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Conflict of Interest Laws, Policies and Trends in Poland



Patrycja J. Suwaj

Białystok School of Public Administration, Poland

MAROC ATELIER SUR LES CONFLITS D'INTÉRÊTS

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Summary

- 1. Civil service in Poland**
- 2. Corruption and Col in Poland – core definitions**
- 3. Instruments already applied to deal with corruption and Col**
- 4. New trends in Polish approach to build ethical infrastructure**



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Facts

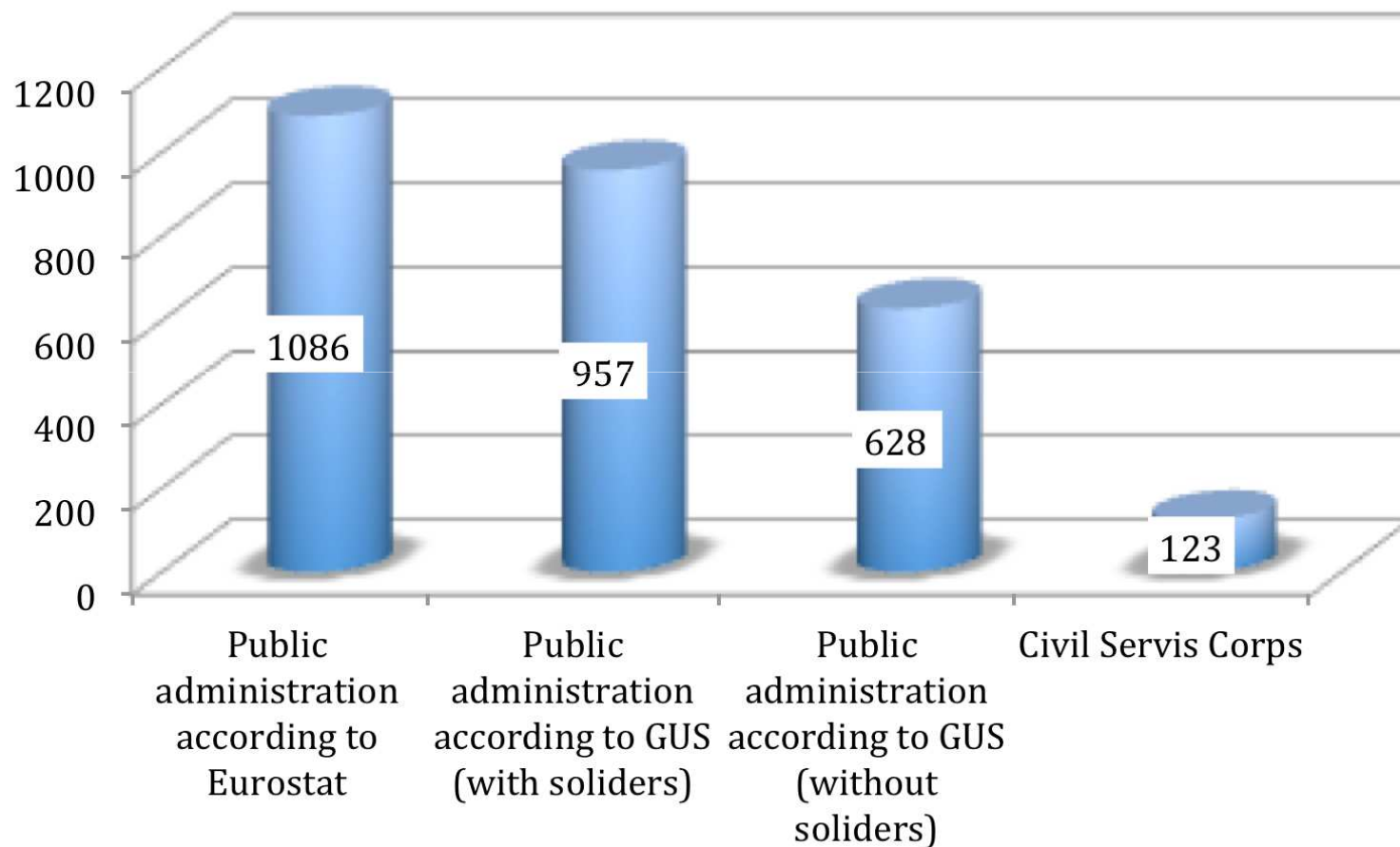
Poland is CEE country with 38.000. 000 inhabitants.

The process of fundamental transition started in 1989



PA and Civil service in Poland

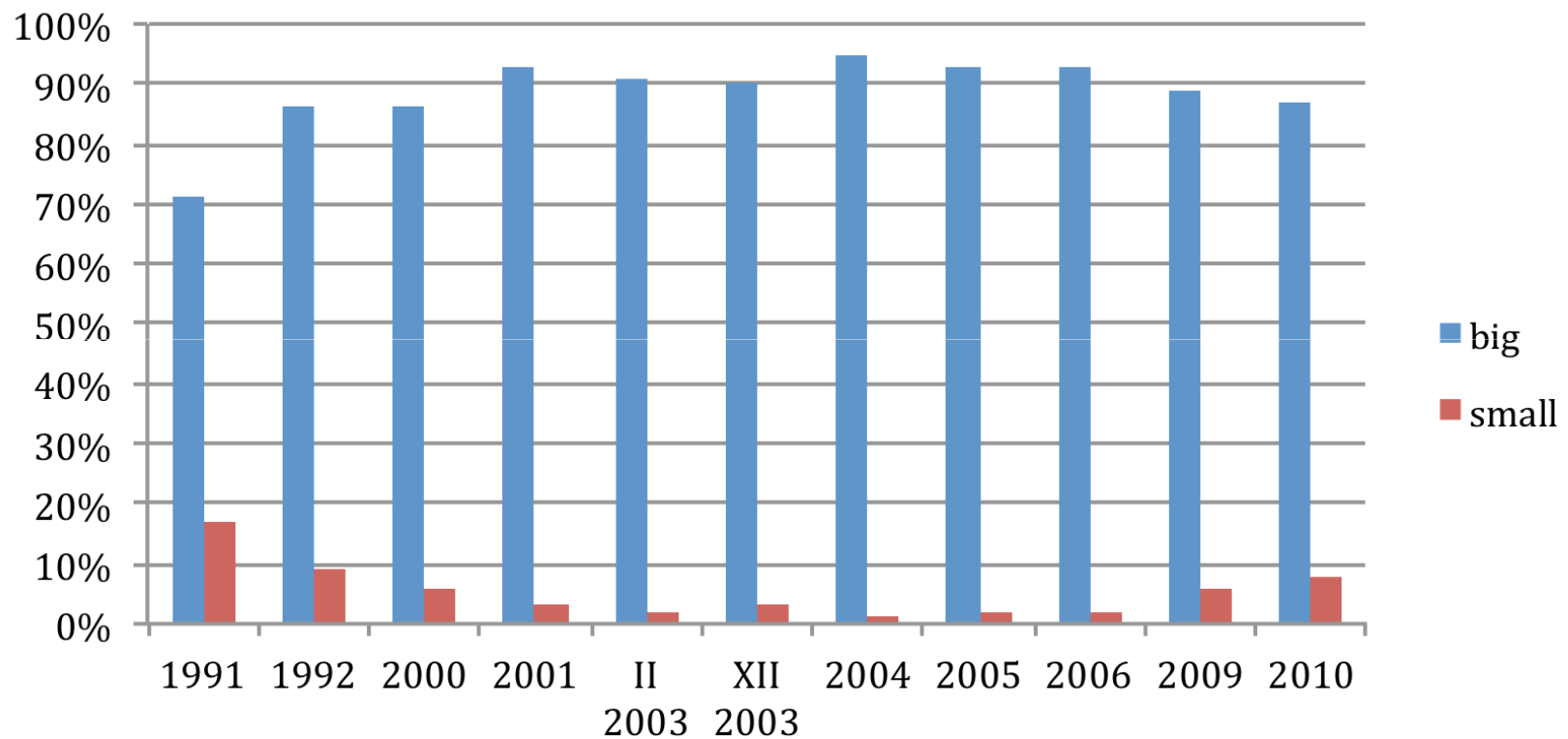
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In your opinion corruption is a big problem or a small one?

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Source: CBOS, April 2010





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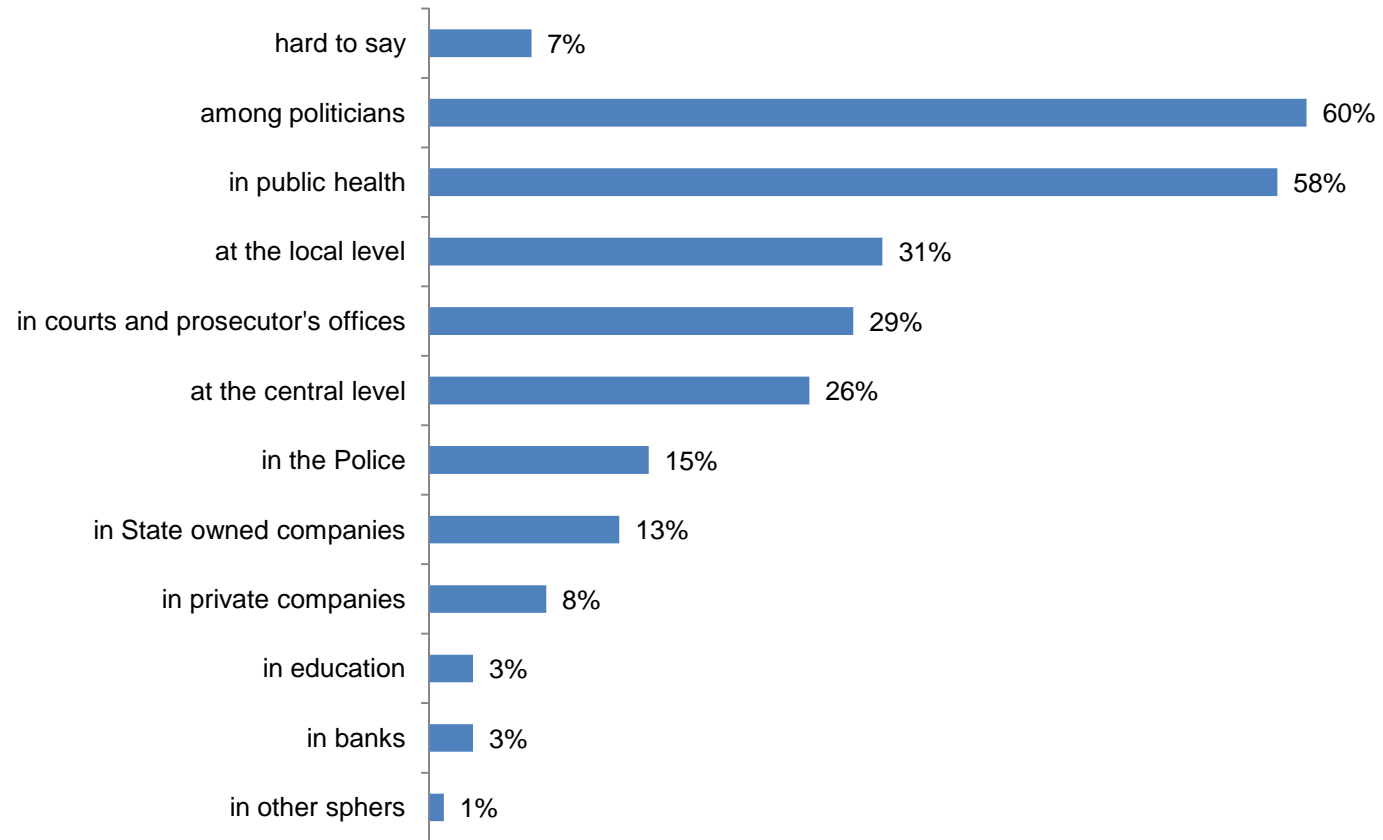
The areas of social life which are most prone to corruption	Nov. 1999	Nov. 2001	June 2002	June 2003	May 2010
	data in %				
Politicians, party activists, councilors, deputies, senators		54	52	60	60
health care	67	47	42	43	58
central government agencies	25	38	29	37	26
courts and prosecutors' offices	49	36	33	33	29
local-government administration	39	28	25	29	31
the police	23	30	23	25	15
state-owned companies		13	12	11	13
private sector companies		13	9	11	8
banks		6	3	5	3
education and science sector		6	8	4	3
it is hard to say		2	12	8	7



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Where in your opinion corruption appears the most often?



source CBOS, 2010



Poles's own corruption definition

The greater majority of respondents identified corruption with bribery and graft (76%).

There were a large proportion of people who were unable to say what corruption means (22% altogether).

Some of the responses "hard to say" may also mean an unwillingness to think it over or to give an answer. The percentage of responses is showing lack of knowledge or difficulties with understanding this term

A. Kubiak, *Corruption in Everyday Experience. Report on Survey*, 2001. www.batory.org.pl



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Conflict of Interest

the Polish society does not connect the corruption with the Col (only 5% of respondents connect corruption with the conflict of interest by favoritism, nepotism, i.e. staffing posts by family members and friends, taking care of matters through connections, backing, arrangements).

A. Kubiak, *Corruption in Everyday Experience. Report on Survey*, 2001. www.batory.org.pl



Legal framework of CoI in EU

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Applicable to (Scope)	All institutions	individual institutions
Type of regulation General rule/and or regulation (including provisions on CoI) Compliance based (normative) Integrity based	General regulation applicable to all institutions: – Constitution - Penal Code - Administrative Act - Civil Servants Act General codes and/or standards for all institutions Ex: Seven Principles of Public Life (UK)	General regulation applicable to individual institutions Ex. Central Bank Act, Court of Auditors Act General Codes and/or standards for individual institutions Ex: Codes of Conduct
Specific rule and/or regulation (explicitly on ethics and CoI) Compliance based (normative) Integrity based	Specific reulation CoI applicable to all institutions Ex: Anticorruption Act (PI) Prevention Corruption Act (SI) Specific codes and/or standards for all institutions Ex: Conflicts of Interest and Post Employment Code for Holders of Public Office (CA)	CoI legislation applicable to individual institution Ex: Incompatibility Act for Government and Parliament (AT) Specific codes and/or standards for specific institutions Ex: Ministerial Code of Ethics (UK)





Legal framework of Col

The new Member States are generally more regulated than the old Member States (80,5% vs. 66,5%).

The strictest system is used in Latvia where all Col categories are regulated for all core institutions (100%).

Among the old Member States Portugal - followed by the United Kingdom and Spain - also has a highly regulated system. The countries with the lowest number of regulated Col issues are Austria, Denmark and Sweden.





Legal framework of Col in EU

1. the use of law is the predominant form of regulation in EU (60%).
2. most Member States have adopted general anti-corruption or anti-fraud laws (which include Col provisions), fewer Member States have also adopted specific Col laws and regulations.
3. only a few Member States have adopted general Col laws which apply to all institutions.
4. Instead most Member States have different and separate rules for the different institutions.
5. In almost all countries, codes of ethics are designed for the individual institutions.



Legal framework of Col in EU

In 21% of the cases the Col issues are regulated both by legislation and by code of conduct/ethics.

There seems to be a trend toward more regulation (mostly by laws and regulation) and more standards (mostly by codes) and also the regulation of an increasing number of conflicts of interest.

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Legal framework hard and soft law for anticorruption and Col

1. structure
2. prevention
3. detection and investigation
4. penalisation



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Legal framework for Conflict of Interest

Poland has already developed legal solutions, institutions and its services that are used to improve the transparency or to implement the good governance principles.



Legal framework for Conflict of Interest structure

The Polish Constitution (1997) is typical for modern, democratic states of civil society.

Constitutional principles based on the general rule of law (art. 2) support basic ethics principles: lawfulness (art. 7), social justice (judicial fairness)—art. 2, proportionality (art. 31, art. 228), rule against bias (art. 153), openness and transparency (art. 61), equality (art. 32), protection of legitimate trust and vested rights (art. 2), and the right to recover damages for public authorities' illegal activities (art. 77).



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Legal definitions

Corruption, in the general meaning, is not a legal term as it covers also the behaviours, such as nepotism or cronyism, which are not penalised but which violate the principles of ethics, morality or culture (CoI).



Legal definitions

1. definition of corruption
similar to (art. 2) the Civil Law Convention on
Corruption and means:
requesting, offering, giving or accepting,
directly or indirectly, any undue advantage
(financial, personal or other) or prospect of
the advantage, which distorts the proper
performance of any duty or behaviour
required of the recipient of the undue
advantage or the prospect of the advantage - Act
on Central Anti-Corruption Bureau (art. 1 section 3a), 9.06. 2006,

2. no legal definition of Col



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Legal framework for Conflict of Interest structure

A corps of civil servants shall operate the agencies of government administration in order to ensure a professional, efficient, impartial, and politically neutral discharge of state obligations (art. 153 § 1 of the Constitution).

This rule strongly supports impartiality in the civil servant corps. Extension of this rule to public officials' corps at local governments is also done.



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Legal framework for Conflict of Interest structure

Article 115 § 13 of the Penal Code enumerates persons who are public officials,

and article 115 § 19 of the Penal Code defines a person performing a public function.



Instruments to prevent and avoid Col

- Restrictions on additional ancillary employment.
- Declaration of income and assets (personal and family - spouses)
- Declaration of gifts
- Public disclosure of declarations of income and assets.
- Security and control in the access to inside information.
- Declaration of private interests relevant to decision making (only in public procurement).



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Instruments to prevent and avoid Col

Restrictions and control of post-employment activities.

Restrictions and control of gifts and other forms of benefits.

Restrictions and control of outside concurrent appointments

Recusal

Personal and family restrictions on property titles of private companies.

Divestment either by sale or by the establishment of a trust or a blind management agreement



Legal framework for Conflict of Interest

Col is not a term of legal vocabulary, but:

If we take into consideration that there three ways of dealing with Col – avoiding, disclosure and Col management -

most codes of ethics (soft law) contain a section referring to a conflict of interest, which, on the one hand, contains an order to avoid them and, on the other hand, envisages to disclose the conflict when it is impossible to avoid it.



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Legal framework for Conflict of Interest Detection

The Central Anti-Corruption Bureau is a special service, created to combat corruption in public and economic life, particularly in public and local government institutions as well as to fight against activities detrimental to the State's economic interest. The Bureau conducts its activities under the Act of 9 June 2006.

(Journal of Laws of 2012, item 621 – consolidated text).



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Legal framework for Conflict of Interest Detection

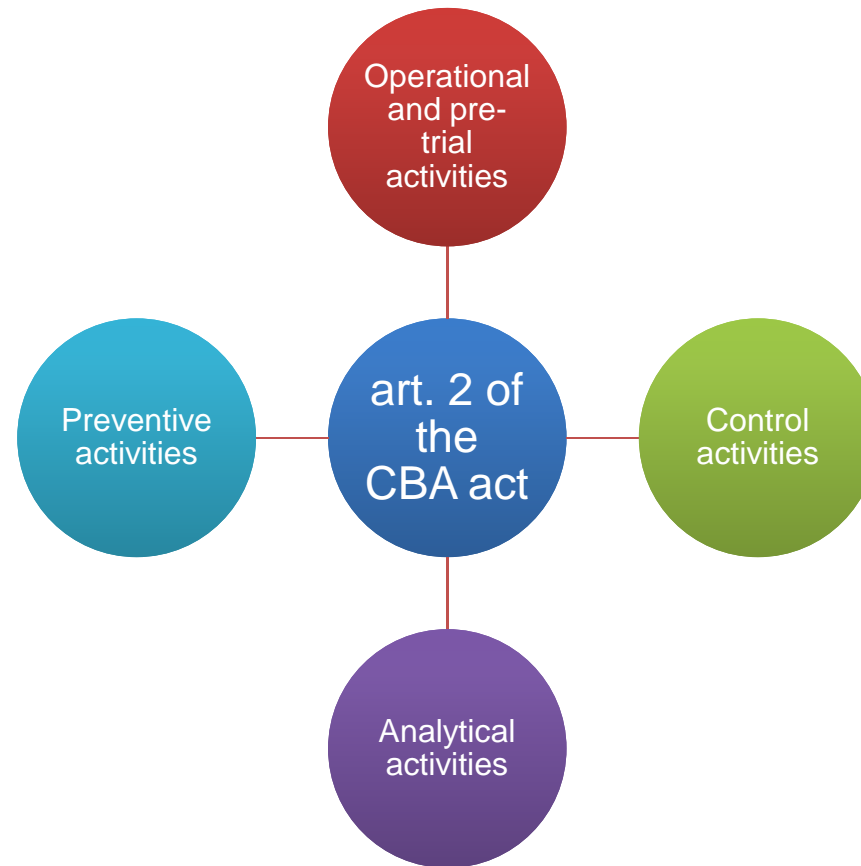
The Head of the CBA is a central authority of the government administration, supervised by the Prime Minister, acting through the CBA. The Head of the CBA is appointed for a term of four years and recalled by the Prime Minister, following a consultation with the President of the Republic of Poland, the Special Services Committee and the Parliamentary Committee for Special Services. The Head of the CBA may be reappointed only once.



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Legal framework for Conflict of Interest Detection & Investigation





Legal framework for Conflict of Interest Prosecution&Sanctions

Judicial or administrative.

There are both kind of prosecution. Judicial prosecution proceeds when there is a crime.

And administrative prosecution when there is a disciplinary fault.

Sanctions

Penale.eg. local public officials can be sanctioned with up to three years in prison for false declaration of income and assets



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Legal framework for Conflict of Interest Prosecution&Sanctions

Disciplinary

Suspension of salary for civil servants

Dismissal is the most serious administrative sanction for violations of conflict of interest regulations. In particular, dismissal of civil servants and judges is provided in Polish law.



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Balance between external and internal measures

If ethics is the foundation of public official behaviour, it must be internalized, that is, individually thought and internally approved.

Raising the level of ethics by any means to intimidate, control, or mechanical application of several recommendations and laws brings a very short-term effects



Balance between external and internal measures – new trends

Public Finance Act (2009) put into agenda a new systematic tool: internal/management control (art. 68).
It has to be introduced in every public institution.

management control means that all activities are undertaken to ensure that the objectives and tasks are performed according to the law, in an efficient and effective way, on time



Balance between external and internal measures – new trends

reporting, protecting of own resources, promoting ethical standards (especially by top officials and managers), effective information

flow, risk management –

this are new tools introduced to the Polish PA

22 standards for groups:

- 1. internal environment***
- 2. risk management***
- 3. information and communication***
- 4. monitoring and assesment***



Management control

Standards for internal environment (No. 1-4) relate to the management system and the organization itself.

Standards define the requirements for the environment in which management control will function. Management control of the system to operate as intended, it must operate in an environment prepared for that organization from structure, merit and mental (staff).

Internal environmental standards apply to written procedures (eg, organizational rules, operating areas), but also to the unwritten values, such as the attitude of management and staff, work ethics, the way we communicate with the petitioners and third parties, knowledge of the control and its acceptance, the level of competence of the employees.





Management control

Standard 1.

Perceptions of ethical values - the managers and employees should be aware of the ethical values adopted in the unit and observe the performance of duties.

Managers should support and promote the observance of ethical values, giving good example of the daily proceedings and making decisions.

Proposals for actions following standard:

- Introduction of a code of professional ethics
- training of workers in the field of management control
- the introduction of anti-conflict of interest rules
- Petitioners survey on the level of service and satisfaction from your contacts with employees.





Management control

Standard 2.
Professional competence (actions: training, motivation in salaries, open recruitment, appraisal systems)

Standard 3 (organizational structure)

Standard 4 (delegation of competences)

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Management control

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