



A joint initiative of the OECD and the European Union,  
principally financed by the EU



# Guidelines for managing Conflicts of Interest (COI)

**Luís de Sousa**

**Research Fellow ICS-UL**

**Director of ANCORAGE-NET and**

**Chairman of TI-Portugal**

**e-mail: [luis.sousa@ics.ul.pt](mailto:luis.sousa@ics.ul.pt)**

# Why should we bother?

- Conflicts of interest compromise the achievement of organizational objectives:
  - Services not being delivered;
  - Services being delivered below expected quality;
  - Financial or economic loss;
  - Waste of public funds;
  - Risk of lost opportunities;
- Damage the image/reputation of objectivity and impartiality of public institutions; and
- Lead to a breakdown of trust in public actors and institutions.

# COI regulation at a glance

- What should be regulated?
  - **Type:** Public/private relations, Functional conflicts, Accumulation of mandates. Pecuniary and non-pecuniary.
  - **Intensity:** Apparent, Potential, Real, Financial impropriety.
- Who should fall under the scope of regulation?
  - All public officials or relevant officials only? Who's relevant?
  - Public officials (including public companies, foundations and institutes)
  - Political appointees
- What period should be covered?
  - 3-5 years prior taking office
  - During the exercise of duties
  - Post-office (3-15 years quarantine)
- What type of measures should be in place?
  - **Avoidance**
  - **Disclosure**
  - **Divestment** or resignation
  - **Recusal** or withdrawal
- And what sanctions should apply to those who trespass them?
  - **Disciplinary:** caution and warning, fine or reprimand, reduction in salary, reassignment of duties, transfer of duties, dismissal, termination of employment
  - **Penal:** imprisonment, fines, disqualification from public office, ineligibility
  - To office holders only or companies that offer post-employment (ex. exclusion of public markets, cancellation of tainted deals, blacklists)?
- What type of body(ies) should guarantee and oversee its enforcement?
  - Depository or proactive monitoring? – Does it have the capacity to check registers of interests and patrimonial declarations? Does it have investigative competences (ex inquiries, request additional information, etc)? Can it issue binding decisions? Can it impose penalties to wrongdoers? How should it coordinate with other investigative bodies?

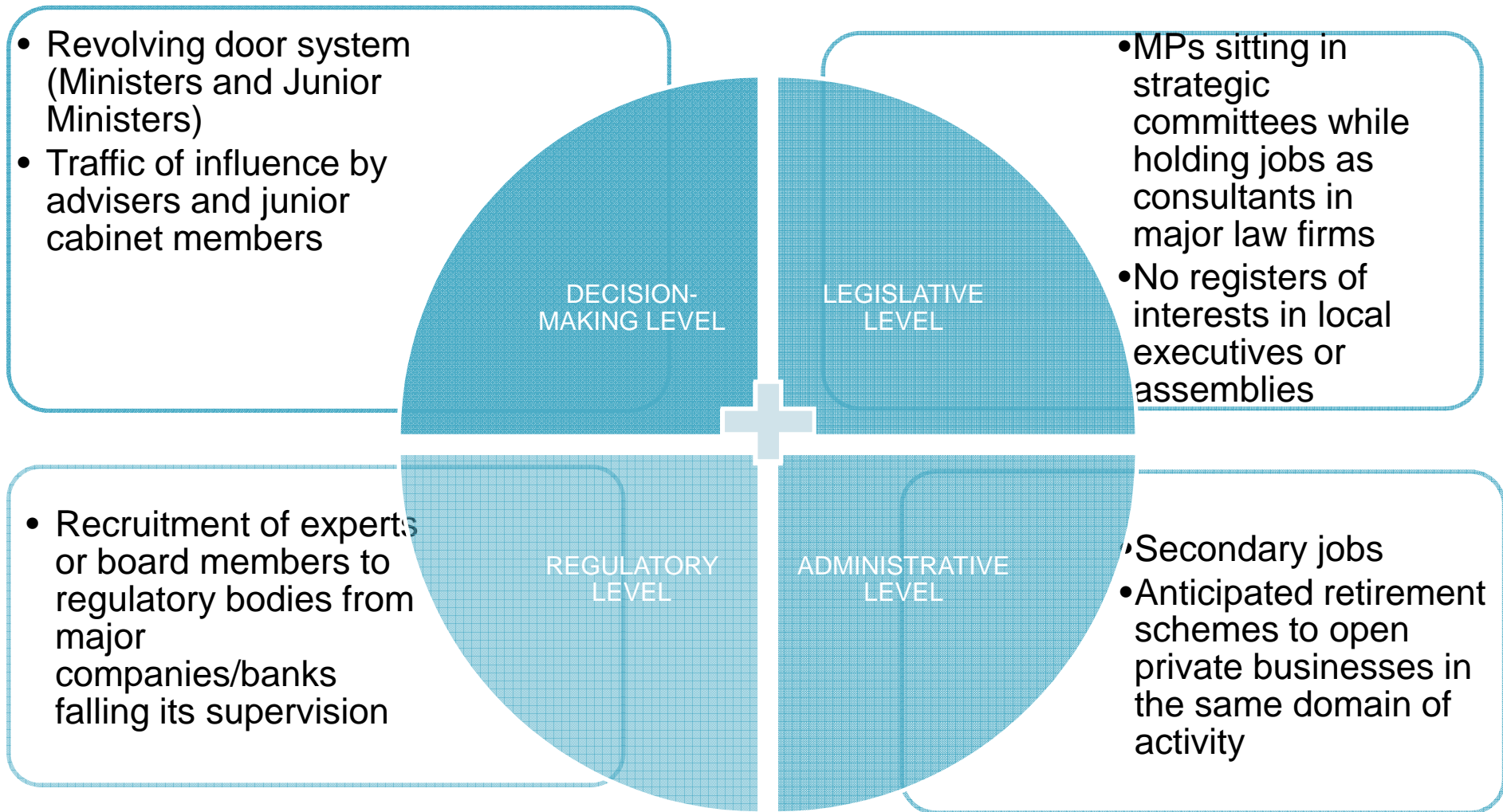
# Types of Conflicts of Interest

- Conflicts of interest that blur the public/personal divide and lead to influence peddling:
  - **Nepotism** in recruitment procedures;
  - **Facilitation** of administrative procedures (deadlines, requisites, etc);
  - **“Pulling strings”** to get a service or benefit to a family member, friend or party comrade;
  - **Bias** in making decisions, allocating public resources/services/goods or **preferential treatment** of citizens.
- Conflicts of interest that blur the public /private divide and lead to financial gains:
  - **Managing business from inside:** marketization of discretionary authority, privileged information and expertise;
  - **Managing parallel business:** using insider knowledge and experience to launch private business in the same sector or to sell to private actors while in office;
  - **Managing business after departure:** revolving door/pantouflage, taking employment or positions in companies or CSOs in the same sector which previously fell under his/her supervision or regulation.
- Conflicts of interest that blur the segregation of functions and lead to the concentration of power:
  - **Accumulation of elective mandates** (*cumul des mandats*) – creates power monopolies, reduces vertical accountability
  - **Accumulation of elective mandates with public management functions** – hinders the independence of supervision
  - **Accumulation of public functions** – hinders the separation of powers

# Public/Private COI across different levels of public governance: findings from the 2012 Portuguese NIS Report



SISTEMA NACIONAL  
DE INTEGRIDADE



## **Major flaws of Public/Private COI Regulation and Supervision: findings from the 2012 Portuguese NIS Report**

- Static conceptualization of COI (COI not regarded in a continuum; interests held in previous 3-5 years prior to holding office not taken into account)
- Low compliance with declaratory obligations (register of interests and assets disclosure)
- No triangulation of data
- No oral or written disclosure of interests prior to entering public business
- Patchy regulatory framework and dispersion of control mechanisms (three declarations; three monitoring bodies; three universes of analysis)
- Few limitations poorly enforced
- Format, composition and mandate of the Ethics Commission is inadequate to monitor COI in public affairs (in particular privatizations, PPP, and concessions) and no reporting of decisions on COI clearance
- No proper enforcement of three-year quarantine period for Ministers taking post-employment in the private sector
- Junior ministers, advisers and cabinet members are exempt of any sort of control and yet they have access to all the information concerning the decision-making process

# COI management strategy/policy

- Establish the context
- Identify/map risk factors
- Detect specific occurrences and evaluate seriousness of impact
- Establish what is relevant, what processes and values should be safeguarded through what mechanisms
- Adopt COI management strategy
- Respond to conflict of interest in a prudent, resolute and timely manner
- Disseminate COI management strategy
- Always take on board external perceptions

# Conflict of interest control measures

- Rules of Disclosure
  - Public business engagement rules (obligation of written and/or oral declaration)
  - Assets declarations
  - Registers of interests
  - Gifts & hospitality rules/registers
- Incompatibilities/impediments
  - Segregation of public functions
  - Limitation of election mandates (types and in time)
  - Restrictions on additional employment
  - Restrictions of outside concurrent appointments (e.g. party positions, football club, board of CSOs)
  - Restriction of post-office business/CSO jobs or activities
- Other business restrictions
  - Restrictions on using official/inside information for personal purposes
  - Personal and family restrictions on property titles of private companies
  - Divestment either by sale or the establishment of a trust or a blind management agreement



# Five dimensions of COI implementation

- Recruitment and career policy
  - **recruitment** and **promotion** procedures based on **open competition** and **merit**;
  - **adequate wages and working conditions** compatible with the level of entrusted authority deposited in a given office in order to favour an ethical conduct on the part of the office holder;
  - **boosting esprit de corps** through professional socialisation (feeling “meaningful”, “ready to serve” and “happy/proud to be part of the team”);
- Guidance
  - codes of conduct and COI management procedures;
  - counselling by an internal advisory committee or standards officer;
  - training staff into conflict of interest rules and management procedures;

# Five Dimensions of COI implementation (cont.)

- Control
  - incompatibility rules and impediments;
  - register of interests and assets declarations;
  - comprehensive penal/criminal framework;
  - flexible mechanisms of reporting and whistleblower protection;
- Leadership
  - Commitment to COI management strategy;
  - value team work;
  - act preventively on COI by making regular check-ups;
  - map risk areas and devise/implement COI management strategy;
  - be assertive in resolving COI and punishing abuse of office;
- Public scrutiny/involvement
  - scorecards;
  - register of complaints;
  - Public opinion (user) surveys

# General remarks on COI regulation and supervision

- It is not sufficient to have a **COI law**, but to **implement** it and **sustain** control efforts in the long term;
- COI laws should be adopted through a **proactive consensus across all party formations** to avoid tailor-made restrictions, patchy regulation and continuous amendments to the law ;
- The law should **target the essential** and **adapt measures to safeguard integrity in different types of public functions** (decisional, legislative, supervisory and management);
- **Operational concepts should be clear** to avoid legal dumping, i.e. broad interpretations of the law that empty its core meaning or spirit;
- **COI should be regulated in a continuum** (prior, during and after holding office of entrusted public authority);
- **Apparent, potential and real COI** should be addressed and systematically monitored;
- **Financial impropriety** in office or wrongdoing (ex. *prise illégale d'intérêts*, influence trafficking, undue advantage) resulting from a COI **should be strictly punished in a timely and resolute manner.**

# General remarks on COI regulation and supervision

- **Sanctions should be dissuasive and proportional** to the seriousness of COI occurrence (disciplinary and penal);
- **COI resolutions and sanctions must be published;**
- **Decisions made in a COI situation should be reversed** and **public moneys embezzled or illicit revenues** generated through COI should be **recovered to the state;**
- **COI management strategy** needs to be thought in an **integrated** and **comprehensive** manner rather than merely as a reaction to specific situations;
- **Leadership** support for COI management strategy needs to be **assertive** and **consistent;**
- **Results** of the regulatory and supervisory framework **need to be evaluated** and **adjustments** to the monitoring framework should be **incremental** but always taking a **holistic** perspective to control;
- Continuous **knowledge production** and diffusion of COI resolutions (**champion best practice**);
- Investment in **ethics training** (ethics should be part of the organization's recruitment and career progression policies);
- COI management framework should **always involve the public.**

***OBLITI PRIVATORUM  
PUBLICA CURATE***

“Forget private interests, concern  
yourself with public affairs”

(Latin inscription above the doorway  
leading from Dubrovnik's 15th-century  
Rector's Palace into the Town Hall)