not covered by the case study work. The survey included a question on the EU-level regulatory framework: *'Does the 2014-2020 regulatory framework on conflicts of interest provide for sufficient clarity on the requirements concerning conflicts of interest? The regulatory framework refers to: (a) Common Provisions Regulation 1303/2013, Art. 5 (Partnership and multi-level governance) (b) Delegated Regulation 240/2014, Art. 11, 12 and 13 (conflicts of interest affecting the partnership arrangements)'*.

18 survey respondents considered the regulatory framework to be 'very clear' or 'clear', three respondents claimed lack of knowledge ('don't know') and only two respondents saw a need for improving the regulatory framework.

2.1.2 Guidance

Section 2.1.2.1 presents relevant EC guidance. Section 2.1.1.4 shows survey feedback on the quality of guidance.

2.1.2.1 EC Guidance

The EC has issued a series of strategy and guidance documents to support stakeholders with fraud prevention.¹⁶ Reviewing this documentation it is worth noting the increasing prominence of Col. For example, whilst the *Joint Anti-Fraud Strategy 2010-2011* does not mention the concept of Col, all subsequent strategies do, and so do most of the guidance documents. Notwithstanding, it is also worth noting that the strategies and guidance documents mostly touch on the issue of Col in the context of public procurement. There are only few, and often rather indirect, references to Col situations outside the sphere of public procurement.¹⁷

OLAF interview feedback confirmed that efforts to date concentrated on assisting MS with compliance in the area of fraud prevention, with a focus on the area of public procurement, including Col affecting public procurement. The specific area of Col affecting the partnership arrangements, e.g. the members of the MCs, has, so far, not been at the forefront of efforts. This is explained, inter alia, by the need to focus on areas most likely to be relevant to Col, i.e. public procurement. MS resource constraints in the area of preventing Col are also noted.

Finally, it is worth noting the EC's substantial dissemination effort, comprising the international conference *'Anti-corruption and Anti-fraud Measures in Relation to the Use of European Structural and Investment Funds'* in Brussels (December 2013) and country seminars in 12 MS (March 2014 to October 2015), attended by some 1,500 participants.¹⁸

¹⁶ <https://ec.europa.eu/sfc/en/2014/anti-fraud>

¹⁷ This is acknowledged by OLAF guidance on Col in the agricultural sector: *'As mentioned in the introduction, the existing guidelines for dealing with conflicts of interest in the field of structural actions²⁸ are focussed on public procurement. This guide for agriculture is intended to complement the structural funds guide for situations not covered by public procurement only. The examples below are therefore limited to private procurement (the three offers rule) or other cases when public procurement rules are not applicable.'* OLAF (2015) *Identifying conflicts of interests in the Agricultural Sector, A practical guide for funds managers*, p. 21.

¹⁸ http://ec.europa.eu/regional_policy/en/conferences/anticorruption/

The following table presents an overview of available EC strategy and guidance documents, and notes whether Col issues are being addressed.

Table 3: EC strategy and guidance documents

Title	Author	Date	Conflicts of interest	
			affecting public procurement	affecting Monitoring Committees / Partnership
Joint Anti-Fraud Strategy 2015-2020, ERDF, CF, ESF, FEAD, EGF, EUSF and EMFF	REGIO, EMPL, MARE, OLAF	2015	✓	
Identifying conflicts of interests in the Agricultural Sector, A practical guide for funds managers	OLAF	2015	✓	
Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures	EC	2014	✓	(✓) ¹⁹
Guidelines for national anti-fraud strategies for European Structural and Investment Funds (ESIF)	OLAF	2014	✓	(✓) ²⁰
Identifying conflicts of interests in public procurement procedures for structural actions, A practical guide for managers	OLAF	2013	✓	
Detection of forged documents in the field of structural actions, A practical guide for managing authorities	OLAF	2013		
Joint Anti-Fraud Strategy for ERDF, ESF, CF and EFF 2012-2013	REGIO, EMPL, MARE, OLAF	2012	✓	
Compendium of anonymised cases, Structural Actions	OLAF	2011	✓	✓
Handbook, The role of Member States' auditors in fraud prevention and detection, for EU Structural and Investment Funds, Experience and practice in the Member States	OLAF	Not dated	✓	
Joint Anti-Fraud Strategy for ERDF, ESF, CF and EFF 2010-2011	REGIO, EMPL, MARE, OLAF	Not dated		
Information Note on Fraud Indicators for ERDF, ESF and CF	REGIO	2009	✓	

Source: Author on the basis of documentation on the EC website <https://ec.europa.eu/sfc/en/2014/anti-fraud>

¹⁹ MC are not directly mentioned, however, Col are addressed with regard to MA staff (p. 12); Annex 3 to this guidance document requires with regard to the MA, that 'A procedure is in place for the disclosure of situations of conflict of interests' (Annex 3, p. 1).

²⁰ MC are not directly mentioned, however, Col are addressed with regard to 'employees involved in the protection of the EU's financial interests' (p. 16). Note that this document provides a definition of Col, referring to a Council of Europe Recommendation (Council of Europe. Recommendation No R (2000) 10 of the Committee of Ministers to Member States on codes of conduct for public officials, Article 13).

2.1.2.2 Survey feedback on the quality of guidance

The survey included a question on the quality of guidance: *'What is the quality of European Commission guidance and / or advice on conflicts of interest under the ESI Funds?'*

Two survey respondents considered guidance to be of very poor / poor quality; eight survey respondents considered guidance to be of very high / high quality; and 12 respondents answered 'don't know' suggesting a lack of familiarity with existing guidance.

2.2 MEMBER STATE RESPONSES

This section discusses MS arrangements, operationalising the Col requirements established in the EU-level framework for the ESI Funds.

Drawing on desk research, the section first provides context information on how the MS approach Col in the public administration / civil service in general terms, i.e. Col affecting the wider public administration sector, beyond the specific scenario of the ESI Funds (section 2.2.1). Section 2.2.2 then discusses the 'interplay' between regulation at the European and the national levels.

Drawing on the survey and case study findings, we then show how MS have addressed the Col requirements by adopting legal instruments (section 2.2.3), codes of conduct (section 2.2.4) and / or by addressing Col requirements in the rules of procedure of the MCs (section 2.2.5) or in other relevant documentation (section 2.2.6). Section 2.2.7 presents survey responses on the MS regulatory framework.

2.2.1 Context information

To allow for an understanding of the wider context of how the MS approach the issue of Col affecting public administration, the following table presents a first overview of the presence of codes of conduct and / or legislation on Col affecting public administration. The table shows that relevant legislation is in place in 23 MS; 17 MS have adopted codes of conduct, and 14 MS have a 'combined' approach, with both, legislation and codes of conduct to address Col affecting the public administration.

Table 4: Codes of conduct / legislation on CoI, public administration

	Code of conduct	Legislation (Laws, Acts)
AT	✓	
BE		✓ ²¹
BG		✓
CY	✓	
CZ		(✓) ²²
DK	✓	
EE	✓ ²³	✓
FI	✓	✓
FR		✓
DE	✓	✓
GR	✓	
HR	✓	✓
HU	✓	✓
IE	✓	✓
IT	✓	✓
LV	✓	✓
LT		✓
LU		
MT	✓	✓
NL	✓	✓
PL		✓
PT	✓	✓
RO		✓
SK		✓ ²⁴
SI		✓
ES	✓	✓
SE	✓	✓
UK	✓	✓

Source: Author, on the basis of the country chapters for the EC's Anti-corruption Report 2014²⁵

However, it is important to note that this first overview only takes stock of whether relevant legislation or codes are in place. The overview does not convey an insight into the detail or intensity of the integrity requirements.

Insights into the intensity of integrity requirements are available from the Organisation for Economic Co-operation and Development (OECD) data collection on MS approaches to ensuring integrity in the executive branch of government and in the civil service in the form of a composite indicator of levels of disclosure and public availability of private interests.²⁶

²¹ Two circulars

²² The 2006 Act on Conflicts of Interest does not cover the entire civil service.

²³ This information was identified with the help of the case study work in Estonia.

²⁴ This information was identified with the help of the stakeholder consultations in Slovakia.

²⁵ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm

²⁶ OECD (2015) Government at a glance, 2015 edition, public sector integrity, <http://stats.oecd.org/Index.aspx?QueryId=66858#>

The OECD data shows that levels of integrity requirements tend to be proportional to seniority, i.e. the higher the level of the civil servant, the higher the level of the integrity requirements. It is also interesting to note that integrity requirements for senior civil servants and civil servants are on average lower for the 'old' MS (26 out of 100 points) than for the 'new' MS (32 out of 100 points).

The MS with the highest levels of integrity requirements for senior civil servants and civil servants (calculating the average of the two categories) include Latvia (88), Estonia (39), France, Sweden and the United Kingdom (all 38); the MS with the lowest levels include the Slovak Republic (4), Portugal (8), Poland (17), Italy (19) and Slovenia (23).

Table 5: OECD data on level of disclosure and public availability of private interests by the level of public officials in the executive branch (0/low to 100/high)

	Head of the executive	Ministers or members of cabinet	Political advisors / appointees	Senior civil servants	Civil servants	Average (all 5 categories) ²⁷
AT	37.5	37.5	25	25	25	30
BE	41.67	41.67	41.67	41.67	20.83	38
CZ	58.33	58.33	0	58.33	0	35
EE	79.17	79.17	0	70.83	8.33	48
FI	87.5	87.5	..	25	8.33	52
FR	62.5	75	75	75	0	58
DE	16.67	16.67	..	25	25	21
GR	79.17	79.17	25	25	25	47
HU	87.5	87.5	41.67	41.67	12.5	54
IE	62.5	66.67	58.33	33.33	12.5	47
IT	50	50	25	25	12.5	33
LV	87.5	87.5	87.5	87.5	87.5	88
NL	62.5	62.5	16.67	25	16.67	37
NO	75	75	58.33	58.33	58.33	65
PL	56.25	87.5	0	16.67	16.67	35
PT	100	100	8.33	8.33	8.33	45
SK	87.5	87.5	87.5	4.17	4.17	54
SI	29.17	29.17	16.67	29.17	16.67	24
ES	62.5	62.5	0	62.5	0	38
SE	70.83	70.83	37.5	37.5	37.5	51
UK	87.5	91.67	41.67	41.67	33.33	59
OECD	64.78	64.84	32.5	39.45	19.48	44

Source: OECD (2015)

Finally, whilst the two overviews suggest that most MS have dedicated substantial efforts to addressing Col as affecting public administration, the overviews do not provide information on actual levels of compliance / effectiveness of the integrity requirements.

However, the lecture of the country chapters prepared in the framework of the EC's Anti-corruption Report 2014 suggests that important additional efforts are required in many MS to translate the requirements set out in law or in codes of conduct into actual practice. To support its recommendations

²⁷ Calculated by the authors of this study

for further efforts, the EC's Anti-corruption Report 2014 frequently refers to Eurobarometer data on Col affecting public procurement.

The following table provides the data from a 2016 Eurobarometer survey on business perceptions of corruption, including Col affecting public procurement.²⁸ This shows that 53% of respondents across the EU consider Col to be widespread in the evaluation of bids in public procurement, with only a small difference between the 'old' MS (50% consider Col to be widespread) and the MS that joined the EU since 2004 (52% consider Col to be widespread).

Table 6: Eurobarometer data on conflicts of interest and public procurement (% of respondents considering conflicts of interest to be 'widespread' in the evaluation of bids in public procurement)

	Code of conduct
AT	41
BE	48
BG	58
CY	76
CZ	58
DK	18
EE	35
FI	35
FR	62
DE	43
GR	71
HR	59
HU	35
IE	48
IT	66
LV	40
LT	40
LU	33
MT	59
NL	63
PL	35
PT	70
RO	53
SK	55
SI	73
ES	68
SE	45
UK	34
EU	53

Source: Author, on the basis of Eurobarometer data²⁹

²⁸ EC (2015) Flash Eurobarometer 428: Businesses' attitudes towards corruption in the EU, http://data.europa.eu/euodp/en/data/dataset/S2084_428_ENG

²⁹ EC (2015) Flash Eurobarometer 428: Businesses' attitudes towards corruption in the EU, http://data.europa.eu/euodp/en/data/dataset/S2084_428_ENG

2.2.2 Interplay between European and national regulation

Until today, the competence for implementing Community law has, as a principle, stayed with the MS, and their organisational and institutional structures are protected under the procedural autonomy doctrine. Moreover, the principles of subsidiarity, proportionality, enumerated competence and safeguarding national identity and institutional autonomy of the MS reflect this classic picture of clear delineation between the EU and the national administrations.

As a consequence of the distribution of tasks and the functional separation between the EU and the MS, a clear area of tension exists between the principle of institutional autonomy of the MS and the duty to 'implement' community policies effectively, as enshrined in Article 197 paragraph 1 TFEU. During the past decades the European Court of Justice has interpreted concepts such as the 'correct implementation of community policies' more strictly and linked it to the principle of effectiveness. This also applies to the duty to effectively safeguard community financial interests.

Despite the fact that (as a principle) implementation falls under MS responsibility, it is certainly true that especially as regards the implementation of the ESI Funds, today, there is no more a clear dividing line between EU administrative law and national administrative law and also not between EU administration and national administration as the scholarly discussions on the Europeanisation of public law, and Europeanisation of administrative law illustrate. For example, forms of administrative 'engrenage' can best be observed as regards the effects of the so-called partnership principle which links European, national, regional and local administrations. Another example for the 'fusion' of administrations is OLAF which assumes important monitoring and surveillance functions as regards the protection of community financial interests on the European but also on the national and regional level.

Notwithstanding, OLAF and the EC rely on the 'goodwill' of the MS to implement the EU funds effectively.

The EC has only few possibilities to monitor and to enforce its own policies on the local level. Therefore, the EC is using other channels to make sure that (not only) community financial interests are properly implemented. For example, the EC is funding various public administration reforms in many EU Member states and uses the ESF to support capacity building, anti-fraud- and anti-corruption policies etc..

Implementing European Col requirements in the field of the ESI Funds faces additional challenges compared to the national level. In its report 'Making the best use of EU money: a landscape review to the risks of the financial management of the EU budget',³⁰ the European Court of Auditors discuss a large variety of reasons and factors which explain risks in the implementation of EU funds. Corruption, fraud and Col are one reason, amongst many others.

One reason can also be found in the legal and institutional structure of the EU and the lack of powers as regards the implementation of EU policies on the national level, weak monitoring and enforcement capacities and the existence of an accountability gap on the side of the MS: *'Member States are obliged to report only on the elements that are included in the legal basis on monitoring and reporting. If the above*

³⁰ European Court of Justice (2014), Making the best use of EU money: a landscape review to the risks of the financial management of the EU Budget, Luxembourg.

cases are not considered irregularity they will not be mentioned in the irregularity reports either. Nevertheless, as the EC participates in the MC meetings it can pay attention on the extent to which the guidance is applied and discuss this with the MAs in bilateral review meetings' (DG EMPL).

Another problem concerns the above mentioned 'accountability gap'. While the MS are responsible for spending approximately 80% of the EU budget under shared management arrangements, it is the EC that is ultimately responsible for supervising and implementing the EU budget, in turn, overseen by the EP's Committee on Budgetary Control, e.g. in the context of the discharge procedure.

As DG Employment replied to this study: 'EC communicates related rules to the ESIF Managing Authorities, which could be both at national or regional level. The formal channel is the expert group (the ESF technical working group, for example) where all guidance is presented and discussed. From time to time, there are meetings of that group specifically dedicated on fraud prevention, where OLAF also takes part and presents their experience and recommendations. Due to the big number of managing authorities however not all of them are represented in the expert groups. Therefore, in some countries with several dozens of OP the only channel is the direct communication between the geographical desks, managing the OPs and the respective national/regional bodies. The role of the national coordination and audit bodies in these cases also is critical'.

According to Mögele (2016), this form of institutional cooperation produces a paradox: Although MS are actively involved in the management and implementation of the EU budget and accountable to the EC (and may be sanctioned in case of unprofessional spending), it is the EC which takes ultimate responsibility. This is also confirmed by the Art. 59 of the EU Budget which gives the political responsibility for the execution of the budget to the EC. Accordingly, the EC is also accountable for those acts for which the MS are responsible.

This again means that – on the national level - the monitoring of EU funds is not taken care of in the same way as the national funds and accountability mechanisms differ as regards the implementation of EU funds.³¹

Since EU funds are spent via 28 national administrations and many regional and local authorities with unequal administrative capacity (skills and resources) this increases the risk of errors occurring, as well as the risk of poor quality spending.

2.2.3 Legal instruments

Case study and survey feedback suggests that there are different scenarios with regard to the use of legal instruments to address Col under the ESI Funds:

- MS with specific legislation addressing the issue of Col under the ESI Funds;
- MS with 'horizontal' legislation addressing the issue of Col in general terms for the entire public administration sector;
- MS with both, specific and horizontal legislation, covering Col under the ESI Funds.

³¹ Mögele (2016), Die Durchführung der EU-Förderpolitiken durch die Mitgliedstaaten im Spannungsfeld europäischen Verwaltungs- und Haushaltsrechts, op cit. pp.490

2.2.3.1 Specific legislation addressing Col under the ESI Funds

Some MS have adopted specific legislation to support the implementation of the ESI Funds, and in some cases, this legislation specifically addresses the issue of Col, e.g. in SK and BG.³²

For example, in BG a law on the management of the ESI Funds also includes a section on Col. In addition, in BG a ministerial decree spells out the requirements applying to MCs. The decree states that MC members need to confirm the absence of Col. This applies to absence of Col during meetings as well as during the period of MC membership.

In NL, the EU regulatory framework is supported by a national-level regulation, however, the national regulation does not specifically address Col.³³

2.2.3.2 Horizontal legislation addressing Col for the entire public administration sector, including the ESI Funds

Case study and survey feedback suggests that the 'dominant' approach is to address Col on the basis of horizontal legislation covering the entire public administration sector, without any specific treatment for the ESI Funds. In this context stakeholders also noted that the EU regulatory framework governing the implementation of the ESI Funds is of direct application in the MS, i.e. stakeholders found no need for any legal transposition, or specific legislation to address the Col requirements under the ESI Funds. Indeed, any such legislation targeting specifically the Col requirements under the ESI Fund would risk duplicating existing legislation on Col in the public administration sector.

For example, in EE there are different legal acts which support the implementation of the EU regulatory framework on the ESI Funds such as the Structural Assistance Act. Notwithstanding, there is no specific supporting legislation on Col under the ESI Funds. Col are addressed under the Anti-Corruption Act, the Civil Service Act and the Public Procurement Act. In addition, there are many lower level decrees. The Civil Service Act provides the main framework for the performance of the public sector, starting first with the requirement that all duties should be performed without self-interest and pursuant to the public interest. Estonian anti-corruption policy is guided by the Anti-Corruption Act. Anti-corruption activities are planned in the Anti-Corruption Strategy which currently applies to the period 2013-2020. In this period, a number of reforms were implemented, including a new system for the declaration of interests.

In DE, stakeholders confirmed that the existing regulatory framework governing the status and conduct of civil servants, public procurement legislation as well as legislation related to the areas of fighting corruption and fraud provide a sufficient framework to address Col situations under the ESI Funds. Notwithstanding, the existing regulatory framework is also considered to be somewhat deficient when it comes to the definition of Col. Moreover, it remains unclear whether the existing legal framework, largely targeting civil servants, would also apply to MC members who are not civil servants. In the light of these weaknesses / gaps, the MC rules of procedure also address the issue of Col.

³² Zákon zo 17. septembra 2014 o príspevku poskytovanom z európskych štrukturálnych a investičných fondov a o zmene a doplnení niektorých zákonov (Law of 17 September 2014 on the contribution from the European Structural and Investment Funds and on amendments to certain laws). Article 46 deals with conflicts of interest.

³³ Regeling Europese EZ-subsidies, See: <http://wetten.overheid.nl/BWBR0036758/2015-07-01>.

Similarly, for ES, stakeholders considered the regulatory framework governing the public administration sector, both at national and regional level, to provide for a sufficiently strong framework on Col, making any specific regulation of Col under the ESI Funds redundant. Again, it is not clear to what extent the existing regulatory framework would cover Col affecting MC members that are not from the public administration sector, e.g. representatives of the social and economic partners.

In BG, national legislation on fighting corruption addresses the issue of Col, and is applicable to the area of the ESI Funds. In NL, Col are mostly addressed in the context of legislation on public procurement.³⁴

The MS approach of dealing with integrity issues in the public administration on the basis of horizontal legislation raises concern in MS where this legislation fails to specifically address Col. For example, case study work in CZ suggests that existing legislation focuses on combating corruption and fraud, however, there is still insufficient attention to Col issues.

2.2.3.3 Combined approaches

Finally, some MS are operating specific and horizontal legislation in parallel, e.g. BG.

2.2.4 Codes of conduct

As shown in the table in section 2.2.1, several MS have adopted codes of conduct to address Col affecting the public administration sector. These codes often complement the regulatory framework.

However, case study and survey work suggests that there are no specific codes of conduct addressing Col scenarios under the ESI Funds. Stakeholders consider that existing codes governing the conduct of civil servants already sufficiently address Col scenarios, including such that might arise under the ESI Funds.

Estonia's Civil Service and Anti-Corruption Act is binding for all public administration,³⁵ however, a code of ethics is also in place, addressing civil servants, and of recommended application for public sector employees.³⁶ Moreover, a Handbook on Col for municipalities was developed.³⁷ The purpose of the booklet is to help local governments resolve Col. The booklet includes an overview of 13 possible Col situations that Estonian local governments have encountered. Every situation description in the booklet is accompanied by an explanation of how to act in the case of that particular type of Col. The preparation of the booklet was guided by the wish to increase the awareness of Municipal Councils and Rural Municipality Governments and City Governments about Col. Unlike the formal solutions set out in the Anti-corruption Act, the solutions provided in the booklet have a guiding nature, not binding rules of conduct. The booklet was prepared, taking into account restrictions set out in the legislation and the wider notion of values characteristic of public services. The booklet was prepared in the co-operation of the Ministry of Justice, Tartu City Government, the Police and Border Guard Board, the Ministry of Finance and the National Audit Office.

³⁴ Article 2:4 Algemene Wet Bestuursrecht

³⁵ <https://www.riigiteataja.ee/en/eli/511102016001/consolide/> https://www.riigiteataja.ee/en/eli/530032016001/consolide

³⁶ http://www.avalikteenistus.ee/public/eetika/Code_of_Ethics.pdf

³⁷ <http://www.korruptsioon.ee/sites/www.korruptsioon.ee/files/elfinder/dokumendid/kasiraamat.pdf>

In ES, there is a code of conduct for all civil servants, and this is specifically applied to those dealing with EU Funds.³⁸ According to Art. 53.5 '*Civil servants will not participate in those areas in which they have a personal interest, or any kind of private activity or any interest that might be a risk of Col with his public position*'. Moreover, Art. 53.6 specifies '*Civil servants will not incur in financial obligations neither will participate in financial operations or business (...) when this might be a case of a Col with the obligations of his public position*'.

2.2.5 Monitoring Committee Rules of Procedure

Several MS address Col issues under the ESI Funds in the rules of procedure of the MCs or relevant sub-committees.

For example, in BG, Col are included in the rules of procedure of the MCs. Members need to submit a declaration of interests and confirm this at the beginning of a meeting. Col are noted in the minutes.

Similarly, the rules of procedure for relevant expert committees in the NL ('*Deskundigencommissie*') require committee members to refrain from participation once personal interests are involved.

In DE, it is interesting to observe that whilst some MC rules of procedure appear to address Col somewhat cursorily (e.g. simply noting the member's exclusion in cases of Col), other MC rules of procedure have established more elaborate Col requirements, e.g. the rules of procedure for the ERDF OP Bavaria.

³⁸ Code of Conduct and Ethics (Annex III of the Description of Functions and Procedures of the ERDF MA). Royal Decree 5/2015, Statute of Public Employees. Art. 53.5) and 6).

Col in the rules of procedure of the MC for the ERDF OP Bavaria³⁹

According to Art. 1 of the Rules of Procedures, a member or its deputy is not allowed to consult or decide if the decision indirectly or directly grants advantage to her or him, a family member, a sub-organisation affiliated to the represented organisation or any other natural or legal person with representative mandate. Hereby, an indirect advantage is not given when the follow-up procedure requires further explanation to justify the advantage.

In addition, Art. 2 states that circumstances emerging during the membership within the MC are to report and explained forthwith to the chair. The assembly of the MC is responsible, together with the member in question, to assess the Col situation and to adjudicate on further proceeding. Meanwhile, the member affected is excluded from decision-making.

Finally, Art. 3 concludes that a decision taken with the involvement of the member in question is only invalid if the participation was significant for the outcome. A decision taken excluding a member or its deputy on unjust grounds is invalid, independently from whether the excluded vote was decisive. Even though the Col situation has not been conceptualized in detail, Art. 1 to 3 are considered sufficient to prevent maladministration related to Col. During the past funding periods, there have not been any cases reported and decisions were taken without undue influence.

In ES, the rules of procedure for the MCs of the regional and some of the national ERDF OPs fail to address the issue of Col, however, Col are addressed in the rules of procedure for the ESF OPs, repeating for all cases the same single sentence: *'The institutions and their representatives must declare all conflicts of interest that might arise between their involvement in the delivery of the Operational Programme and their condition as Monitoring Committee member'*.⁴⁰ Stakeholder feedback (national and regional level, ESF) confirms the absence of any additional guidance (e.g. definitions) or follow-up mechanisms and /

³⁹ (1) Ein Mitglied oder sein Stellvertreter darf weder beratend noch beschließend mitwirken, wenn die Entscheidung einer Angelegenheit ihm selbst, einem seiner Angehörigen, der von ihm vertretenen Institution, einer Unterorganisation dieser Institution, einem Mitglied dieser Institution oder einer weiteren Institution (z.B. einem Unternehmen), an der diese Institution unmittelbar oder mittelbar beteiligt ist, oder einer von ihm kraft Gesetzes oder kraft Vollmacht vertretenen sonstigen natürlichen oder juristischen Person einen unmittelbaren Vorteil bringen kann. Ein unmittelbarer Vorteil liegt nicht vor, wenn es noch einer späteren Förderentscheidung zuständiger Bewilligungsbehörden bedarf, um einen Vorteil zu begründen.

(2) Die Definition der Angehörigen im Sinne des Absatzes 1 Spiegelstrich 2 richtet sich nach Art. 20 Absatz 5 Satz 1 und 2 BayVwVfG.

(3) Umstände, die während der Mitgliedschaft im Begleitausschuss einen Interessenkonflikt darstellen oder verursachen können, sind dem Vorsitz unverzüglich anzuzeigen. Ob ein Interessenkonflikt vorliegt, entscheidet im Streitfall der Begleitausschuss in Anwesenheit des/ der Betroffenen. Die von der Entscheidung Betroffenen dürfen an der Beratung und Abstimmung nicht teilnehmen.

(4) Ein Beschluss, der unter Mitwirkung eines nach Absatz 1 auszuschließenden Mitglieds oder seines Stellvertreters zu Stande kommt, ist nur unwirksam, wenn die Mitwirkung für das Abstimmungsergebnis maßgeblich war. Ein Beschluss, bei dem ein Mitglied oder sein Stellvertreter zu Unrecht ausgeschlossen worden ist, ist unwirksam, unabhängig davon, ob die Stimme des Vertreters oder Stellvertreters ausschlaggebend gewesen wäre oder nicht.

⁴⁰ 'Tanto las instituciones como las personas que las representan deberán declarar todo conflicto de intereses que pudiera surgir entre su participación en la ejecución de las actuaciones del Programa Operativo y su condición de miembros del Comité de Seguimiento' The example is taken from the rules of procedure for the MC for the ESF OP for the Balearic Islands, however, all ESF MCs' rules of procedure are identical.

<http://www.caib.es/sacmicrofront/archivopub.do?ctrl=MCRST31ZI205518&id=205518>

or sanctions. Awareness raising is limited to the email message sent together with the invitation to attend an MC meeting, and noting that members should inform the MC of Col and abstain from participation (ESF).

The following table provides an overview of MC rules of procedure in Spain.

Table 7: MC rules of procedure in Spain

OP		ESF (✓ Col addressed / x rules of procedure not publicly available)	ERDF
Regional	Andalucía	x	Rules of procedure published, however no specific reference to Col
	Aragón	x	
	Asturias	✓	
	Baleares	✓	
	Canarias	x	
	Cantabria	x	
	Castilla-la Mancha	x	
	Castilla y León	x	
	Cataluña	x	
	Extremadura	x	
	Galicia	✓	
	La Rioja	x	
	Madrid	x	
	Murcia	x	
	Navarra	x	
	País Vasco	✓	
	Valencia	x	
	Ceuta	x	
Melilla	✓		
National / Interreg	ESF Operational Programme Employment for Youth	x	
	ESF Operational Programme for Social Inclusion and Social Economy	x	
	ESF. Operational Programme Employment, Training and Education	✓	
	ERDF SMEs		x
	ERDF Smart Growth		No
	ERDF Sustainable Growth		No
	INTERREG V A Madeira-Açores-Canarias 2014-2020⁴¹		✓
INTERREG V A ESPAÑA – PORTUGAL (POCTEP) 2014-2020⁴²		✓	

⁴¹ Members should notice the presence of any Col. In the case of a member having a Col, actual or potential, direct or indirect Col, he/she should not participate in the discussions neither vote on the issues related to the Col.

⁴² Idem

2.2.6 Other relevant documentation

Finally, case study and survey work has helped to identify other types of documentation used by MS to address Col.

In DE, the well established legal framework on the conduct of civil servants and legislation on public procurement and fighting corruption and fraud is complemented by a strategy framework, at the national, regional and often local levels, and clearly referring to the issue of Col for civil servants.

Similarly, in BG, the regulatory framework on Col under the ESI Funds is set out in a wider strategic framework, namely the '*National Strategy for prevention and fight against fraud and irregularities affecting the financial interests of the EU*' adopted at the level of BG's Council of Ministers.

Case study work also indicates that in some MS, Col are addressed at the level of the documentation governing the calls for proposals, evaluation and selection of projects (CZ).

In ES, the Rules of Procedure for the MCs of the ERDF OPs fail to make any mention of the Col. However, the Ministry of Economy, the MA for all of Spain's national and regional ERDF OPs, has issued an 'institutional declaration' in the framework of anti-fraud measures for the ESI Funds that does include a reference to Col,⁴³ and it is understood that this document would also cover the MA's involvement in the operation of the MCs: '*the MA has implemented a procedure to declare situations of conflict of interests*'. However, the declaration only targets MA staff (civil servants), and it is unclear whether any Col requirements apply to members of the MCs that are not civil servants. Note that the declaration is further supported by a 'Code of conduct and ethical principles', transcribing three articles from the law on public sector employees, however, again this is only of application to civil servants.⁴⁴ Stakeholders (ES, regional level) argue that Col are not addressed in some MC rules of procedure because Col issues have never materialised in the context of MC proceedings.

2.2.7 Survey feedback on the MS regulatory framework

The survey included a question on the quality of guidance: '*Please describe your approach to addressing the conflict of interest requirements*'.

Five survey respondents noted the establishment of a 'regulatory framework to address conflicts of interest under the ESI Funds'; Six survey respondents noted that they had established a definition of Col; and 19 respondents had addressed Col in the MC rules of procedure. It is worth noting that one respondent acknowledged not having taken any action.

⁴³ Institutional declaration (following Annex II of the Description of functions and procedures of the ERDF MA), of 27 April 2016.

⁴⁴ Código de Conducta y principios éticos (Anexo III de la Descripción de Funciones y Procedimientos de la Autoridad de Gestión del FEDER), http://www.dgfc.sepg.minhfp.gob.es/sitios/dgfc/es-ES/jpr/fcp1420/gsfeder/dg/Documents/Medidas_antifraude-codigo_de_conducta_y_principios_eticos.pdf

3 EFFECTIVENESS OF CONFLICT OF INTEREST PREVENTION

KEY FINDINGS

- As our case studies have shown, the biggest challenge is not the lack of rules and codes, but the lack of awareness about potential Col, the lack of ethical leadership in MCs, the lack of transparency, and the poor management and the institutionalisation of Col policies in the MCs. In most cases, more regulation is not required in those situations or countries where high levels of public trust exist. We believe that the existing rule-based approaches are necessary, but must be complemented by soft approaches, ethical leadership and investments in transparency. A transparent system that can be observed by everyone as a matter of course will also demonstrate to members of the public and others who deal with the implementation of the ESI Funds that the MCs perform their role in a way that is fair and unaffected by improper considerations. Therefore, we believe that protocols and voting behavior should be published and Col more intensively discussed. The latter requires an active role by the MC chairperson.
- We are also critical as regards the effectiveness of codes and guidelines. Adopting a code of conduct is not sufficient. In most MCs, EU-guidelines are not well known. Also on the national level, much time and energy is usually spent in designing, formulating, and adopting a code but many institutions stop here. The code remains a 'paper tiger' and is never implemented or monitored. The future challenge should be to 'utilise the dynamics' which have emerged from the formulation of the code. This will support a continuous process of reflection on the central values and standards contained in the code. Thus, it would be important, if politicians and public servants meet on a regular basis and discuss (and update) the existing code (s).
- Overall, Ethics and Col policies should not be a 'plug-in policy' that fills the gaps that other policies and other governance logics produce. It is time to acknowledge that ethics is not only a normative question. It is a practical, daily-life issue.
- Most important is to have a credible monitoring and control mechanism in place, the crucial issues being transparency and accessibility of information, monitoring and enforcement. While we do not suggest the introduction of more rules and more codes, we believe that countries should invest in monitoring (the effectiveness of their own) Col policies and nominate existing bodies (e.g. the ombudsman) to carry out regular Col tests and reports.
- Col policies are an expression of distrust. We believe that in the future, the public will continue to question practices where public institutions and/or politicians regulate their own ethical conduct. Any form of self-regulation will continue to cause suspicion. This also relates to the MCs. Our findings suggests that it may be advisable to establish an independent Col commission and/or independent compliance officer who should carry out these tasks.

This section discusses the effectiveness of Col prevention with regard to the work of the MCs. Section 3.1 notes a few introductory comments concerning the feasibility of assessing the effectiveness of the Col requirements under the ESI Funds; Section 3.2 discusses the concept of Col policy in some detail; Section 3.3 reviews the experience with Col under the ESI Funds, drawing on case study and survey feedback. Finally, Section 3.4 discusses the effectiveness of different tool to prevent Col.

3.1 INTRODUCTORY COMMENTS

3.1.1 EC feedback

EC feedback (EMPL, OLAF, REGIO) confirms that there is only limited quantitative data on Col affecting the implementation of the ESI Funds. This is explained with limitations in data gathering and with the still relatively limited experience with implementation under the programming period 2014-2020.

- Data gathering limitations: REGIO interview feedback indicates that whilst there is 'anecdotal' information on Col affecting the Structural Funds in the programming period 2007-2013, there is no systematic information on the share of irregularities / financial corrections related to Col. REGIO interview feedback also confirms that there is no systematic data collection on Col affecting the partnership arrangements in 2014-2020, however, to date, no Col issues affecting the ESI Funds have been communicated to the EC by the MS. Similarly, OLAF confirmed the limited number of reported cases related to Col on public procurement under the ESI Funds. However, recently, the MS reporting system on irregularities was enhanced with the introduction of new categories allowing the identification of irregularities related to Col. OLAF noted that to date 43 cases of irregularities related to Col in public procurement under the Structural Funds during the period 2007-2016,⁴⁵ out of which 31 were reported during the last three years.
- Limited experience with implementation: The programming period 2014-2020 started late, with only limited funding deployed in the first years of implementation. More substantial experience with implementation is expected as of 2017.

REGIO has recently launched procurement procedures for a new study looking at fraud prevention under the ESI Funds: *'Preventing fraud and corruption in the European Structural and Investment Funds – taking stock of practices in the EU Member States'*. The objective is to take stock of and disseminate information on the measures that authorities responsible for the management of ESI Funds in the MS have established in order to prevent and detect fraud and corruption in the programming period 2014–2020. This is expected to shed light, inter alia, on how MS have operationalised Col requirements. Deliverables under the assignment include: a study on the implementation of Article 125 (4) c) of the CPR in the MS; a handbook of practices and measures for preventing fraud and corruption in ESI Funds; and a workshop presenting the results. REGIO expects the study to be published towards the end of 2017.

3.1.2 Constraints related to the complexity of the concept of Col

Effectiveness is also difficult to assess because of the complexity of the concept of Col. Indeed, analysing Col policies involves some of the greatest challenges and difficulties in legal, political and administrative science. To this should be added the difficulty in comparing and analysing different (legal) instruments in different legal and administrative traditions in different languages.

The concept of 'Integrity of Governance' (Huberts, 2014) is more complex than ever. Likewise, the list of perceived, potential and actual integrity violations is longer than ever before. Also, progress toward

⁴⁵ Note, that this period is not to be confused with the Programming Period 2007-2013.

higher integrity standards is combined with new challenges, conflicts and dilemmas. The 'marketisation' of societies leads to ever new forms of moral and ethical dilemmas and conflicts (Sandel, 2012). Some experts believe that trends are moving towards the end of the 'secular state' and a return to 'moral politics' (Knill, 2016). Again, others discuss the overriding importance of 'security' as the top-political issue in the next years which will also have implications on the regulation of ethics policies (Gros, 2015). Moreover, trends towards more inequality and individualisation have an impact on perceptions of fairness, attribution and justice (Menzel, 2011).

Within this context, it becomes not easier, but more difficult to define ethical standards. In fact, the increase in complexity in society correlates with the increase in complexity of moral and ethics as such.⁴⁶ Moreover, the different societal systems (e.g. the political system, public administration etc.) function on the basis of different values.⁴⁷ Therefore, in no country and no society, values and moral are based on a uniform systemic understanding.

In this study, we take a middle approach.

- Firstly, we claim that 'avoiding Col' can be learned and cultivated.
- Secondly, we believe that definitions of Col (that is definitions on values and virtues) as such are ambivalent and sometimes even contradictory concepts. In some cases, even positive Col concepts can have very ambivalent effects. Moreover, the discussion of what constitutes Col is changing over time. This is because values are changing over time. For example, virtues such as modesty or impartiality must always be interpreted in the context and time. In the same way, it becomes more difficult to define vices and unethical behaviour in times of changing governance and changing values.
- Thirdly, working ethically and under the guidance of a number of virtues is not more nor less challenging than leading an ethically correct private life.

3.2 INTRODUCTION TO THE CONCEPT OF COI POLICY

Definitions of unethical behaviour (and Col) cover an ever wider range of situations. In the meantime, the notion of Col has evolved from a focus on financial interests to other subjective, personal, political, economical and ideological interests.

The implications of these changes for public administration are obvious: post-modern administrations tend to be much more diverse, less hierarchical, more flexible, representative and less separated from the citizenship. Whereas the term bureaucracy represents clear values, such as hierarchy, formalism, standardisation, rationality and obedience, the term postmodernism implies conflicting values and value dilemmas.

⁴⁶ Niklas Luhmann, *Die Moral der Gesellschaft*, Suhrkamp, Frankfurt/M., 2008, p. 156.

⁴⁷ *Ibid.*, p. 167.

Still, in today's discussions of public values, it is all too often assumed that there is one set of public sector values versus private sector values,⁴⁸ whereas research shows that values differ according to different organisations.⁴⁹

Moreover, new values such as transparency, diversity, sustainability and flexibility have been added to the classical values. As it seems, the future will be dominated by more value conflicts and newly emerging values.⁵⁰ Also, efficiency is seen as an increasingly important value.

Therefore, it is also not surprising that, under all jurisdictions and in all countries, there is confusion about the multiplicity of issues that fall under the umbrella of Col, and dissent about how important the problem of Col in the implementation of the ESI Funds really is.

Therefore, it is no surprise that despite the evidence as regards the existence of the problem, there is frustration with the limited impact of regulatory, political and institutional Col efforts. Finally, there is uncertainty about how best to tackle Col policies.

However, the contours of an approach to establishing effective Col policies are steadily coming into view. From our perspective, they include the following:

- measuring and assessing Col in ways that focus on generating information that is useful, e.g. through staff assessments and other indicators;
- strengthening the focus on transparency, openness and accountability, so that interested stakeholders can have access to the information they need to prevent, detect, investigate and sanction Col;
- supporting efforts to tackle conflicts of interest through cycles of awareness raising and learning about the risks of Col;
- focusing more on analysing the effectiveness of Col policies in relation to specific policy sectors, problems, issues or instruments;
- paying more attention to compliance and results and not only the implementation of rules as such.

A further issue is that Col easily overlap with other integrity violations. For example, Col easily turn into corrupt behaviour and/or fraud. Thus, the concept of Col as such is a 'grey zone'. Next, often, Col have nothing to do with pecuniary interests, and even personal interests do not always play a role. Consequently, often Col have more the character of a dilemma than of a criminal act. People have intentional or unintentional Col.

Thus, Col are not only notoriously difficult to define, but also difficult to separate from other integrity violations. Col are difficult to regulate, to implement and to enforce. The latter is also the case with the

⁴⁸ Zeger van der Wal/E. Th. van Hout (2009), Is public value pluralism paramount? The intrinsic multiplicity and hybridity of public values, in: *International Journal of Public Administration*, Vol. 32, 3-4/2009, pp. 220-231.

⁴⁹ Sandra van Thiel/Zeger van der Wal, Birds of a feather? The effect of organisational value congruence on the relationship between ministries and quangos, in: *Public Organisation Review*, Vol. 10 No 4/2010, pp. 377-397.

Gjalf de Graaf/Zeger van der Wal, On value differences experienced by sector switchers, in: *Administration and Society*, Vol. 40, No.1/ 2008, p.79.

⁵⁰ Ibid.

implementation of European policies in the field Col. Moreover, according to a definition of the OECD,⁵¹ Col can be actual, perceived or potential.

Therefore, only the principle of Col as such is easy to define. However, to resolve a conflict and to distinguish between actual, apparent, real, and potential conflict situations usually requires legal, technical and managerial skills and a fundamental understanding of the many issues and points of view involved. Moreover, the language is confusing: 'having an interest' is not the same as being interested in an issue.

Col can arise at any time and may range from avoiding personal disadvantages to personal profit seeking. They can have financial or non-financial reasons and include many social and professional activities and interests. For example, a minister, judge, legislator etc. may be a member of a board, or have personal contacts with lobby groups, non-governmental organisations or simply friends.

Col are also strongly related to the institutional and political context. For example, the Estonian case study shows that Col are related to the size of a country.

Size of a country and relationship with Col – the case of Estonia

With a population of under 1.3 million, Estonia is one of the smallest countries in Europe. The size of the population influences Col in the public sector. However, this does not suggest that only because Estonia is a small country, it has higher levels of Col (in reality, it has relatively low levels of corruption, fraud and Col). Still, the size of the country relates to Col. First, because few actors are working in the administration. This again means that people know each other (personally) which again means that decision making, coordination and communication structures are less formalised and anonymous than in bigger administrations. Thus, the fact that the public workforce is small may have positive (side-effects through more possibilities for social control of actors) and/or negative effects because of enhanced possibilities to create networks and personal ties which make it more difficult to maintain strictly formalised decision-making procedures and processes. Another problem is the high labour turnover in the public sector. High turnover favours high levels of interaction between the public and private sector, facilitates corruption and weakens institutionalised knowledge. This again may support the appearances of Col.

As can be seen, the area of Col is a field of extraordinary complexity and political and legal sensitivity. Moreover, expectations as to the effectiveness of Col policies are increasing. The underlying reasons for this worldwide development can be summarised as follows:

- First, governments are increasingly expected to ensure that public office holders do not allow their private interests to compromise official decision-making;
- Second, society is becoming increasingly demanding as to behaviour of holders of public office. Consequently, potential Col may weaken public trust;
- Third, new forms of relationships have developed between the public and private sector and give rise to increasingly close forms of collaboration between the two sectors;

⁵¹ OECD, OECD Guidelines for Managing Conflicts of Interest, Paris 2003; OECD, Managing Conflicts of Interest, A Toolkit, Paris 2004

- Fourth, new forms of mobility between the public and private sector may provoke more potential Col as regards post-employment issues;
- Political scandals and increasing media attention put more pressure on the political actors to do even more in the field of ethics.

Despite the existence of numerous international standards, EU primary law, EU secondary law, guidelines and existing subsidies in the field of capacity building, transposition, implementation and enforcement poses one of the main barriers in the European fight against Col. The various international and EU monitoring mechanisms are generally considered to have contributed to compliance at MS level. However, there is a lack of horizontal and vertical integration in terms of consistency with related monitoring and enforcement mechanisms and the rule of law more generally, as well as between international, EU, national, regional and local governance levels. Col in some countries is closely linked to fraud and political corruption. According to the reply of DG EMPL to this study: *'The leverage of the Commission there is quite weak as anything more than a recommendation would be considered as interference in the national sovereignty'*.

3.3 THE MONITORING COMMITTEE EXPERIENCE WITH COI

The MS and the EP expect a high degree of transparency from the EU budget. In the end, inefficient spending of ESI Funds poses a problem for the legitimacy of the EU, even if the bulk of EU funds is spent on the national level and national administrations are responsible for the protection of the EU financial interests. In particular, negative opinions can promote the perception that inefficient spending indicates that the spending of the ESI Funds is seriously affected by fraud and corruption. This again affects adversely public confidence in the EU institutions. The risks for Col in the implementation of projects is indeed real as relevant funding decisions are adopted by (relatively in-transparent) MCs and allocated to final beneficiaries. In this phase, the interests of decision-makers and beneficiaries which include individuals, companies, universities, public-private partnerships and government organisations etc. can overlap, especially at the regional and local level.

Section 2.1 has presented the regulatory framework at the EU level. This framework implies that the MS still enjoy a lot of freedom how to manage Col in the framework of the partnership arrangements, and more specifically, the MCs. Basically, MS must fulfil at least two legal requirements: (a) the MCs must have rules of procedures, and (b) they are obliged to have provisions on Col.

Our case studies indeed show that most MCs provide for rules of procedure and rules on Col. Thus, all case studies seem to have fulfilled the legal obligations arising from EU law. Still, references to Col in rules of procedures are (mostly) very short. Usually, Col are not defined and do not follow international guidelines or models (for example the OECD guidelines).

Overall, amongst the different case studies in this study, MCs differ enormously as regards the implementation and the management of Col within these committees.

This also relates to the transparency of MCs and the publication of members of MCs and the publication of protocols of meetings. As regards the latter, many MCs do not publish protocols and keep the protocols confidential.

Also MC structures and rules of rules of procedures as well as policies on Col differ from country to country.

Whereas in ES, rules of procedures are standardised and uniform, MC structure and rules of procedures differ widely in DE. Interestingly, in NL, in OP East, the MC consists of the Comité van Toezicht (supervisory committee) and the Deskundigencommissie (expert committee). The former supervises quality and effectiveness of the execution of the programme. The committee includes:

- an independent chair as a representative of the MA;
- representatives from the province of Gelderland, Overijssel, the cities from Gelderland and Overijssel, the universities of eastern NL, and SME;
- Representatives from organisations dealing with equality, environment and sustainability, the central government and the EC;
- A Secretary.

The Deskundigencommissie has been specifically established as an independent advisory body to the MAs. The committee includes experts on education, government and business. The committee advises the MA on content and quality of project proposals and determines on the basis of national set criteria a score that is awarded to each project. Representatives from the provinces and the municipalities participate in the committee but cannot vote.

The set-up of the Comité van Toezicht and the Deskundigencommissie has been established in order to guarantee an independent expert view on topics that can be of a highly technical nature and therefore fall sometimes out of the scope of decision-makers. The Deskundigencommissie advises the MA on the scoring of project proposals after which the MA takes the decision to allocate funding.

Whereas in DE only few committees provide for an obligation to fill out registers/declarations of interests prior to the meetings, in BG, MC members need to submit a declaration of interests and confirm this at the beginning of a meeting. Col are also noted in the minutes. Also in the NL all members must issue a declaration of interest and the chair of the Deskundigencommissie has access to these files. Therefore, the chair is able to prevent possible Col. According to the interviewees there are few cases in practice but this does happen.

Also MCs discuss Col in very different ways. In the case of BG, transparency of the respective individual interests of members of the MC is seen as a way to ensure that decisions are taken that guarantee objectivity. In BG, at the start of meetings, possible Col need to be made public to all members. This is then noted in the minutes of the meeting. Members are not required to leave the meeting and can contribute to the debate. However, when Col are announced the respective member cannot vote. In EE, all participants in the MCs must fill out questionnaires and pledge that they do not have Col. In a control-sheet there are special questions about Col. Experts who are involved must also pledge that they don't have a Col.

In other countries (such as in DE and NL), members with a potential Col are also required to leave the room. On the other hand, Col are not necessarily discussed at the start of the meeting. This is very much up to the discretion of the chairperson. In ES *'in the Internal regulation of the ESF it is established that members should declare Col. In practice, the invitations for the meetings of the Monitoring Committees are sent by the Secretariat of the Monitoring Committee to the members. In the written invitation it is mentioned that if a member has any Col he should declare it in advance and in written. At the moment of holding the meeting of the Monitoring Committee, it is again said before the start of the meeting that Col should be declared at that moment'*. In case of a potential or apparent Col, these members are not allowed to participate in the meetings.

Our research also revealed that it is difficult to verify whether the existing rules on Col in the rules of procedures are actually applied in practice, discussed and implemented. In order to shed light on these questions, evidence could only be gathered via practical insights from the chairperson and/or the existing protocols of the meetings. As regards the latter, we found many cases, where protocols were not published and not made available to the public. As a consequence, it was difficult to assess whether the MCs discuss Col at all. In many cases where protocols were published, no discussions on Col were recorded. This brings the issue of ethical leadership and ethical responsibility of the chairperson to the forefront. If the chairperson is not interested in the discussion nor in the management of Col within the MCs, the rules of procedures are nothing but paper – therefore ineffective.

Here, the issue of (lack of) awareness of Col is becoming important. Interestingly, many case study interviewees report that awareness about the importance of Col policies has increased.

On the other hand, it seems, decision-making within MCs is somewhat disconnected from national and EU-policies in the field of Col. The CZ case study concludes that 'regional and local level authorities report no direct contact or communication with EU level authorities other than via the provision of guiding documents'. Similar remarks have been made by interviewees in the ES case study: 'There is no awareness of EC guidance' but also no 'national guidance on Col for the MC of the ESF'. The latter is slightly different to the DE case study, where – occasionally – MAs reported that EC guidelines on managing Col and detecting fraud were distributed to the MCs (and also – partly – applied in practice).

Whereas EU and national rules, policies and guidelines are abundant in the field of Col, they do not play an important role in 'committee life'. This illustrates that (a) ethical knowledge is not ethical know-how. Thus, it seems to be easier to 'preach' ethics than to practice ethical living in MCs. On the other hand, this also shows that (b) not all violators of Col rules and policies are simply uncaring, 'evil' people. The CZ case study reports that all national, regional and local sources report a lack of methodology and support ('guidance and advice') to the MC. This is especially true for the very complex rules on public procurement, where MAs tend to turn to the EC guidance 'Identifying conflicts of interests in public procurement procedures for structural actions: A practical guide for managers'.

Case study feedback indicates that MC chairpersons neglect the issue of Col because of lack of awareness, lack of information or conflicting values. Some MC chairpersons argued that Col requirements in the rules of procedures would not be necessary at all because Col 'do not exist'. In other cases, arguments were more complex. Some chairpersons believe that it is in the very nature of an MC to lobby, represent interests and bargain in favour of organisational or personal interests. This form of representation of diverse interests would be an inherent task of an MC member. Consequently, it would be wrong to discuss Col as such. This points to the risk of systematically ignoring or implicitly tolerating Col issues, as may be the case for a number of MS studied in this report.

As such, provisions on Col are seen as an instrument that communicates in an implicit way that they are present because of the potential distrust and conflict that is present in the group,⁵² i.e. an awareness is created that people cannot trust each other.⁵³ This also explains why many chairpersons avoid discussions of Col in the MCs. Alternatively, chairpersons briefly ask the MC members whether Col exist and then proceed with the agenda. Still, awareness about the importance to manage Col remains a huge challenge. In our study, MC members were often aware of the existence of apparent and potential

⁵² Marshall Schminke (eds) (2010), *Managerial Ethics*, Routledge, New York, p. 121

⁵³ Schminke, op cit, p.121

Col. However, these forms of Col were widely tolerated and not taken seriously.⁵⁴ Consequently, there is little awareness of Col and existing Col are not taken seriously. This may also explain why codes of conduct have little effect even if administrations invested heavily in the design, formulation and implementation of codes.⁵⁵

Also in PL, the lack of knowledge and training explain why civil servants are not prepared to anticipate potential Col (Batory Foundation, 2015).⁵⁶ The majority of the staff in the ministries and other central offices may have insufficient knowledge and preparation to properly react to Col situations.⁵⁷

However, most important seems to be the fact that all MC members join these meetings for various interests. There is a lack of awareness about the importance of Col and the existence of potential Col. MC members seem to be not only not aware of existing rules and codes in the field but also not of the rules on Col in the MC rules of procedures. Especially, MC chairpersons must be made aware about the importance of Col rules. They also need to be educated about the rules. Training is an important instrument in any strategy to raise awareness of the existence of rules and standards. Although empirical evidence is lacking, our findings suggest that training on Col for MC chairpersons is strongly underdeveloped. Only in BG, the 'Central Coordination Unit'⁵⁸ and the OP MAs are supposed to organise training of the MC members in relation to their functions and tasks. This training is provided for all MC members, including those newly appointed.

Overall, in all of our case-studies there is no evidence pointing to much awareness of Col as affecting the MCs or related sub-committees. In many cases, stakeholders consider that the issue of Col is not relevant in the first place in the context of the MCs. This is somewhat contradictory since the MC rules of procedure, in some (but not all) cases actually refer to Col, thus addressing the requirements spelled out in the EU regulatory framework for the ESI Funds. However, there is no specific guidance on Col in the context of the MCs. As regards the implementation of Col in the MC meetings, we conclude that, in most cases, there is no operationalisation of the Col rules (where they exist). The lack of operationalisation is explained by a lack of awareness that Col can in fact become relevant for MCs. Moreover, as the ES case illustrates, the focus is strongly on anti-fraud measures, looking primarily at public procurement.

⁵⁴ See Lascoumes on the tolerance of conflicts of interests and unethical behaviour, Pierre Lascoumes, Condemning corruption and tolerating conflicts of interest: French arrangements regarding breaches of integrity, in: Auby/Breen/Perroud, op cit, 83/84

⁵⁵ T. Lamboo/W. van Dooren/P.M. Heywood (2015), Prime Witnesses? Case Studies of Staff Assessments, Ministry of the Interior and Kingdom Relations, Den Hague, p.48

⁵⁶ Stefan Batory Foundation (2014), The Conflict of Interest in the Polish Government Administration, Warsaw

⁵⁷ Stefan Batory Foundation (2014), The Conflict of Interest in the Polish Government, op cit., p.13

⁵⁸ The Central Coordination Unit coordinates the operations of the ESI instruments. Its mandate is defined in Council of Ministers Decree No 94/25.04.2006 on the amendment of the Rules of Procedure of the Ministry of Finance. It participates in all OP MCs and is primarily the focal point for contact with the EC.

3.4 EFFECTIVE TOOLS FOR PREVENTING COI

This section discusses the effectiveness of different tools to prevent Col. Section 3.4.1 looks at the choice of tools; Section 3.4.2 looks at the effectiveness of rules; Section 3.4.3 reviews the effectiveness of codes.

3.4.1 Choice of tools

Most of our MS interviews and case studies revealed that – in order to receive funds – the MS must comply with many rules. There is certainly no shortage of rules. Instead, many interviewees complained about the lack of clarity of rules and the high degree of fragmentation of existing rules. Nobody complained about the lack of rules, or that more rules and policies would be needed. The latter also applies to the field of anti-corruption and anti-fraud.

Instead, interviews also showed that MC members were not aware about the existence of EU rules in the field of Col. They also lacked motivation to discuss Col in MCs. The latter points to the fact that there are also not enough incentives to manage Col.

Overall, it appears, there is no link between EU (legal) requirements and (mostly adequate) national implementation (of rules) and the decision-making reality in MCs.

Moreover, in most cases, existing rules of procedures in MCs mention Col in terms of a sanctioning system. Thus, in rules of procedures, Col are communicated in an implicit way that they are required because of the potential distrust and conflict that is present in the group. If this is the message that members receive, chances are slight that Col are managed in a proactive way.⁵⁹ As a consequence, chances are higher that Col will not be discussed at all.

This indicates a need to design better instruments in the field of Col. So far, discussions on Col were dominated by legal approaches, but rarely by behavioural ethics approaches. However, the overall ethical climate of organisations and committees is also very important (Trevino & Weaver, 2003). Four core dimensions of the ethical climate are: organisational fairness, the example set by leadership, public service motivation and a goal orientation that provides a sense of mission (Hoffmann & Van Dooren, 2013; Trevino & Weaver, 2003). These are influenced by general management policies and the broader public culture, but integrity policies nonetheless can be important levers to maintain or improve the ethical climate. Van Tankeren and Montfort (2012) state that regardless of the definition of integrity, integrity policy can be described as the set of intentions, choices and actions designed to promote and protect integrity within organisations. That set may involve a wide range of initiatives and instruments, which will ideally be a combination of ‘software’ (ethical culture), ‘hardware’ (rules and procedures), and an ‘operating system’ (organisation and coordination of integrity policies).⁶⁰

When looking at this overview of policy elements, it becomes clear that the EU policy approach almost exclusively focuses on the hardware.

⁵⁹ D. de Cremer, *On the Psychology of Preventing and Dealing with ethical Failures: A Behavioral Ethics Approach*, in: M. Schminke (ed.) (2010), *Managerial Ethics*, Routledge, New York, pp. 111.

⁶⁰ Leo Huberts/A. Hoekstra (eds.), 2016, *Integrity Management in the Public sector, The Dutch Approach*, Bios, Den Hague.

Preconditions for effective implementation also depend on the choice and the design of effective instruments, or tools, for implementation. As we will see later on, there is a clear correlation between the regulation of Col and the development of trust: the lower the levels of trust in public institutions, the stronger the tendency to manage Col by detailed rules. This illustrates how Col are related to national context. The level of public trust in government affects the choice of instrument.

However, overall, it is important to have a broad 'menu' of tools that have effects on various implementation factors:

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

To be successful, policy instruments require compliance from stakeholders (national politicians, civil servants, citizens and other stakeholders). In some MS this is easier as decision-making processes are more consensual and trust levels in public institutions are higher. In these cases, government is able to use relatively soft instruments, such as voluntary agreements, codes or guidelines. As has been shown elsewhere, MS with high levels of distrust, conflictual decision-making cultures and high levels of corruption often also have a high number of legally binding and detailed rules in the field of Col, whereas this is not so much the case in 'high trust' countries e.g. the Scandinavian countries. Thus, the effectiveness of measures in the field of Col does not only depend on the choice of instruments (top-down, command and control, legally binding, direct enforcement, sanctions) but also on the MS context and culture.

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

Table 8: Examples of policy tools and instruments on the national level⁶¹

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

Other categorisations distinguish between ‘carrots and sticks’ approaches or ‘soft- and hard law’ approaches. Discussions about the pros and cons of the right choice of instruments continue also in the field of Col. For example, whilst some experts call for the need for more behavioural economy approaches and more ‘nudging’ in the field of ethics, others believe that there is too little control and monitoring. Again, others point to the need of more intrinsic incentives for doing good and warn against a too strong focus on compliance approaches.

Still, this overview illustrates that countries have a much more elaborated choice of tools at their disposal than the EU level. Because of limited EU-competences in the fight against corruption and Col, the EU only disposes of a limited arsenal of tools and instruments in the field of the ESI Funds. Consequently, we will focus on the evaluation of the effectiveness of the most important (EU-) tools and instruments such as legally binding rules (section 3.4.2) and codes (section 3.4.3).

⁶¹ See for example Guy Peters (2015), Guy Peters, Edgar Elgers, p. 103

Table 9: Examples of European policy tools and instruments

Economic	Legal	Persuasive	Managerial	Control
<ul style="list-style-type: none"> - Expenditures, Funds - Subsidies for Capacity Building and Adm. Modernisation (not specifically targeted to Col) 	<ul style="list-style-type: none"> - Regulations, e.g. Reg. 1303/2014 	<ul style="list-style-type: none"> - Information - Guidelines, e.g. for national authorities in order to avoid Col - Reports, e.g. Anti-corruption report 	<ul style="list-style-type: none"> - Open Method of Coordination (not yet applied in the field of Col) - Benchmarking (not used so far in the field of Col) - Toolkits, Toolboxes (model OECD, not yet developed on EU-level in the field of Col) - Promulgation of Best-Practices (not yet existing in the field of Col) 	<ul style="list-style-type: none"> - Monitoring (OLAF) - Self-Risk assessment - Data Management (ARACHNE)⁶² - Sanctioning, e.g. administrative fines (infringement procedure, withholding of EU funds)

This (limited) choice of instruments constrains policy choices and policy implementation. In fact, in the field of the ESI Funds, the most important instruments are legal instruments and economic instruments. Especially monitoring enforcement on the EU level is complicated, if this can be done at all: *'At the same time revealing Col is a very complicated business as it requires serious intelligence, access to many databases (with mobility of persons and capital within EU such access should go beyond national borders) as well as serious capability to process that data and detect links. For the authorities responsible for the management and control of the ESIF such task would be very heavy. The ARACHNE system is a step in this direction but it seems to require further development and cooperation with national authorities. In any case, the question who should carry out verifications remains. A EU prosecution office could be a solution'* (DG EMPL).

On the other hand, the focus on economic instruments also bring opportunities. There are various EU budgetary instruments offering direct or indirect support to public administration reforms. A basic distinction can be made between ESI Fund interventions under Thematic Objective 11 and other EU budget programmes. The former aim at supporting the design and implementation of comprehensive, top-down driven public administration reforms strategies. Other programmes, such as the Connecting Europe Facility Telecom, Horizon2020 or the EU Justice Programme, provide financial support to reforms targeting European added-value through the better cooperation and interoperability between MS public administrations, or the strengthening of administrative capacities in implementing EU legislation. Both programmes can also be used for funding in the field of Col and awareness raising.

⁶² ARACHNE is the EC risk scoring tool. See EC (2016) 'Arachne, be distinctive' The publication can be downloaded here: <http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7883&type=2&furtherPubs=no>

In the case of the European Economic Area (EEA)/Norway Grants we see a proactive and inclusive approach manifest in a clear distribution of responsibilities between National Focal Points, National Monitoring Committees, Certifying Authority and Audit Authority, and the Financial Mechanism Office (FMO). There seems to be better communication and understanding of the requirements and rules in force. Respondents from the EEA/Norway Grants case underline the importance of access to information, clarity of guidance and relevance of the practical approach. Moreover, the joint analysis of ethics risks and the inclusive way of developing mitigating strategies, involving the national and regional levels may be mentioned as a good practice.

This rather principled and inclusive approach, involving a bottom-up strategy, is clearly expressed in the EEA/Norway Grants Risk Management Strategy, 'promoting an active culture of risk management' and 'encouraging active risk management practice' by all stakeholders. Responsibilities, duties and procedures are detailed in the FMOs Standard Operating Procedures. Risk management is included at all stages, i.e. at strategic, operational and resource decision making levels, 'including written documentation of the practical methodology' to guide involved parties.⁶³ Particular importance is given to 'communication and dialogue [as] a continuous process throughout', taking into account questions, concerns and reflections from operational and committee levels. 'Methods include: brainstorming, dialogue with beneficiary states, scenario analysis, workshops, audit, monitoring, ex ante or interim evaluation, risk assessment matrices [...], quarterly irregularities reporting and interim financial reports', also involving independent, external partners in risk assessment, such as Transparency International or the Berlin Risk Institute. Controlling for Col and fraudulent behavior, risk analysis and deciding on mitigating measures are thus inclusive and empowering processes, inspiring ownership and ethical leadership at all governance levels. This approach resounds with the Scandinavian culture of value-based ethics management.

3.4.2 Effectiveness of rules

This section discusses the first type of instrument, namely rules.

Interestingly, critical approaches as to the effects of Col rules are abundant in the United States (US) and in the United Kingdom but much less in continental Europe. This can be explained by the fact that the US system provides for more and stricter rules and standards of ethics, more control and monitoring requirements than most other European countries and the existence of a real (ethics) bureaucracy. Some experts also claim that ethical problems are more discussed in the US than in continental Europe because of differences in culture and tradition. Behncke,⁶⁴ for example, believes that ethics as a policy issue is much less important in DE because German public officials have a stronger public service ethos than their colleagues in the US. In DE most top-officials 'grow up' in a legalistic administrative culture. The positive side of the 'lawyers' monopoly' in the strong legalistic tradition in DE is that people are – generally – well aware of existing rules and standards in the field of ethics. Other issues also play an important role: Traditionally German top-officials are also less mobile (for example as to moving between the public and private sectors) than their US counterparts and face fewer ethical risks.

⁶³ FMO, Risk management Strategy, p. 7

⁶⁴ N.Behnke, Ethik-Maßnahmen für die öffentliche Verwaltung – Modeerscheinungen oder Mauerblümchen?, in: J.Bogumil/W.Jann/F.Nullmeier (ed.s.), Politik und Verwaltung, Politische Vierteljahresschrift, No. 37/2006, pp. 250.

This observation suggests that dimensions of Col differ in different contexts and that Col policies are closely linked to administrative tradition and administrative culture.

3.4.2.1 Effects of European Col rules – more rules, more effectiveness?

The EU approach and most of our case study approaches to Col can be called a classical compliance based approach. It is based on rules, codes (or guidelines), monitoring and sanctions. In our study, only the NL case study deviates from this approach. As we will see later on, the NL approach combines compliance based with integrity based approaches. The latter includes the adoption of a number of soft-instruments and strategies such as interest in value based management, investment in assessing organisational culture and the institutionalisation of ethics, monitoring of ethical leadership, and support of various types of training such as training on laws and rules, values and dilemma training.

As regards our study and in the field of implementing the ESI Funds, the EU institutions and MS focus on the implementation of rules and codes (which are abundant) and sanctions in case of non-compliance.

Generally, requirements as to high quality standards of legal acts are that they should be clear, simple, concise and use an unambiguous choice of words. As regards the latter, the best way to ensure this is to have clear and detailed acts in order to achieve legal certainty. Consequently, a number of case studies under this study did indeed point to a need for better rules and more clarity. For example, interviewees in the ES case mention that 'it would be extremely helpful if the EU Regulations introduce a clear definition of Col in the context of ESI Funds'. This request may be as understandable as difficult to operationalise. What could be a clear definition of Col in the context of ESI Funds, if experts in the field of Col still can not agree on a consistent and clear definition of Col?

Moreover, the downside of a detailed definition and clear rules could be a lack of flexibility. Next, some authors argue that legal regulations ignore essential aspects of morality and justice perceptions in the society as a whole, ignoring vital components of leadership and accountability in public administration (Johnston, 2005).⁶⁵ Others emphasise that purely legal approaches disregard the importance of organisational culture, and the need for trust (Heywood and Rose, 2016).⁶⁶ Systems that focus on rules, compliance and sanctions have the advantage that they are easier to implement (than value based approaches), unambiguous and represent a useful tool for policymakers to respond to public demands in the aftermath of individual corruption scandals. In addition, compliance management does provide senior managers with legal shields, following Johnston's (2005) argumentation that they can make use of legal provisions to blame the act of breaching the law instead of systematic organisational malfunctions in, e.g., leadership and lack of accountability. However, compliance approaches may also create negative side effects. Even though the approach is well suited for ensuring 'compliance with laws', fostering an integrity culture is highly unlikely.

Many MCs only provide for rules on Col and no other integrity approach. Moreover, the existing Col rules are short and sometimes unclear. Often, the rules of procedures in MCs only provide for one article. An explanatory guideline or introductory chapter on the definition and importance of Col is missing.

⁶⁵ M. Johnston (2005), *Keeping the Answers, Changing the Questions: Corruption Definitions Revisited*, in: *Politische Vierteljahrszeitschrift*, pp. 61-76

⁶⁶ P. Heywood & J. Rose (2016), *The Limits of Rule Governance*, In: Z. van der Wal/A. Lawton & L. Huberts (eds.), *Ethics in Public Policy and Management*, Routledge, Oxford, pp. 181-196.

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

Some interviewees have also called for the need of rules which have a better proximity to reality. Unfortunately, this is rather a 'battle cry' than an exact conceptual delimitation. Still, this is the very problem of Col rules. Since Col are so complex and differ from situation to situation, it is very difficult to design rules which adequately grasp every reality.

Particularly highly regulated countries and institutions face the challenge of a poor quality of rules, overlapping rules and a low level of awareness of the existing rules and standards (which are mostly not codified into one document but fragmented over several documents). For example, in DE, Col are regulated in many federal rules and by many codes in the field of criminal law, public procurement law, civil service law, anti-corruption law etc. To this should be added the existing laws, rules, codes and procedures by the German Länder and the local municipalities and the existing international and EU rules and codes.

Thus, there is no shortage of rules and standards in the field of Col. In fact, Col are becoming more regulated but not necessarily better managed and enforced in many countries. Because of the fragmentation of rules, there is also no understanding about the definition of Col, as too many definitions overlap. The (still) existing focus on regulation instead of implementation can be explained as follows. In contemporary societies it seems that when political scandals and new Col appear '*...failure is attributed to poor drafting and not enough law; typically, the solution is 'smarter' legal interventions...In the aftermath of serious scandal, concerns about guaranteeing integrity and about the appearance of integrity trumps efficiency. Rarely is the integrity/efficiency trade-off even considered*'.⁶⁷

3.4.2.2 Col rules as effective instruments in the fight against corruption

One of the most important questions to Col is what causes integrity violations and Col. The question as such is difficult as it tends to raise other important questions on what exactly constitutes a cause (Huberts, 2014). Research has shown that factors at the micro, meso and macro level are manifold and that factors may be grouped into individual, organisational and system-level factors. Other factors that influence Col may be cultural factors and values, economical factors, political and administrative factors, legal factors and injustice in general (Huberts, 2014).

From this overview, it becomes clear that rules and standards only have a limited impact. Moreover, rules constitute only one instrument and/or tool in the fight against corruption, fraud and Col.

Moreover, the more rules and standards are introduced, the more often rules and standards can be violated. Consequently, media and the public may interpret this as a sign of declining ethical standards. '*Thus, rather than decreasing the number of cases of unethical behavior, by declaring behavior unethical which was formerly in accordance with the rules, the absolute number of scandals and cases of unethical behavior increases, thus creating the appearance of public officials becoming more unethical. In reality, however, higher ethical standards lead to an overall more ethical public service*'.⁶⁸

⁶⁷ F. Antechiarico/J.B. Jacobs, *The Pursuit of Absolute Integrity*, Chicago and London, 1996, p.12.

⁶⁸ Behncke, *Ethics as Apple Pie*, op cit, p.8

Next, rules and standards may also have other negative or positive side-effects. For example, Col rules may either be in conflict with other rights, unworkable, counter-productive in practice, or may create impediments to bringing experienced people into public office. The OECD has warned that too strict approaches, excessive prohibitions and restrictions have perverse effects. Therefore, a modern Col policy should strike a balance between the need to regulate Col issues and guaranteeing individual and organisational freedom and flexibility.⁶⁹

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

There is no way out of this as the many relatively unsuccessful attempts to reduce bureaucracy, red tape and to improve the quality of EU- and national law have shown during the last decades. Thus, in fact, while it would not be very wise to accept the 'legal state of affairs' as it is, we suggest to focus on other areas where progress may be easier to achieve. This concerns efforts to raise awareness about the importance of Col policies, the need to better implement and to institutionalise Col policies, and the need for better leadership on Col in the management of the various monitoring committees. As regards the latter, we come full circle as we believe that EU law (especially regulation 1303/2013) should contain a clear reference to the duty to monitor Col in the MCs.

For example, we cannot observe a link between institutional structure and corruption levels. For example, post-bureaucratic countries like Finland and Sweden have very low levels of corruption. However, this is also the case for a classical bureaucratic country like DE with low levels of corruption. On the other hand, a classical bureaucratic country like Greece but also post-bureaucratic countries like Italy have very high levels of corruption. Thus, we conclude that the institutional structure as such is not decisive for the level of corruption. For example, in her study on the Quest for Good Governance, Mungiu-Pippidi concludes that countries with a higher power-distance culture (Hofstede) have higher levels of corruption.⁷⁰ On the other hand, one explanatory variable for high levels of corruption is also the blurring of boundaries between the public and the private sector. The latter also applies to those countries with an open access order.⁷¹

It is also important to note that many central and eastern European MS have very detailed and strict rules in the field of Col. Often these countries are also those with a high degree of perceived corruption and fraud. The adoption of new and stricter measures in these countries is also a reaction to important real life concerns and problems; these rules are introduced with the best intentions. A different question is whether these countries have the necessary capacities and skills to properly implement, manage, monitor and enforce the rules which they have adopted.

Thus, obviously, the existence of strict rules and standards is no guarantee for ethical government. Especially in some of the central and eastern European MS it seems that one of the objectives of the

⁶⁹ OECD, *Managing Conflicts of Interest*, 31 March 2006, op cit, p. 8.

⁷⁰ Mungiu-Pippidi, *The Quest for Good Governance*, op cit., p. 21

⁷¹ Mungiu-Pippidi distinguishes between Governance regimes with a limited access order and an open access order and believes that the latter countries have a sharper separation between the public and the private sector, in: *The Quest for Good Governance*, op cit, p. 29.

introduction of strict and detailed rules was to prophylactically prohibit holders of public office 'from entering into an ever-increasing number of specified, factually ascertainable sets of circumstances because they might lead to inner conflict'.⁷² Another objective was obviously to satisfy the requirements of EU membership.

The situation in some of the central European states (like BG) is in an interesting contrast with the situation in most Scandinavian countries which have much fewer rules and standards in place but at the same time relatively low levels of corruption and bribery.

Therefore, this allows for the hypothesis that more regulations do not lead to less corruption. Instead, it seems that more regulation is not required in those situations or in countries where high levels of public trust exist.

However, this is not to say that countries with a high level of corruption and Col should have fewer rules in place. This comparison shows that tough and strict rules are not a necessary condition for low levels of Col. Moreover, too many ethics measures can damage the public trust instead of enhancing it. This is the case if the introduction of more rules supports the perception that these rules were introduced because of the existing high level of corruption and Col. The problem is that subjective perceptions of increasing levels of Col '*risk to reflect citizens' general predispositions towards government, rather than actual experienced corruption*'.⁷³

3.4.2.3 Positive aspects of rules and standards in the field of ethics⁷⁴

Still, one may argue that the rise in regulations and of expectations in the field of ethics and Col is to be welcomed since it reflects more critical and more mature citizen attitudes towards authorities. In fact, citizens tolerate unethical behaviour less than ever before. For good reasons: people expect public officials to have very high standards of integrity because they have considerable power, influence and decision-making discretion. Because of this, standards of integrity must be set at high levels.

A study by Gaugler (2006, 108) in DE shows that the higher the prestige and the position of a holder of public office, the more companies and organisations seek to establish contacts and to offer board memberships to them. Accordingly, top-politicians, top-civil servants or top-managers frequently assume new and important positions or functions in companies and organisations after they have left office. In recognising this, it seems appropriate that specific rules and standards should regulate the behaviour of holders of public office and of top public servants. Also, supporters of more and better ethics rules in the field of registering financial assets claim that rules and standards are important because holders of public office and top officials '*hold positions of such importance and such accountability that the public can claim a reasonable right to know some of the details of their personal finances and the potential conflicts those might create*' (Mackenzie, 202:168).

Other experts claim that strict rules, standards and management instruments in the field of Col bring a number of benefits for public sector organisations. First and foremost, opportunities for corruption and fraud will also be cut down. Detailed policies and procedures for identifying, disclosing and managing

⁷² Stark, Conflict of Interest, op cit, p.264

⁷³ Stephen van de Walle, Decontaminating Subjective Corruption Indicators, Paper presented at the EGPA-Conference, Leuven, June 2005, p.16

⁷⁴ This section refers to the findings in Demmke et al. (2008), Regulating Conflicts of Interest for Holders of Public Office in the European Union, European Institute of Public Administration, p. 117-121.

Col mean that accusations of bias can be dealt with more easily and efficiently. Detailed prohibitions can be highly effective. *'Some authors suggest that ethics laws that had a major impact on legislative process are those that ban or limit gifts (...) from lobbyists or their principals, or laws that simply require their disclosure. In most states these laws have reduced gift giving and gift taking'* (Saint-Martin & Thompson 2006, 172).

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

In a legalistic culture like DE, civil servants believe that regulation is effective and opportunities for corruption or improper conduct are reduced. Second, effective policies and procedures for identifying, disclosing and managing Col mean that unfounded accusations of bias can be dealt with more easily and efficiently. Third, the organisation can demonstrate its commitment to good governance by addressing an issue that is commonly associated with corruption and misconduct. Fourth, a transparent system that is observed by everyone in an organisation as a matter of course will also demonstrate to members of the public and others who deal with the organisation that its proper role is performed in a way that is fair and unaffected by improper considerations.

An organisation can demonstrate its commitment to good governance by addressing an issue that is commonly associated with corruption and misconduct. For example, the process of accession of the MS to the EU in 2004 and 2007 had the positive effect that all new MS reformed their laws on ethics, corruption and Col. In the meantime, most of the countries that entered the EU in 2004/2007 have introduced more and stricter rules for all governmental institutions (Demmke et al. 2008). Despite all the problems in implementing and enforcing these rules, this can be considered as a positive process.

The existence of strict transparency requirements and monitoring mechanisms may not automatically improve public trust. However, unclear and no rules and ethical standards may raise suspicion and rather lead to higher levels of distrust. Thus, integrity, openness, and loyalty to the public interest are a necessary condition in increasing public trust (Feldheim & Wang 2003, 73). Partisans in favour of more or better rules do not always pretend that more rules and standards will decrease corruption and Col. However, additional standards may deter public officials and holders of public office from questionable behaviour. Feldheim and Wang also demonstrate that ethical behaviour of public officials improves public trust. The authors find higher levels of public trust in cities where managers have higher perceptions of ethical behaviour. Furthermore, *'integrity, openness, and loyalty to the public interest (...) are crucial in increasing public trust'*.⁷⁵

⁷⁵ M.A. Feldheim/X.Wang, Ethics and Public Trust, in: Public Integrity, 2003-2004, Vol. 6, pp. 73

3.4.3 Effectiveness of codes

This section discusses the effectiveness of codes of conduct. We first introduce this tool (section 3.4.3.1); then discuss the effectiveness of codes (section 3.4.3.2); and complete the section with a series of conclusions (section 3.4.3.3).

3.4.3.1 Introducing codes of conduct

In the field of Col, an increasing number of international, European, national, regional and local authorities have adopted different types of codes. Because of this increasing interest in adopting this specific instrument in the fight against corruption, fraud and Col, interest is also growing in evaluating the effectiveness of codes.

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

However, there is still a definitional lack in what these ethics documents should include.⁷⁶ As the variety of literature suggests, ethical guidelines can be comprised in different types of documents, sometimes referred to as codes of conduct, codes of practice, codes of ethics or codes of professional behaviour.

According to the OECD, there is a definitional differentiation between codes of conduct and codes of ethics. A code of conduct serves as an instrument of a rules-based compliance approach. It describes as specifically and unambiguously as possible what kind of behaviour is expected and establishes strict monitoring and sanctioning procedures to enforce the code. A code of ethics is rooted in the values-based management approach. It focuses on general values rather than on specific guidelines, putting more trust in the employee's capacities for moral reasoning. A code of ethics seeks to support and coach on the application of these values in daily real-life situations.⁷⁷ However, the choice for a respective version is depending on several factors, including the existing jurisdiction's legal framework and the organisation's ethics culture in management and leadership. Therefore, in most cases, a hybrid form is desired, providing a general ethics scope and clear behavioural instructions.⁷⁸

Codes for the different categories of institutions, sectors, policies and categories of staff are also subject to some considerable variation. In addition, the different codes vary as to their legal and political effects. Also as regards the term 'code' many countries differentiate between code of ethics, code of conduct and code of rules and regulations.⁷⁹

Generally, most codes can be divided into three types. Whereas codes of ethics discuss general and abstract principles of behaviour, code of rules and regulations set more concrete behavioural expectations. These codes may also have disciplinary consequences in the case of non-compliance. Codes of conduct are located between these two extremes: generally, they contain norms that set both aspirational values and expectation values. Therefore, their level of abstractness varies from

⁷⁶ Yallop, A. (2012). The Use and Effectiveness of Codes of Ethics – A Literature Review. P. 504.

⁷⁷ Bertók, J. & Maesschalck, J. (2009). Public Sector Ethics: an infrastructure. In: OECD (Eds.): No longer business as usual – Fighting Bribery and Corruption. Paris. P. 34.

⁷⁸ Bertók, J. & Maesschalck, J. (2009). Public Sector Ethics: an infrastructure. In: OECD (Eds.): No longer business as usual – Fighting Bribery and Corruption. Paris. P. 35.

⁷⁹ M. Van Wart, Codes of Ethics as Living Documents, in: Public Integrity, Vol. 5, No. 4, pp. 331.

moderately abstract to moderately concrete. This distinction is a heuristic device and, in practice, these terms are used in a more or less interchangeable way.

According to Frankel 'three types of codes of ethics can be identified. An aspirational code is a statement of ideals to which practitioners should strive. Instead of focusing on notions of right and wrong, the emphasis is on the fullest realisation of human achievement. Another type is an educational code, one which seeks to buttress understanding of its provisions with extensive commentary and interpretation. A conscious effort is made to demonstrate how the code can be helpful in dealing with ethical problems associated with professional practices. A third type is a regulatory code, which includes a set of detailed rules to govern professional conduct and to serve as a basis for adjudicating grievances. Such rules are presumed to be enforceable through a system of monitoring and the application of a range of sanctions. Although conceptually distinct, in reality any single code of professional ethics may combine features of these three types. A decision about which type of code is appropriate for any single profession at a particular point in time will necessarily reflect a mixture of both pragmatic and normative considerations'.⁸⁰

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

Professional codes of conduct have existed since antiquity. Especially when applied to the professions – doctors, lawyers and public servants – they have always been an important expression of values, ethical standards and principles. One important common feature of almost all codes is their overall purpose: codes should guide behaviour. Grundstein-Amado concludes that Codes of Conduct fulfil three purposes. They should articulate the organisation's values and norms and by doing so, create an ethical culture amongst members of an organisation, so that support for solutions to ethical dilemma situations can be provided.⁸¹ The Council of Europe's model code of conduct (Art. 4) states that codes are meant to specify the standards of integrity, helping public officials to meet these standards and inform citizens on what they can expect from administrative conduct. Independently from the sector and the nature of business and administration, the OECD conceptualises codes of conduct as an essential component in effective integrity frameworks.⁸²

In an overarching definition, Yalopp extracts three main characteristics of Codes of Conduct. According to her, a Code of Conduct is a written and formal document that outlines ethical guidelines and principles for employees, which are developed in order to guide individuals' behaviour.⁸³ The objective

⁸⁰ Frankel, Professional Codes, op cit, pp.110-111.

⁸¹ Grundstein-Amado, R. (2001). A Strategy for Formulation and Implementation of Codes of Ethics in Public Service Organizations. In: International Journal of Public Administration, 23(5), p. 463.

⁸² OECD (2016). Integrity Framework for Public Infrastructure. OECD Public Governance Reviews. Paris. P. 7.

⁸³ Yallop, A. (2012). The Use and Effectiveness of Codes of Ethics – A Literature Review. P. 507.

of principles, rules and regulatory framework of a Code of Conduct are targeted at restoring citizen trust in institutions, promoting ethical behaviour and increasing the accountability of public officials.⁸⁴

A study comparing Norwegian professionals in organisations with and without Codes of Conduct sought to explain different functions of manifested codes, covering, amongst others:⁸⁵

- A Rule Book to help clarifying expected behaviour and reporting mechanisms for integrity violations;
- A Shield for employees to be able to tackle unethical requests;
- A Smoke detector that supports employees in the attempt to convince peers of their unethical behaviour;
- A Club Convention that creates intrinsic motivation to comply with the code's provisions.

A model code of conduct, such as the one provided by the Council of Europe, includes articles on general principles, including traditional public sector values like legality, impartiality and neutrality (Art. 4, Art. 6), loyalty, honesty and acting in the public interest (Art. 5), no undue advantage (Art. 8), integrity and effectiveness (Art. 9), accountability (Art. 10) and transparency (Art.11). In addition, rules and procedures cover reporting (Art. 12), conflicts of interest (Art. 13), declaration of interest (Art. 14), gifts and improper offers (Art. 18, Art. 19) or cooling off periods (Art. 26), repeating what is oftentimes already stated in hard law. A code concludes with sanctioning and enforcement provisions in form of disciplinary action and i.e. terms of employment (Art. 28).⁸⁶

Nonetheless, the content of codes of conduct can vary extensively. For example, the Code of Conduct for US Judges is very different (and more detailed) to many other codes for Judges from the EU MS. The same could be said for the British 'Ministerial Code' which is a 48-page 'Code of Ethics and Procedural Guidance for Ministers'. This code is very different to many other codes for holders of public office at governmental level. To make things even more complicated there are countries with relatively simple codes – the British 'Code of the Committee for Standards in Public Life' – and very complex codes – the codes of the US Office of Government Ethics. As regards the British code the approach is based mainly on values to guide behaviour whereas the US codes are more compliance oriented. Also the different codes for the EU institutions are very different. The objectives and functions of codes also differ widely. *'Every profession faces the difficult task of trying to maintain a balance between fulfilling its functions for its members and for the larger community. This difficulty is reflected in codes of ethics, which are intended to appeal to many interests such as, for example, the general public, the media, clients, the profession's members, other professions, and government. These interests will on occasion overlap, while at other times they will diverge. It is not surprising, therefore, that a code of professional ethics which, after all, defines a profession's relationship to these various interests, reflects this reality.'*⁸⁷

⁸⁴ Transparency International (2013) The Effectiveness of Codes of Conduct for Parliamentarians. p. 5.

⁸⁵ Leach, M. & Harbin, J. (2010). Psychological Ethics Codes: A Comparison of Twenty-four Countries. *International Journal of Psychology*. 32:3, 181-192.

⁸⁶ Council of Europe (2000). Model Code of Conduct for Public Officials. U4 Anti Corruption Center.

⁸⁷ Frankel, Professional Codes, op cit, p. 111.

3.4.3.2 Effectiveness of Codes of Conduct

Despite existing research on the effectiveness of codes, it is still not clear how and whether codes of conduct fulfil their objectives. This uncertainty can be explained by the variety of existing types of codes, the differences of institutional, political and legal contexts and the difficulties to define codes as such.

Moreover, codes may only be useful for those people who want guidance because they want to act ethically. If a Holder of public office wants to act unethically, it is very unlikely that a code will stand in the way. *'If the moral reward of doing the right thing is not sufficient to stop someone acting corruptly, why would the existence of a code do so?...One answer might be that in reality few individuals have no moral sense, but many have underdeveloped ones'*.⁸⁸ Consequently, codes should have an educational effect. However, codes without an effective institutional implementation strategy and support from the top are likely to be relatively useless. The same is true if no enforcement and no sanctions for misconduct exist. According to Gilman, *'Successful codes rely on an environment ready to nurture them'*.⁸⁹

Another side effect is presented by Anechiarico and Jacobs. In their 'anti-corruption project analysis' conducted in the city administration of New York, the authors came to the conclusion that codes of conduct can facilitate a stigmatising corrupt image of public officials, resulting in lower working motivation and higher pressure to conform with diffuse values. Hereby, the caution and fear of ethical misbehaviour can lead to slower decision-making, involving the consultation of several instances counteracting to the efficiency paradigm behind the decentralisation of management discretion and blurring boundaries between public and private sectors.⁹⁰ In a study conducted by Fisher elaborating codes of conduct in British organisations, he came to the conclusion that codes can lead to a loss of personal integrity of employees. Hereby, codes of conduct restrict and limit the development of intrinsic loyalty.⁹¹ Additionally, some scholars argue that codes do not cover the whole range of ethical principles, and the principles covered are too broadly defined to offer specific guidance. In addition, the enforcement of codes is highly unlikely in, e.g., avoiding Col when general crucial ethical issues are ignored, especially in cases of systematic corruption.

Furthermore, their 'whole-of-government' nature, meaning that they should affect public servants across different branches of government, is partly seen as inappropriate because officials in the health sector have by nature other ethical standards than those in customs administration.⁹²

Moreover, as part of an integrity management system, codes of conduct have to withstand three essential claims for negative side effects. Identified by Maesschalck and Bertok, it might be possible that there are not any significant integrity problems at hand. Additionally, integrity management has a potential reinforcing effect on lack of trust. Moreover, staff can take it as an insult when codes are implemented. Also, they agree with Yallop, that it can be doubted whether an integrity management

⁸⁸ Hine, Codes of Conduct, in: Saint-Martin/Thompson, op cit, p.45.

⁸⁹ S.Gilman, Ethics Codes and Codes of Conduct as Tools for Promoting an Ethical and Professional Public Service: Comparative Successes and Lessons, Washington, DC, 2005

⁹⁰ Anechiarico, F. & Jacobs, J. (1996). The Pursuit of Absolute Integrity. How Corruption Control Makes Government Ineffective. The University of Chicago Press. P. 174.

⁹¹ Fisher, C. (2001). Managers' Perceptions of Ethical Codes: Dialectics and Dynamics. Business Ethics: A European Review, 10 (2). Pp. 145.

⁹² Grundstein-Amado, R. (2001). A Strategy for Formulation and Implementation of Codes of Ethics in Public Service Organizations. In: International Journal of Public Administration, 23(5), pp. 465

system has any impact in societies where corruption is deeply anchored or even not condemned. Where corruption is societally accepted, codes of conduct have to be accompanied by advanced human resources mechanisms such as recruitment and staff replacements.⁹³ In a situation where compliance-oriented controlling instances and mechanisms are essentially affected by corruption i.e. in executive prosecution and judicial punishment, a Values-Based Management code has very little effect on the ethical behaviour of public officials.⁹⁴ This 'paradox of integrity' management has also been acknowledged amongst other public ethics scholars. According to Nieuwenbourg, even though codes have to be seen as instruments to restore the trust in public administration amongst citizens by showing efforts for ethical guidance, the instrumentalisation of an ethics discussion debating the role of integrity in administration can seriously backfire if the policies are meant as responsive post-scandal action. In such a scenario, the implementation of a code of conduct can be seen as an indication of a lack of integrity in the first place, resulting in more public distrust than before. Following the Kantian argument that ethics are not meant to play a role themselves in political decision-making, Nieuwenbourg doubts whether a discussion on the need of integrity is even justified, as the role of integrity in public administration should be self-explanatory.⁹⁵

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

In this context, a significant factor to consider is the consultation with all key stakeholders in the development phase, or in a more general way, the involvement of all key stakeholders in the drafting of such a code. According to McMillan, an effective code and its objectives have to be formulated in an inclusive bottom-up process that is more likely to have better outcomes, because employees were faced with its development and are hence more attracted to comply.⁹⁶

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

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

A further significant factor for guaranteeing an effective functioning of codes relates to the implementation phase. Quite often, drafting and adopting codes of conduct is looked upon as being an end in itself. Once adopted, they are often forgotten and not further implemented. However, this is only the first step, and in order to make the code a viable document and part of the organisational culture, training and raising awareness of the content of the codes should be an ongoing task.

⁹³ Bertók, J. & Maesschalck, J. (2009). Public Sector Ethics: an infrastructure. In: OECD (Eds.): No longer business as usual – Fighting Bribery and Corruption. Paris. Pp. 18 – 20.

⁹⁴ OECD (2016). Integrity Framework for Public Infrastructure. OECD Public Governance Reviews. Paris. P. 7.

⁹⁵ Nieuwenbourg, P. (2007). The Integrity Paradox. *Journal of Public Integrity*, Vol. 9, 2007. P. 220.

⁹⁶ McMillan, M. (2012). Codes of Ethics: If You Adopt One, Will They Behave?

Moreover, as regards communicating the various codes, many administrations focus on the distribution via internet and intranet. It is therefore unlikely that public officials and members of MCs are regularly reminded in their daily lives of the existence of codes. One may also doubt whether these are the most effective communication channels.

Related to the issue of effectiveness in public administration, Transparency International published a paper on the impacts of Codes of Conduct on parliamentarians. Transparency International comes to the conclusion that any affect of a code is only visible in long-term measurements, and even then, the internalisation process with resulting changes in behaviour have to be attributed to a variety of external factors such as oversight, reporting and implementation mechanisms, the role of the media, the quality of processes of consultation and discussion, the quality of education and training, the simplicity / accessibility of the code and its scope of application.⁹⁷

3.4.3.3 Conclusions on Codes of Conduct

In most cases, the code of conduct restates and elaborates the values and principles already embodied in legislation. This is useful since the relevant values and standards in many countries are scattered in numerous legal documents, which makes it difficult to locate the information and to understand the general idea of public service.

As Transparency International concludes, the main benefit of a code of conduct is the organisation of an institution's ethical framework in one document. Hereby, a single document can provide clear guidance on how practical behaviour according to law and ethical dilemmas has to be interpreted.⁹⁸

If properly used, legislation and code of conduct complement each other effectively. As argued by Doig and Wilson, a code of conduct can represent an opportunity for a public administration to create moral capital and to improve the ethical behaviour of its workforce.⁹⁹ This assumption is supported by three different reasons. First, when ethical standards are comprehensive and well known, employees are more likely to identify and avoid misbehaviour. Secondly, employees hesitate to commit ethical wrongdoing when people around them know what and why it is wrong, and thirdly, employees are of the opinion that the disclosure of wrongdoing is more likely in ethics-aware environments.¹⁰⁰

In fact, code of ethics and code of conduct can be seen as two steps in the development of official ethics. As a first step, public authorities often begin by identifying their core values and promote them by announcing a statement of core values (code of ethics). After this, as the discussion on public-service ethics advances, the state is ready to introduce more systematic and detailed guidelines in the form of code of conduct. We anticipate that there might well be a third step in the development, and that is to take the codes of conduct down to the agency-level in order to provide more specific and useful guidelines for practical situations that vary between different agencies. This enables bottom-up approach to codes that probably leads into stronger commitment. The downside is that this approach increases discrepancies, which may fragment the public-service ethics if not coordinated. In many countries the existing rules and codes of ethics look good in themselves, but this does not mean that the different institutions and the people take them to heart. Often, the rules are nothing but paper. Therefore, the problem is often not the rules but the shortcomings in their implementation and a lack

⁹⁷ Transparency International (2013). *The Effectiveness of Codes of Conduct for Parliamentarians*. p. 2.

⁹⁸ Transparency International (2013). *The Effectiveness of Codes of Conduct for Parliamentarians*. p. 5.

⁹⁹ Doig, A. & Wilson, J. (1998). *The Effectiveness of Codes of Conduct*. *Business Ethics: A European Review*, 7 (3). p. 142.

¹⁰⁰ Transparency International (2013). *The Effectiveness of Codes of Conduct for Parliamentarians*. p. 4.

of capacity and effort in the enforcement process. Also, codes are essential at certain times and for certain purposes, but more is needed. Codes only work when they encompass people's existing beliefs and practices and are well designed, understood and supported by those who have to apply them in their daily lives. In addition, codes can only be effective in an atmosphere of trust. *'A well-functioning democracy cannot survive without citizen trust and confidence in those who govern. Thus, behaviours or acts by officials that diminish citizen trust and confidence are a direct threat to democratic governance. While trust is a renewable resource, it is much easier to destroy than to renew. Many factors can destroy trust in governmental institutions. However, none may destroy trust easier or faster than unethical behaviour or blatant corruption of public officials'*.¹⁰¹

Our study shows that no country regulates Col exclusively by laws, regulations and procedural norms. Especially in the field of violating Col requirements, it seems to be inadequate to regulate ethical behaviour only by legislation and by administrative and criminal law. Instead, the notion of political and public sector values requires softer instruments too such as codes. *'Structural developments...put a new emphasis on soft ethics measures like training and information as contrasted to rules and sanctions'*.¹⁰² Despite this, codes are still mainly used as an instrument supplementing other legal instruments.

Our analysis shows that many codes regulate general ethical principles. Also codes are used very widely for a number of Col issues. However, they are mostly used as a complementary instrument. They are much less used for regulating post-employment issues and declaration of financial interests. In these fields, laws are still the predominately used tool.

Overall, the current deployment of codes of conduct for the different institutions follows a fragmented approach and is inconsistent.¹⁰³ Especially 'in terms of institutional clarity, however, it is important to understand what different political systems mean when they use the term 'codes of conduct'.¹⁰⁴ *'A code may be a statement of the quasi-constitutional status of the relevant reference group.....It may be a very general statement of the ethical climate in which the public service should operate. It may be a guide to more detailed ethical behaviour applying to the whole of the public service or to particular categories....Or it may contain general statements of what the public can expect'*¹⁰⁵

The differences amongst the different codes, their functions, their political and their legal nature and their meaning in different traditions and cultures suggests that it would be not wise to suggest any form of model code or best practices. From this, we conclude that best practices and model codes should better not be easily recommended. For example, Hine suggests that whereas the best known and most popular codes are probably the British, US and Canadian codes,¹⁰⁶ the German code 'seems to get close to what we might think of as a model code of conduct. It is detailed, practical, and apparently taken quite seriously by departments and individual civil servants alike'.¹⁰⁷ However, a totally different question is whether the German code would 'fit' into other legal and administrative

¹⁰¹ D.C.Menzel, Ethics Management for Public Administrators, New York, p.17.

¹⁰² N. Behncke (Strohmann), Why Germany does not (yet?) have a Nolan Committee?, in: Polis, Nr. 53/2001, University of Hagen, p.26

¹⁰³ Hine, Codes of Conduct, in: Saint-Martin/F.Thompson, op cit, p. 65.

¹⁰⁴ Hine, Codes of Conduct, in: Saint-Martin/F.Thompson, op cit, p. 66

¹⁰⁵ Hine, Codes of Conduct, in: Saint-Martin/F.Thompson, op cit, p. 51

¹⁰⁶ For example the British Ministerial code: A Code of Ethics and Procedural Guidance for Ministers, the Canadian Conflict of Interest and Post-Employment Code for Public Office Holders or the US-Standards of Ethical Conduct for Employees of the Executive Branch.

¹⁰⁷ Hine, Codes of Conduct, in: Saint-Martin/Thompson, op cit, p. 66.

cultures. Obviously, national codes cannot be exported easily and do not have the same meaning, acceptance and purpose in other administrative cultures. We conclude from this that whether there is a case for introducing common codes across differing legal, administrative and institutional cultures *'might be thought of as questionable'*.¹⁰⁸

Finally, the process of elaborating ethics codes can have important educational effects at organisational level. *'It would be unfortunate if the emphasis on a code of ethics as a product obscured the value of the process by which a code is developed and subsequently revised. This process is a time of critical self-examination by both individual members and the profession as a whole. The profession must institutionalize a process whereby its moral commitments are regularly discussed and assessed in the light of changing conditions both inside and outside the profession. The widespread participation of members in such an effort helps to reinvigorate and bring into sharp focus the underlying values and moral commitments of their profession'* (Frankel 1989: 112-113).

In this manner, Doig and Wilson suggest that the implementation of codes alone may not be as effective on public servants as one might expect. In that sense, a proper implementation of a code has to be accompanied by the ethical leadership of senior management.¹⁰⁹ This argument is also supported by Demmke, who states that a pure rational understanding of ethics is useless. Ethics promoted in codes are only effective, if they foster the motivation for practical ethical behaviour. To that end, ethics have to be understood as a continuing inclusive learning and teaching process. Short-term impacts are thus very unlikely.¹¹⁰

In general, codes of conduct as part of integrity management have to be seen as a prevention strategy. It targets the avoidance of scandals in the long run and seeks to establish more fundamental trust in the public rather than changing the personal nature of employees.

However, a prevention strategy is only functional if implemented with the necessary sincerity. Signalling the sincerity of goals manifested in codes is especially significant for the trustworthiness in the public sector. All too often, their implementation only serves as a symbolic endeavour with no further implications for practical behaviour.¹¹¹ The sincerity of corruption prevention tools is closely linked with the credibility of an institution in investing and ensuring that codes are not only well known, but also progressively applied in daily behaviour of public officials.¹¹²¹¹³

¹⁰⁸ Hine, Codes of Conduct, in: Saint-Martin/Thompson, op cit, p. 66.

¹⁰⁹ Doig, A. & Wilson, J. (1998). The Effectiveness of Codes of Conduct. *Business Ethics: A European Review*, 7 (3). p. 141.

¹¹⁰ Demmke, C. (2005). Öffentliche Meinung, Ethik und die Reform der öffentlichen Dienste in Europa. In: *Ethik, Integrität und Korruption- Neue Herausforderungen im sich wandelnden öffentlichen Sektor?* Universitätsverlag Potsdam. p. 99.

¹¹¹ Demmke, C. (2005). Öffentliche Meinung, Ethik und die Reform der öffentlichen Dienste in Europa. In: *Ethik, Integrität und Korruption- Neue Herausforderungen im sich wandelnden öffentlichen Sektor?* Universitätsverlag Potsdam. p. 89

¹¹² Nieuwenburg, P. (2007). The Integrity Paradox. *Journal of Public Integrity*, Vol. 9, 2007. p. 217.

¹¹³ Wieland, J. (2005). Die Governance der Korruption. In: *Korruption Unaufgeklärter Kapitalismus. Multidisziplinäre Perspektiven zu Funktionen und Folgen der Korruption.* Jansen, S. & Priddat, B. (Eds.). Heidelberg: Springer. p. 43.

4 BEST PRACTICES

KEY FINDINGS

- For many years, international research on ethics and integrity has focused on the characteristics and prevalence of high performance ethics infrastructures. Much of this literature assumes that high performance ethics infrastructures constitute 'best practice' and universally applicable management, although a distinction can be drawn between those arguing for a contextual *best-fit* approach and those arguing for more of a best-practice approach, based on a belief in the more universal advantages of these systems. The *best-practice* approach is based on the belief that ethics infrastructures can be used in any organisation and the view that all organisations can improve performance if they identify and implement best practices.
- In the meantime, there is considerable consensus on what constitutes bad practices, for example, the absence of codes of ethics, poor leadership, unfair HR policies, lack of training, unprofessional performance measurement etc..
- However, it is much more difficult to identify institutional best practices, although the search for benchmarks is becoming ever more popular. Still, it is possible to continue the work on 'common elements' and 'good practices' that really work in the field of Col. The contours of an approach to establishing effective Col policies are steadily coming into view, and comprise aspects such as measurement of Col; strengthening the focus on transparency, openness and accountability; supporting efforts to tackle Col through cycles of awareness raising and learning about the risks of Col; systematic monitoring and evaluation of effectiveness; and paying more attention to implementation, compliance and results and not only the implementation of rules as such.
- Overall, the search for *best ethics infrastructures* is confronted with a context and institution-based, fragmented and pragmatic reality. Overall, institutional differences – notably the levels of budgetary resources, social legitimacy, work systems, labour markets, education and training systems, work organisation and the collective organisation of employers and employees – mediate the impact of converging processes.
- Consequently, the proposition for implementing institutional and organisational best practice models such as ethics infrastructures is ambiguous. In fact, the political and institutional world is currently moving away from universal or even European best-practice institutional configurations towards more specific best-fit context-related models. New developments lean more towards the testing of new innovative organisational models and work systems that fit into the national, regional, local or even organisational context.
- Current discussions in the field of Col also turn away from the 'grand old' dichotomy: value-based approaches versus compliance-based approaches. This can best be seen in the field of Col, where countries have started to realise that the management of Col does not work without clear rules, formal procedures, and strong enforcement mechanisms but also not without soft-instruments, awareness raising, strong leadership, independent ethics committees, registers of interest and more and better management capacity. Overall, countries are also starting to test new instruments like staff-assessments on Col and integrity, monitoring integrity policies on the governmental level and introducing better registers that collect data on Col violations.
- Thus, our study concludes that it would not be wise to offer suggestions on the best way how to tackle Col in different contexts, situation, policies, as regards categories of staff and as regards the right choice of policy instruments within the best-fit organisational design of ethics

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

- Still, in our study, we were able to identify aspects of the NL model as potential 'good practice model'. We have also identified some aspects of the NO model as interesting for other countries. However, we are cautious to interpret these models as superior to others and as 'easily transferable' into other systems and cultures. In fact, this does neither suggest that best practice models disappear. In fact, it seems that the current trends are giving way for a new hybrid models which focus more on value management but also a modest 'renaissance' of the classical compliance model.

The following lists the main findings from the EEA/Norway Grants case study of conditions or restrictions that might be imposed to manage, reduce, or mitigate Col:

- Appointment of a risk manager for individual programmes or sectors, following-up the entire project cycle in the fund management from selection to evaluation;
- Public disclosure of significant business or financial interests of members of relevant committees in a publicly accessible register or database;
- Disclosure of Col in all internal or external presentations on the project progress or results;
- Raise awareness for nature and potential impact of Col among all stakeholders, as well as of the consequences, sanctions and penalties for breach of procedures;
- Systematically include sections on Col in all protocols on monitoring, reporting and evaluation proceedings; where appropriate, review of reports and protocols by independent reviewers;
- Disqualification from participation in procedures that could negatively affect the programme/project in terms of legal, material or reputational impact; clarify other sanctions and penalties;
- Detailed reporting of detected deviations from standard operating procedures and filing in a publicly accessible 'irregularity register' (also as a soft tool for 'nudging' or 'naming and shaming', but also to document how reported irregularity cases have been dealt with to serve as a knowledge base and to inform and encourage ethical leadership);
- Systematically involve Col and ethics experts in the design and implementation of Col policies, implementation and training; as well as in the external evaluation of the programmes.

This chapter presents the findings from the case study work in NO (Section 4.1). Moreover, a general discussion of best practices is presented in Section 4.2 with references to case study findings where relevant.

4.1 CASE STUDY NORWAY

The NO case study focused on the Col regime established for the EEA Grants and Norway Grants. Section 4.1.1 introduces this funding instrument; Section 4.1.2 reflects on the management of Col; and Section 4.1.3 on the effectiveness of Col policy.

4.1.1 Introduction to the EEA Grants and Norway Grants

The EEA EEA/NO Grants are the financial instrument funded by Iceland, Liechtenstein and NO, destined to reducing economic and social disparities and to strengthening bilateral relations with 16 MS in Central and Southern Europe and the Baltics. NO is contributing 97% of the total funds of EUR 1.798 billion for the funding period 2009–2014, spent on 150 programmes, jointly managed by the Financial Mechanism Office (FMO) in Brussels and national authorities in the recipient states. Regarding overall performance of the NO Grants, a report by the Norwegian Auditor General's Office (Riksrevisjonen) in 2013, found that the EEA/NO grants 2009–2014 facilitate a more concentrated effort than the financial mechanisms 2004–2009.

Beneficiary countries, and there the National Focal Points, have the overall responsibility for the compliance with the integrity rules in place: they designate (1) a Certifying Authority, in charge of submitting financial reports to the donors; (2) an Audit Authority to ensure the effective functioning of the management and control systems designed by the beneficiary countries; and (3) a national entity responsible for the prevention, detection and reporting of cases of irregularities, such as fraud or Col.

4.1.2 Management of Col

With regard to corruption and management of Col, a risk assessment has been carried out in 2015 by Transparency International and the Berlin Risk Institute. This assessment found that with the exception of EE all beneficiary countries were exposed to medium or high corruption risks. Main concerns were the separation of functions between management and implementation of the grant instruments as well as to safeguard independence and to avoid Col between the different actors carrying out these functions. In addition, an evaluation of Col in particular sectors and programmes revealed that some activities more than others are prone to Col and corruption, and among those figure activities that involve extensive public procurement such as the purchase of construction material and equipment. The assessments looked at public and private sector bodies, law enforcement agencies, civil society, media, judiciary and other key 'pillars' of governance.

Based on this recent and comprehensive study, beneficiary states in close consultation with donors have developed and started to implement targeted mitigation measures. The basic tool implemented by those managing the EEA/NO Grants at country level, is the National Integrity System methodology. In addition, national managing partners have proposed over 50 mitigation measures. These bottom-up measures include:

- the strengthening of the complaint mechanisms to prevent fraud and malpractice, and putting in place a whistleblower policy;
- enhanced monitoring and oversight of programmes, including close cooperation of partners as well as regular meetings and reporting on progress;
- ex-ante and ex-post verification of procurement documents;

- internal review of cases of suspected irregularities combined with independent auditing and program evaluation;
- regular on-site monitoring of projects and targeted enquiries based on interest declarations.

This consultative process of jointly developing instruments for identifying and mitigation of Col is likely to increase awareness, understanding of the problem as well as ownership of the implementing partners (National Focal Points; donor states' programme operators, MC).

As critical factors to avoid Col a strong emphasis was put on (1) compliance with the transparency and reporting requirements of the EEA/NO grants (as laid out in the legal documents and accompanying/guiding material, e.g. the Risk Management Strategy);¹¹⁴ as well as on the neat separation of functions in order to ensure that the different actors carry out their duties independently from each other. For disclosure and handling potential Col, a number of precautionary measures, linked to publication and verification requirements are to be taken by programme operators, particularly in the project selection process.

National focal points report that the communication of advice and guidance by the FMO is helpful and of good quality. Especially the templates for reporting and documentation and handling of Col are highly appreciated (rated 4 out of 5). Lower The definition of Col are scored lower, and problems related to more complex cases related to institutional Col seem to pose similar problems as for the management of the ESI Funds. Regarding the question where to look for guidance in Col matters, managing authorities, programme operators and MCs pay most attention to the FMO and national levels.

4.1.3 Effectiveness of Col policy

Complaint mechanisms and whistleblower policy play a critical role in combating corruption, and are required by Art. 12.7 of the Regulation on the Implementation of the Norwegian Mechanism 2014-2021, which 'shall be capable of effectively processing and deciding on complaints about suspected non-compliance with the principles of good governance'. The purpose of the Complaint Mechanism is to ensure that members of the public and any stakeholder wishing to complain or report irregularities have a simple means of doing so, that their complaint is handled with an open mind and in confidentiality, and that incidents of mismanagement and corruption are uncovered and corrected.

Further, also monitoring and oversight mechanisms are key to Col prevention particularly in high risk areas (such as pre-defined projects excluded from competition). Due diligence is completed by targeted enquiries into potential cases of favoritism and hidden personal or political connections between project promoters and programme operators or contracting authorities and providers/contractors. A particular strength of Col management in the EEA/NO Grants case may lie in this transparency and accountability, including the open availability of information. Reports, reviews and evaluations are accessible on the EEA/NO Grants webpage. One reporting scheme is dedicated to irregularities, i.e. to documenting all complaints and detected problems for all individual programmes/projects as well as measures taken and the outcome of this process.

¹¹⁴ See EEA/Norway Grants Risk Management Strategy, at: <http://eeagrants.org/Results-data/Documents/Legal-documents/Guidelines-mandates-and-strategy/EEA-and-Norway-Grants-2009-2014/Risk-Management-Strategy>

According to the FMO's 'Irregularity Report', 465 irregularity cases have been reported by the beneficiary countries and the Fund Operators between 2013 and 2016. Out of these, 273 irregularity cases have been closed. Investigations that have been concluded are referred to as 'closed cases'. Among the closed irregularity cases, most relate to errors; two cases refer to fraud. 50 closed cases refer to deviations from the programme agreement; 70 refer to deviations from the project contract; 85 refer to deviations from public procurement procedures and 66 refer to errors in payment claims. Many of the country or programme level irregularity cases reported do not have any impact on the payments made from the Grants.

Based on interviews and available information, audit and reporting requirements as well as constant improvement of integrity policies have contributed to an increased awareness of Col issues among stakeholders. The National Focal Point for the EEA/NO Grants Scheme in EE reports that: 'the main effectiveness comes through the increased awareness of Col among public institutions. The Ministry of Justice has drawn a lot of publicity to the topic, notably with anti-corruption awareness programs. There is also a public website dedicated to anti-corruption with best practices and etc. (also available in English) at: <http://www.korruptsioon.ee/en> .

So therefore, the Col, as an integrated element of anti-corruption legal framework, is widely having a lot of attention in society together with awareness of statutory penalties' (Interview, 19 December 2016).

4.1.4 Good practices to consider

In the case of EEA/NO Grants, both the Regulation on the Implementation of the Financial Mechanism, as well as in the Management and Control system, there are specific articles about Col. Irregularities are extensively defined and conditions to handle them are laid out in Art. 12 of the EEA Regulation on Implementation of the Financial Mechanism. Communication and understanding of these rules and procedures are commonly seen as being sufficient or good.

Beneficiary countries are entrusted the overall responsibility for the compliance with the integrity rules in place: they designate (1) a Certifying Authority, in charge of submitting financial reports to the donors; (2) an Audit Authority to ensure the effective functioning of the management and control systems designed by the beneficiary countries; and (3) a national entity responsible for the prevention, detection and reporting of cases of irregularities, such as fraud or Col.

Selection and supervision of projects as well as financial management activities are carried out based on a set of established formal internal procedures governed by the openness and equal access for applicants, and pro-actively mitigating against (potential) Col. To this end, the managing authorities should strengthen their verification system with regard to project selection and implementation. Col need to be addressed proactively, and relevant examples drawing on real-life situations should be provided.

The FMO commissioned an external assessment of ethics and integrity risks to its management scheme: As a result, the FMO focused on a number of critical factors in Col prevention, namely (1) strict compliance with the transparency and reporting requirements of the EEA/NO grants (as laid out in the legal documents); as well as on (2) the neat separation of functions in order to ensure that the different actors carry out their duties independently from each other. For disclosure and handling potential Col

a number of precautionary measures, linked to publication and verification requirements are to be respected by programme operators during project selection, monitoring and evaluation.

Good practices identified from the case of the EEA/NO Grants include:

- Clear communication of legal rules and guidelines; these are understood and enforced by National Focal Points;
- external assessment of risks and level of exposure (carried out by Transparency International and the Berlin Risk Institute); weaknesses of the control system, identified in this report were addressed (e.g. separation of functions between management and implementation of the grant instruments, to prevent Col among actors carrying out these functions);
- strengthening of the complaint mechanisms to anticipate risks and prevent fraud and malpractice, and putting in place a whistleblower policy;
- track record of all deviations from standard procedures and risks that may have a negative impact on activities during the whole programme cycle, in an irregularity reporting system;
- internal review of cases of suspected irregularities combined with independent auditing and programme evaluation, including the procedures relating to ex-ante and ex-post verification;
- enhanced monitoring and oversight of programmes, including close cooperation of partners as well as regular meetings and reporting on progress;
- regular on-site monitoring of projects and targeted enquiries based on interest declarations (with a special focus on 'high risk' areas, such as procurement or pre-determined programmes);
- inclusive approach: bottom-up development of innovative instruments for identifying and mitigating Col in close consultation with National Focal Points.

From the case study a number of recommendations can be derived:

Managing authorities should review and harmonise the established formal internal procedures for selection and monitoring committees to see whether they are in line with existing principles of transparency and good administrative practice, and safeguarding against potential Col.

MAs should set up monitoring and reporting systems based on result and impact oriented key performance indicators as well as taking into account results from ex post evaluation. It has been mentioned as good practice to appoint a risk management officer or specialised external adviser to identify and follow-up on potential risks during all stages of the programme. An additional measure could be to introduce a learning and knowledge management system regarding Col and integrity policies. Such a database could serve as a resource base for regular training and awareness raising activities in the field of Col and transparency, e.g. to build a collection of cases or dilemma to be studied as exercises.

Where not yet the case, the MA should establish formal internal procedures for the implementation and conditions for derogations from these procedures, and ensure that these procedures in conjuncture with regulatory texts are clearly communicated and understood by all stakeholders. All deviations from standard procedures should be listed in detailed and regularly updated irregularity reports. More specifically, the selection and management procedures should emphasise openness and transparency: Internal staff members involved in the grant award and monitoring procedures should be formally appointed and clearly authorised by the responsible authority (authorising

authority/governing board); all major decisions should be clearly reported for each stage of the programme selection and management; regarding selection both the underlying criteria and the relative weighting of the evaluation stage should be published in the call for proposals and award decision. A complaint procedure and whistleblower policy should be in place and communicated to all stakeholders.

A proactive approach to risk management and Col should be adopted. Formal Col policies should be established for external experts, internal staff as well as members of the MC involved in the selection, award and evaluation process. The policy should define and classify Col issues according to nature and consequences, also considering the accumulated effect of several minor Col and define effective mitigating measures. Examples and training enhance understanding and ability to handle Col issues.

Managing authorities should improve the standardised reporting requirements for the beneficiaries to allow for an efficient and effective monitoring system. The outcomes of ex post controls should be reviewed at least annually to identify and address any potential systemic issues in the ex-ante control system.

4.2 GENERAL DISCUSSION OF BEST PRACTICE

4.2.1 Introduction to current debate on best practice

Under all jurisdictions and in all countries, there is confusion about the multiplicity of issues that fall under the umbrella of Col and disagreement about how important the problem of Col in the implementation of ESI Funds really is. First, lack of knowledge and clear understanding of how to define, identify and classify Col persist among stakeholders at different governance levels. Second, despite evidence as regards the existence of the problem, there is frustration over the limited impact of regulatory, political and institutional Col efforts. Third and finally, there is uncertainty about how best to tackle Col policies.

However, the contours of an approach to establishing effective Col policies are steadily coming into view. From our perspective, they include the following:

- measuring and assessing Col in ways that focus on generating information that is useful, e.g. through staff assessments and other indicators;
- strengthening the focus on transparency, openness and accountability, so that interested stakeholders can have access to the information they need to prevent, detect, investigate and sanction Col;
- supporting efforts to tackle Col through cycles of awareness raising and learning about the risks of Col;
- focusing more on analysing the effectiveness of Col policies in relation to specific policy sectors, problems, issues or instruments;
- paying more attention to compliance and results and not only the implementation of rules as such.

Still, it seems, the increasing interest in Col as a policy as such has not necessarily produced more clarity and consensus on the best way to tackle Col in different contexts, situations and policies, as regards

categories of staff and as regards the right choice of policy instruments and the best-fit for organisational design of ethics infrastructures. More work is also needed as regards 'what types of rewards or penalties work best to create incentives for responsible and accountable behaviour, including the search for improvement' (Jarvis/Thomas, 2009: 11).

In the meantime, common developments can also be observed. During the past years, an increasing number of countries have called for an alternative to the 'compliance-based' ethics model. As a consequence, discussions on the need for an alternative model (the 'value based' model) were highly influential and successful. In fact, many countries started to move away from legal and top-down approaches that focused on the design- and implementation of (ever new) rules, control mechanisms in place and the imposition of sanctions in case of infringements.

In fact, this does not suggest that compliance models disappear. In fact, it seems that the current trends are giving way for new hybrid models which focus more on value management but also a modest 'renaissance' of the classical compliance model. Let us take a step back to look at these interesting trends.

According to the German sociologist Weber, the essence of administrative behaviour is to follow legally given orders. Following this, at a minimal level, administration was considered to be good and ethical if it achieved the implementation and enforcement of the existing laws and policy goals of the government of the day. Moreover, ethically good or acceptable behaviour was also defined in terms of obedience to the law, impartiality and standardisation of practices. The purpose of rule-orientation was also to achieve fairness, to implement the merit principle, to allocate rights to citizens and to protect public employees against arbitrary administrative decisions. Thus, 'the ethics of neutrality and structure' (Thompson, 1985: 555-561) is the cornerstone of the traditional bureaucracy. From the ethical point of view, following the law or the superior's orders is usually not problematic, as long as obedience and excessive adherence to rules do not become absolute values.²

However, the problem with the Weberian concept is that as an ethical guideline it is simply too narrow for today's multi-level governance. Moreover, evidence was also growing that specific public working conditions and organisational structures do not necessarily produce less corruption and a specific public service ethos. In their seminal paper '*The Merit of Meritocratization: Politics, Bureaucracy, and the Institutional Deterrents of Corruption*' Dahlström et al concluded: '*The empirical results show that first, some bureaucratic factors (most notably the meritocratic recruitment of public employees) exert a significant influence on curbing corruption even when controlling for the impact of most standard political variables. We believe that these variables capture the effect of the bureaucratic professionalism. Second, the results also indicate that another set of bureaucratic characteristics that constitutes the backbone of what the literature defines as "closed" bureaucratic structure (career stability and formal exams for bureaucrats) do not have any relevant effect. The second finding is surprising since "closed" bureaucratic structures have previously been praised as key deterrents of corruption*'.¹¹⁵ Also, other experts have come to the conclusion that bureaucratic countries are not less corrupt than countries with other organisational features, because other explanatory factors play a more important role. For example, in her study on

¹¹⁵ Carl Dahlström/Victor Lapuente/Jan Teorell.: *The Merit of Meritocratization: Politics, Bureaucracy, and the Institutional Deterrents of Corruption*. *Political Research Quarterly*, Vol. 65(3). 2012, p. 665. See also: James Rauch & Peter Evans.: *Bureaucratic Structure and Bureaucratic Performance in Less Developed Countries*. *Journal of Public Economics*, Vol. 75.2000, pp.49-71.

the Quest for Good Governance Mungiu-Pippidi concludes that countries with a higher power-distance culture (Hofstede) have higher levels of corruption.¹¹⁶

This assumption is essentially confirmed by the evidence from the EEA/NO case, where formal rules are overall lean, but efficient, a principle underlined in the EEA/NO Grants Risk Management Strategy (p. 4),¹¹⁷ namely to manage risks 'more effectively' and 'to reduce the need for complicated systems'. To this end '[a] dialogue to identify good risk mitigation is carried out' (ibid.). However, the Scandinavian value-based approach to Col and ethics management is modified to some extent, as illustrated by the case study on the EEA/NO Grants, to mitigate the specific and frequently much higher integrity risks in recipient countries. We see a rather pronounced contrast between intrinsic vs sanction-driven, consequential compliance models.

Today, the level of awareness is growing that work in the public sphere is much more complex and no longer dominated by the principle of rationality as Weber predicted. In reality, work in the public sector is more individual, value-laden, emotional, pluralistic, political and more unpredictable than ever. For example, modern public officials have much more individual decision-making discretion than that predicted by Weber. On the other hand, the rule of law and administrative law as such remain the core principles of all administrative systems in Europe.

However, with the emergence of New Public Management (NPM) euphoria, administrative law was mostly seen as a constraint that blocks policy choices and reform policies. Also, traditional hierarchical and rule-based administrative behaviour was held to be rigid, rule-bound, centralised and obsessed with dictating how things should be done – regulating the process, controlling the inputs – but totally ignoring the end results. As a result, NPM theories dominated from the 1990s onwards. Consequently, in the field of integrity, the compliance approach was seen as old-fashioned and ineffective. Suddenly, the focus was on values and attitudes, results, soft law (such as on codes of ethics and codes of conduct), training, leadership, decentralisation, delegation, individualisation and flexibility, instead of on law and top-down approaches.

The United Kingdom and the Netherlands were forerunners in this field. The British and Dutch perceptions were that the field of anti-corruption and ethics and Col was defined too narrowly and should be complemented by more discussions on a broader concept, namely integrity. However, especially the British model was based on codes. For a long time, this approach looked fashionable to many. However, there was no evidence that this approach a) could be exported to other political, constitutional and administrative traditions and b) would be more effective at all. Moreover, there is also increasing evidence that one explanatory variable for high levels of corruption is also the blurring of boundaries between the public and the private sector. The latter also applies to NPM countries with an open access order.¹¹⁸ The OECD is monitoring these trends for years: *'Increased mobility between the public and private sector – "revolving door" phenomenon – has raised public and governmental concerns of impropriety which can affect trust in public service. At the same time, it is also in the interest of the public and government to attract experienced and skilled workforce to serve the public interest. In this regard, conflict of interest situations should be appropriately and adequately identified and managed to ensure*

¹¹⁶ Mungiu-Pippidi, *The Quest for Good Governance*, op cit., p. 21

¹¹⁷ See EEA/Norway Grants Risk Management Strategy, at: <http://eeagrants.org/Results-data/Documents/Legal-documents/Guidelines-mandates-and-strategy/EEA-and-Norway-Grants-2009-2014/Risk-Management-Strategy>

¹¹⁸ Mungiu-Pippidi distinguishes between Governance regimes with a limited access order and an open access order and believes that the latter countries have a sharper separation between the public and the private sector, in: *The Quest for Good Governance*, op cit, p. 29.

sound democratic governance. An excessively strict approach could result not only in bureaucratic inefficiency but also in discouraging the employment of potential skilled and competent workers in the public sector.¹¹⁹

Thus, as it seems, each approach has its own challenges. A compliance-based approach has to deal with the strengths and weaknesses of pure rule-based ethics. For instance, this approach tends to develop and to elaborate codes emphasising compliance with rules, thus acquiring a strong legalistic tendency.¹²⁰ Since this is the case in DE, it is quite straightforward to foster relatively high standards of ethics. In this approach, problems may occur when people tend to think that if something is not explicitly prohibited, then it is not wrong.¹²¹ In the DE case study, the study objectives were repeatedly questioned. According to the respondents, the study would not serve any purpose because the existing rules are numerous and clear. Thus, for a German civil servant this means: If rules exist, these rules also need to be implemented. So why worry about Col if the existing rules and standards exclude the emergence of Col.

Another weakness is that value-based approaches are seen as unnecessary because legalistic approaches suffice to prevent wrongdoings. As a consequence, these approaches *'do not go far enough in promoting positive ethical attitudes and behaviour'*.¹²²

The value-based approach emphasises informal instruments and values that underlie the rules made by government for the management of public resources. In this way, it goes beyond a pure rule-based approach. However, although a prevention-based approach stresses the values that will promote positive ethical behaviour, it remains tied to specific functional areas of the organisation. Paradoxically, its strength is also its limitation. By concentrating on the development of ethical competencies, values and virtues, this approach neglects the importance and effects of deterrent mechanisms and formal instruments. Often, it also overemphasises the possibility of virtue approaches (the possibility to change behaviour by learning ethics) and underestimates the importance of external (economic factors) factors on individual behaviour. Moreover, value-based approaches are more often preached than practised. For example, in NL, ethical leadership is seen as a top-priority and as the most effective instrument. However, in practice, a majority of employees on the central, regional, in the water agencies and on the local level believe that 'the role model character' of management exists rather on paper but not in reality. Overall, there is also no reason to believe why Dutch leaders have higher levels of ethical leadership than elsewhere. The consequences of this (unprofessional) way of dealing with ethical issues and the lack of ethical leadership leads to the discrepancy between theory and practice. For example, a study on 'Integrity of the Government',¹²³ which was commissioned by the Dutch Ministry of the Interior in 2007, revealed that relatively high percentages of public employees were relatively dissatisfied with issues such as ethical leadership, ethical awareness raising and ethical culture. Also a more recent survey on Dutch Integrity policies shows that only 37% of respondents believe that leaders (actively) pursue integrity policies.

Thus, huge differences exist between the normative idea, the conviction that ethical leadership is important, and the daily administrative reality, which often limits the possibility to act clearly and in

¹¹⁹ OECD, *Governance at a Glance*, 2015

¹²⁰ National Defence of Canada, *op. cit.*, p. 4.

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ Ministerie van Binnenlandse Zaken en Koningszakenrelaties, *Integriteit van de Overheid*, Den Hague, 2007.

accordance with leadership theories. Consequently, Mintzberg differentiates between managers and leaders.¹²⁴ The possibility to exercise leadership is limited by a number of managerial tasks. Therefore, most leaders are rather managers than leaders. Lewis and Gilman describe the role of managers: *'The public manager must act quickly in a grey, marginal area where laws are silent or confusing, circumstances are ambiguous and complex, and the manager is responsible, well-meaning, and perplex'*.¹²⁵ Daily management leaves little time to brainstorm and to think about dilemmas. Often, long working days and time pressure put additional stress on the manager's shoulders: *'In fact, managers make most of their ethical choices this way: in the pit of the stomach, automatically, reflexively, intuitively in the popular sense, by common sense...'*.¹²⁶ Mostly, managers dismiss theoretical concepts and philosophical traditions in the field of ethics as artificial and impractical. For managers, the sheer number and complexity of ethical traditions will not make the management of daily life issues easier. *'As a result, the obligation of informed ethical reasoning – thinking through a dilemma and making a morally reasonable decision – falls on the individual public manager'*.¹²⁷ As a consequence, most managers practice 'amoral management',¹²⁸ which does not mean that management is unethical. Rather, many managers face impediments to ethical leadership.

It is also very doubtful whether there is more 'moral consciousness' in the Dutch public sector than in, say, the German public sector.

Thus, current discussions in the field of Col seem to turn away from the 'grand old' dichotomy: value-based approaches versus compliance-based approaches. This can best be seen in the field of Col, where countries have started to realise that the management of Col does not work without clear rules, formal procedures, and strong enforcement mechanisms but also not without awareness raising, strong leadership, independent ethics committees, registers of interest and more and better management capacity. Most 'compliance-based' countries such as DE no longer focus entirely on rules and trust in the effectiveness of sanctions.

Thus, there is a growing understanding in all cultures that both approaches are needed, and that they must be supplemented by a more political approach which considers ethical behaviour a consequence of factors such as the existence of organisational justice (note: in NL, 'just treatment' is also an indicator when measuring integrity), good working conditions, fair salaries, an open and motivating working atmosphere, well-functioning and active communication at all levels, and model role playing by political and administrative leaders. This reflects the taking into consideration of the importance of the concept of organisational culture/justice. The term organisational justice refers to the extent how employees perceive administrative practices, administrative reforms and human resource policies as fair in their outcome. Organisational justice theories have also been linked to health issues. Experts often make a distinction between distributive justice, procedural justice and interactional justice. For many years, researchers have attempted to find out why employees behave ethically or unethically in the workplace. Most have accepted the distinction offered by Kish-Gephart et al. (2010) as to the influence of individual characteristics, moral issue characteristics and organisational characteristics. Especially the social environment in which public employees operate has been shown to relate to

¹²⁴ Henry Mintzberg, *Managing*, San Francisco, 2009.

¹²⁵ Carol W. Lewis/Stuart C. Gilman, *The ethics challenge in public service: A problemsolving guide*, Jossey-Bass, second edition, 2005.

¹²⁶ *Ibid.*

¹²⁷ Carol W. Lewis/Stuart C. Gilman, *The ethics challenge in public service*, op. cit.

¹²⁸ Rebecca L. Greenbaum/Matthew J. Quade and Julena Bonner (2014), *Why do leaders practice amoral management? A conceptual investigation of the impediments to ethical leadership*, in: *Organizational Psychological Review*, pp. 1-24.

important output variables. Many ethics experts have analysed whether particular dimensions of the social context have connections with the attitude and behavior of individual employees. For example, many studies have shown the impact of multiple organisational contexts on ethical behavior. For example, employee perceptions on ethical climate, ethical culture and leadership styles have been related to employee attitudes and behavior.

As a consequence, present discussions on effective ethics policies are still becoming more complex and still expand from the early focus on rules, sanctions, anti-corruption and fraud to the development of ever new incentive policies in the field of behavioural economics, such as 'nudging policies' (Thaler & Sunstein, 2008).

For many years, international research on ethics and integrity has focused on the characteristics and prevalence of high performance ethics infrastructures that are applicable in both the public and in the private sector. This research was originally initiated by Transparency International (Pope, 1996).

This concept assumed that high performance ethics infrastructures constitute 'best practice' and universally applicable management, although a distinction can be drawn between those arguing for a contextual best-fit approach and those arguing for more of a best-practice approach, based on a belief in the more universal advantages of these systems. The best-practice approach is based on the belief that ethics infrastructures can be used in any organisation and the view that all organisations can improve performance if they identify and implement best practices.

In the meantime, there is considerable consensus on what constitutes bad practices, for example, the absence of codes of ethics, poor leadership, unfair human resource policies, lack of training, unprofessional performance measurement etc. However, it is much more difficult to identify institutional best practices, although the search for benchmarks is becoming ever more popular.

Still, the search for best ethics infrastructures is confronted with a context and institution-based, fragmented and pragmatic reality. Overall, institutional differences – notably the levels of budgetary resources, social legitimacy, work systems, labour markets, education and training systems, work organisation and the collective organisation of employers and employees – mediate the impact of converging processes.

Consequently, the proposition for implementing institutional and organisational models such as ethics infrastructures is ambivalent. In fact, according to neo-institutional theories, the political and institutional world is currently moving away from universal or even European best-practice institutional configurations towards more specific best-fit context-related models. New developments lean more towards the testing of new organisational models and work systems that fit into the national, regional, local or even organisational and leader-follower context. Best fit schools are associated with this contingency approach and argue that organisations must adapt their strategies and implement reforms to the specific local strategy and to its environment.

In fact, the effectiveness of any particular ethics infrastructure system will be determined by the degree of consistency amongst its constituent elements and the way they fit into the organisation, human resource policies, culture and leadership styles.

To conclude, one may agree about the importance of the socio-political institutional context in the field of developing ethics infrastructures. According to Huberts (2014), it is possible to stress the 'basics of an integrity system' (Huberts, 2012: 190). However, whether it is possible to define complex best-

practice infrastructures in the field of integrity is another question. The performance of an ethics infrastructure also depends on the management of multiple and conflicting goals. Furthermore, in the future, it is unlikely that ethics management strategies will not be associated with any particular philosophy or style of management. Working conditions, leadership styles and work organisations continue to differ, ranging from traditional taylorist models to high-involvement or high-job autonomy models with low hierarchies and high levels of job autonomy. Also, the role of employees varies from very paternalistic to very communicative and partnership-oriented forms of social dialogue. Consequently, there will be multiple forms of organisational structures, ranging from traditional and bureaucratic working systems to innovative workplaces and learning organisations within different governmental organisations and even within the same organisations (OECD, 2010).

Also in the field of Col, it may be easily possible to agree on good practices in the field of codes, Col management, ethical leadership, risk analysis, dilemma training, ethical audits etc.. However, the concrete design of instruments will – also in the future – always be shaped according to the best-fit doctrine. In each country, each instrument and policy must also be seen in different political, economical, cultural and institutional contexts. For example, the role and effects of whistleblowing differ from country to country and from institution to institution. The same applies to leadership styles, which differ from one administrative tradition to the other, from organisation to organisation and situation to situation. In our study, leadership is considered to be the most effective instrument in the fight against Col as regards the sound management of the ESI Funds. However, in practice, leadership is also considered one of the most important obstacles for an effective policy. The latter is the case if chairpersons of MCs do not care about the need to discuss Col during the proceedings in the committees. In this case the effectiveness of Col is also highly depending on individuals and personality. As regards gift policies, in some countries strict gift-policies may be highly effective and also easy to implement, however, this is not the case in other countries where zero-gift policies would be in conflict with local values. There also seems to be different interpretations with regard to what constitutes a code of conduct. Many countries seem to consider that a document cannot attain the status of code of conduct unless it had been passed by the Parliament (law) or accepted by an authority such as the Council of the State (directive or a decision in principle) or State Employers Office (staff regulations) whereas some countries use documents that had not been officially authorised but which have a de facto status of a code.

At the same time, it is important to continue the work on ‘common elements’, ‘best practices as regards the effectiveness of instruments’ and ‘suggestions for ethics infrastructures that really work’ in the field of ethics. For example, during the Dutch EU-Presidency in 2004, work has been carried out on common models in the field of public service ethics.

4.2.2 Still existing best practices? – The Netherlands

Obviously, there is still too little evidence regarding the outcomes and effects of Col policies. In most cases, MS themselves have no oversight about the regulation, management and effectiveness of ethics policies and rules at central, regional and local levels. For example, whether regulations and policies exist as regards ancillary activities, post-employment, gift acceptance, use of organisational resources and data; or whether rules and procedures exist as regards declaring Col, whistle-blowing, reporting of potential Col etc. To our knowledge, only NL (as a decentralised unitarian state) is engaged in monitoring (the effectiveness of) integrity policies at the central, regional and local levels.

The report 'Beleidsdoorlichting Inegriteit(sbeleid)' by the Dutch Ministry of the Interior is one of the few existing evaluation reports which have been produced by national governments in Europe. This report evaluates integrity policies in NL at all governmental levels.

The report provides information on the existence of rules, standards and procedures, measures the state of awareness of instruments, discusses weaknesses and suggests improvements in the whole system. Moreover, it evaluates developments in time and analyses the development and effectiveness of integrity policies (including Col) policies on the central, provincial, local level as well as in the Dutch Water agency. Moreover, the report discusses whether and how the different administrative levels collect and monitor integrity policies. Finally, staff assessments are carried out at all government levels and results are compared with each other.

However, before suggesting a 'best-practice' in evaluating integrity policies, it is important to mention that this model is not easy transferable to other countries. For example, in a federal country like DE, responsibilities, rules and policies in the field of integrity are highly decentralised and fragmented. Thus, a coherent overview of existing policies and instruments does not exist. However, at the federal level in the US, the National Conference of State Legislatures provides for comparative information on Col policies in all US states.¹²⁹

¹²⁹ <http://www.ncsl.org/research/ethics/50-state-table-conflict-of-interest-definitions.aspx>

5 CONCLUSIONS AND RECOMMENDATIONS

MAIN CONCLUSIONS AND RECOMMENDATIONS

Overall, existing rules and standards on Col, including those applying to the ESI Funds, are highly fragmented and dispersed on the international, EU, national, regional and local level, amongst sectors, and types of stakeholder. This suggests the need for a comprehensive codification of existing Col requirements.

There are shortcomings in the implementation of EU standards in the field of Col because of the limited number of instruments that have been adopted at the EU level – regulatory approaches, guidelines, self-assessment tools, innovation in data management, monitoring and sanctioning. We suggest elaborating the ‘menu’ of instruments by offering better and more information on best-practices in the field, funding training in the field for Col, deepening research on the effectiveness and management of Col policies and collecting information on the use of innovative instruments at the national level.

As regards the MCs under the ESI Funds, we have concluded that:

- a) There is too little awareness about the importance of Col in MCs; there is also too little discussion on Col. Therefore, we suggest to invest in awareness raising instruments, also at the EU level, through ESF-funded programmes in the fields of Public Sector Modernisation and Capacity Building.
- b) Mostly, the MC rules of procedures address Col, if at all, very cursorily. We suggest that each MC should have Col guidelines at hands. There is no need to produce new ones, as best-practices exist (EU guidelines, OECD-toolkits). This is only a matter of better internal distribution and communication.
- c) Frequently, MCs are not transparent as regards the management of Col. We suggest to publish protocols of meetings and voting behavior and, for the purpose of research and scrutiny, to collect these reports in publicly available databases (respecting, of course, existing rules on data protection and privacy).
- d) Often, the chairperson does not discuss Col in the MC because priorities are set elsewhere. This is also due to a lack of ethical leadership and awareness as regards the importance of the issue. Here, ethical leadership is important. Chairpersons need to be trained in the field of Col and should be obliged to discuss Col during committee proceedings.
- e) Involvement of external experts in the proceedings as well as in training and awareness raising can help eliminate blind spots and identify systemic weaknesses. Experts could, e. g., be consulted in elaborating risk management strategies, providing guidance and instructions as well as distributing roles and responsibilities to identify and mitigate Col risks.
- f) Most countries have no information and data on the development of Col under the ESI Funds. There is also very little monitoring in the field of Col. We believe that monitoring and reporting on Col is of utmost importance. Without asking for the establishment of a new ethics/Col bureaucracy, we suggest to ask existing authorities and bodies in the field to regularly report on the development of Col. Good practices exist in NL and NO.

As can be seen throughout this study, research on the implementation and effectiveness of Col policy in the framework of the ESI Funds is no easy task. The most important challenge concerns the measurement of Col, the access to reliable data as regards the number of Col, evidence on the actual implementation and management of Col regimes in MCs, and, more generally, obtaining honest answers to sensitive questions. Because of the sensitive nature of the subject matter, research into the world of applied Col faces tremendous difficulties. Overall, analysing Col policies involves some of the greatest challenges and difficulties in legal, political and administrative science. To this should be added the complexity of comparing and analysing different (legal) instruments in different legal and administrative traditions in different languages.

The existing EU instruments in the field of Col concern legally binding rules (regulations), monitoring (as far as the monitoring of EU financial interests through the EC/OLAF is concerned), guidelines, reporting, self-assessments and funds. **In the future, a stronger focus should be placed on a widening of the menu of instruments and the development of innovative approaches in the field of Col (e.g. how to use nudging in the field of Col). In particular, inclusive and proactive methodologies, involving stakeholders in programming, implementing and supervising, to jointly identify and address (potential) Col issues should be explored.**

There is a great risk that MS deal with ESI Funds differently than with MS funds. Here, new ways are needed to close the 'accountability gap' and motivate MS authorities to spend ESI Funds in a more accountable way. One way for doing so would be to enhance the transparency of MC composition and proceedings. **We suggest that MC rules of procedures, composition and protocols of meetings, including detail on voting / decision taking are made public (without prejudice to applicable legislation on privacy and data protection).**

When considering all the existing rules, levels of regulation and the use of the variety of soft and legally binding instruments, it is no surprise that in the field of Col, the EU Institutions and all administrative layers at the MS level face increasing challenges as to the definition of Col, the quality of the existing rules, overlaps of rules, legal fragmentation and a lack of coherence of approaches. Altogether, knowledge and awareness about EU policies and rules decrease gradually from EU level to local level. For example, in most MCs, there appears to be limited knowledge / discussion of relevant EU-level guidance.

Overall, there is no shortage of rules and standards in the field of Col. Moreover, Col are becoming more regulated, but only slowly better managed and enforced in the MS. For example, some MS start to invest in monitoring integrity and the development of Col policies. Moreover, more MS use staff assessment surveys in order to generate more and better data in the field of integrity. Still, measuring Col faces many methodological, practical and financial obstacles.

Theoretically, in all MS, potential Col are abundant in the field of the implementation of the ESI Funds. Thus, we confirm the importance of the research mandate for this study. At the same time, it is also difficult to define what constitutes Col in each case. Some MC members reported that Col do not exist as MC members represent legitimate national, regional, sectoral or individual interests in MCs. Consequently, Col would not exist at all because of the representative function of MCs as such. We acknowledge the existence of a grey zone between 'representation of interests', lobbying and Col. This grey zone illustrates the difficulty to regulate and manage Col in each case.

Despite the many existing challenges, almost all stakeholders agreed that specific Col rules and standards are necessary in the context of implementing ESI Funds. Many respondents to this study even mentioned the need for better and more precise definitions of Col as well as practical guidance on Col scenarios.

The trend towards the adoption of more rules, codes, guidelines and standards in the field of Col requires that more attention should be given to implementation issues. The more rules and guidelines exist, the more management capacity is required to implement these rules and standards. Here, new paradoxes are about to emerge. Whereas individual requirements in fulfilling new obligations (mainly in the field of disclosure policies) are increasing, control and monitoring bodies are still weak and lack resources. Studies have shown that ‘toothless’ rules, i.e. those without implementation and sanction capacity undermine effectiveness and are detrimental to integrity management (Demmke et al. 2008). The real challenges are here: how are Col requirements managed and monitored in MCs? Are members of MCs really required to fill out forms? How are rules of procedure managed and monitored? Are MC members sanctioned in case of Col breaches?

It seems that only few MS evaluate and monitor the strengths and weaknesses of their Col systems. Most MS have no overview about the existence of rules, awareness of rules and application of rules at the central, regional and local levels. This is particularly regrettable, because the many reform activities that took place in the last few years provide a wealth of interesting material for evaluation and comparison. **In order to improve this situation, we suggest to MS to undertake/publish regular monitoring reports and the systematic collection of data on the development and management of Col.** This task could be accompanied by nominating independent monitoring bodies, national ombudsmen, court of auditors or specific anti-corruption bodies to prepare Col monitoring reports. In this study, we have presented the NL and the NO cases as good practices.

Generally speaking, there is neither evidence that Col are decreasing as a consequence of stricter rules nor increasing because of more opportunities for Col in the implementation of the ESI Funds. Moreover, there is a lack of empirical evidence on the development of Col in the implementation of the ESI Funds. **This observation underlines the need for better monitoring of Col and addressing the total lack of statistical and empirical evidence, monitoring and awareness of Col as such - hence the recommendation of investing in a Col database for the purposes of research, comparison and public scrutiny.**

Most MCs provide for very short references to Col in their rules of procedures. Almost no MC refers to extended Col definitions such as those by the Council of Europe, or the OECD. In many MCs, Col standards are not discussed at all. Overall, there is little interest and awareness about the need to discuss Col.

Despite vivid discussions on the (lack of) effectiveness of codes of ethics/codes of conducts, **we suggest that every MC should adopt its own code on Col.** However, adopting a code of conduct is not enough. In many cases, much time and energy is usually spent in designing, formulating and adopting a code but many institutions stop here. The code then turns into nothing else than paper and a symbolic action without achieving its aims. As it seems, often, instruments are perceived as more effective when they exist, and are known and applied in the administration. For example, newer soft instruments are often considered to be less effective simply because they are also less known. **Therefore, we suggest that the Code should be regularly discussed by MC members.** This requirement could be made mandatory in the MC rules of procedure.

In order to enhance 'ethical leadership', **we suggest that the MC chairperson should be obliged to communicate and discuss Col at each meeting and make sure that violations are sanctioned in case of actual breaches of Col rules and standards** (e.g. members fill out registers, leave the meetings in case of Col, are not allowed to vote etc.).

Because of the lack of ethical leadership, MC members are not made sufficiently aware of the existing rules and trained on how to implement them. Consequently, **we propose increasing investment in the training, especially for the MC chairperson**. The latter could also be co-financed by the ESF under the chapter of administrative modernisation and capacity building.

ANNEX 1: RESEARCH QUESTIONS

There are two sets of research questions, one set addressed to Member State (MS) authorities dealing with the ESI Funds, and a second set, addressed to the European Commission (EC) (DG REGIO and DG EMPL).

For the MS authorities dealing with the ESI Funds (questions for interviews (I) and the survey (S))

I) Identification of respondent (I/S)

- 1) Please indicate the Fund (ERDF, ESF, ERDF+ESF)
- 2) Please indicate the Member State authority
- 3) Please indicate the Operational Programme (s)

II) Rationale (I/S)

- 1) Have Col affected the ESI Funds in the past programming period 2007-2013? (scale of 1-5, from 1=to a very limited extent, to 5=to a very important extent)
- 2) Did your MS experience a need for the introduction of Col requirements for the ESI Funds in 2014-2020? (scale of 1-5, from 1= very limited need, to 5=very important need)

III) Regulatory and guidance framework

- 1) Has the EC communicated the objectives underlying the new Col requirements (CPR 1303/2013 Art. 5.3 and EC Delegated Regulation (DR) 240/2014 Art. 11, 12 and 13)? (scale of 1-5, from 1=very poor communication, to 5=very good communication) (I/S)
- 2) Do you consider the 2014-2020 regulatory framework on Col (CPR 1303/2013 Art. 5.3 and DR 240/2014 Art. 11, 12 and 13) to provide for sufficient clarity on the requirements concerning Col? (scale of 1-5, from 1=to a very limited extent, to 5=to a very important extent) (I/S)
- 3) In case you consider the 2014-2020 regulatory framework to provide insufficient clarity, what needs to be improved? (scale of 1-5 for the following options: definition of Col, procedures for handling Col) (I/S)
- 4) Please describe your (MS national and regional) regulatory framework with regard to Col in the specific framework of the ESI Funds – where and how do you ‘regulate’ Col under the ESI Funds? (I)
- 5) Please describe your (MS national and regional) guidance framework with regard to Col – where and how do you provide guidance on Col under the ESI Funds? (I)

IV) MS response (operationalisation of Col requirements) (I/S)

- 6) Have you established a definition of Col under the ESI Funds? (yes, don’t know, no)
- 7) Have you established procedures for handling Col under the ESI Funds? (yes, don’t know, no)

V) EC and national / regional guidance and / or advice (I/S)

- 8) What is the quality of EC guidance and /or advice (e.g. EC, Identifying Col in public procurement procedures for structural actions, A practical guide for managers, best practices communicated

in the framework of 'European Community of Practice on Partnership' etc.)? (scale of 1-5, from 1=of very poor quality, to 5=of very high quality)

- 9) In case you consider EC guidance and / or advice to be of high quality, which features of the guidance do you value? (scale of 1-5, from 1= value to a very limited extent, to 5= value very highly, for the following options: clarity on regulatory framework, clarity on application, practical examples, open text box)
- 10) In case you consider EC guidance and / or advice to be of poor quality, how can the document be improved? (scale of 1-5, from 1= value to a very limited extent, to 5= value very highly, for the following options: clarity on regulatory framework, clarity on application, practical examples, open text box) (I/S)
- 11) What is the quality of MS national / regional guidance and / or advice? (scale of 1-5, from 1=of very poor quality, to 5=of very high quality)
- 12) In case you consider MS national / regional guidance and / or advice to be of high quality, which features of the guidance do you value? (scale of 1-5, from 1= value to a very limited extent, to 5= value very highly, for the following options: clarity on regulatory framework, clarity on application, practical examples, open text box)
- 13) In case you consider MS national / regional guidance and / or advice to be of poor quality, how can guidance be improved? (scale of 1-5, from 1= value to a very limited extent, to 5= value very highly, for the following options: clarity on regulatory framework, clarity on application, practical examples, open text box)

VI) Effectiveness of Col regimes

- 14) Where do you first turn to for advice on Col matters? - EU, national, regional level (I/S)
- 15) Which rules are most relevant for solving Col issues? - EU, national, regional level (I/S)
- 16) How would you elaborate the management of Col training of public officials in your department? (I)
- 17) How do you ensure the enforcement of rules to handle Col (I)
- 18) Does the management of Col regulation play a role in Performance Management, and if, what kind of measurement methods, indices or benchmarks do you apply in order to elaborate its effectiveness? (I)
- 19) Are there any indications of increased consciousness vis-à-vis Col among relevant stakeholders (e.g. members of a MC)? (yes, don't know, no) (I/S)
- 20) Have Col affected the ESI Funds in the current programming period 2014-2020? (scale of 1-5, from 1=to a very limited extent, to 5=to a very important extent) (I/S)
- 21) Do you consider the Col regime to reduce (potential) Col when comparing with previous experience (2007-2013 programming period)? (scale of 1-5, from 1=to a very limited extent, to 5=to a very important extent) (I/S)

VII) Recommendations for the future of the Col regimes (I/S)

- 22) Do you have any recommendations for the future of Col regimes in the framework of the ESI Funds? (open text box)

For the European Commission (questions for interviews with DG REGIO and DG EMPL)

I) Identification of respondent

II) Rationale

- 1) What was the need for the introduction of Col requirements for the ESI Funds in 2014-2020?
- 2) How have Col affected the ESI Funds in the past programming period 2007-2013 and is there any data on this?

III) Regulatory and guidance framework

- 3) Has the EC (specifically) communicated the objectives underlying the new Col requirements (CPR 1303/2013 Art. 5.3 and DR 240/2014 Art. 11, 12 and 13) to the MS?
- 4) Why did the EC limit the sanctioning of infringements of the DR? (The CPR Article 5.5 stipulates '*An infringement of any obligation imposed on Member States either by this Article or by the delegated act adopted pursuant to paragraph 3 of this Article, shall not constitute an irregularity leading to a financial correction pursuant to Article 85*')
- 5) Please describe how the EC ensures oversight / enforcement of the MS' implementation of the DR 240/2014 Art. 11, 12 and 13 (e.g. is there any MS reporting on their Col regimes)?
- 6) Please describe your guidance framework with regard to Col – where and how do you provide guidance on Col under the ESI Funds, promote the transfer of good practices (European Community of Practice on Partnership) etc.?

IV) Effectiveness of Col regimes

- 7) Are there any indications of increased consciousness vis-à-vis Col among relevant MS stakeholders?
- 8) Have Col affected the ESI Funds in the current programming period 2014-2020?

V) Recommendations for the future of the Col regimes

- 9) Do you have any recommendations for the future of Col regimes in the framework of the ESI Funds?

ANNEX 2: STAKEHOLDER CONSULTATIONS

The following stakeholders were consulted on this study.

Bankwatch (Hungary, Latvia, Slovakia)

Directorate-General for Regional and Urban Policy, DGA2.E1 Competence Centre Administrative Capacity Building, Solidarity Fund, European Commission

Directorate-General for Regional and Urban Policy, DGA1.B4 Legal Affairs, European Commission

Directorate General Employment, Social Affairs and Inclusion, European Commission

European Anti-Fraud Office (OLAF), Directorate D - Policy, Unit D.2 – Fraud Prevention, European Commission

Strategic Inquiries Unit, General Secretariat, European Ombudsman (confirming that the Ombudsman did not receive any complaints concerning conflicts of interest affecting a Monitoring Committee for the ESI Funds)

ANNEX 3: LITERATURE

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This study reviews the Member States' experience with codes of conduct and conflicts of interest affecting the partnership arrangements under the European Structural and Investment Funds. The focus is on conflicts of interest affecting the Monitoring Committees under the European Regional Development and European Social Fund. The study reviews the rules and other approaches to deal with conflicts of interest, discusses best practices and ends with conclusions and recommendations advocating a complementary rule and value based approach supported by transparency and ethical leadership.

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