The Problem of Conflict of Interest in European Governance

This research work examines conflict of interest papers written by the EU and the OECD in collaboration with their subsidiary organisations and expert consultation. An attempt is made to evaluate them against the main features of European public administration. This is accomplished by examining two other papers, also produced by EU and the OECD, in order to uncover first, the contextual attributes of European governance, and second, its consistency with conflict of interest guidelines and recommendations. In other words, the structure of the work is built on two main pillars: conflict of interest data and related concepts (principles, norms, themes), plus the context of European public administration, together with its key developments and characteristic traits. The data pertain to the period from the 1990s until 2010. To summarise, four papers are divided into two groups: the first group represents wider contextual descriptions of European governance, and the other deals directly with the phenomenon of conflict of interest in the administration of public affairs. The results draw an ambivalent picture. The context of European governance has partly remodelled its practices to follow mainstream managerial trends, and partly retained its fundamental core; such developments have a compound impact on the effective application of the conflict of interest model in practice. The Critical Management Study with its poststructural stream is chosen to be the main theoretical underpinning. Carol Bacchi’s ‘What is the problem represented to be?’ (WPR) technique of policy analysis both supplements the Critical Management Study through its poststructural stance, and is used as a methodological tool.

Avainsanat – Nyckelord – Keywords
Conflicts of Interest, European administrative governance, administrative reforms, accountability, good governance, public administrative reforms, convergence, context, managerialism.
THE PROBLEM OF CONFLICT OF INTEREST IN EUROPEAN GOVERNANCE

Nino Puustinen
The University of Helsinki
Department of the Social Sciences
Political Science
Study Line for Administration and Organisations
Master’s Degree Research Work
February 2015
Table of Contents

Table of Contents ..................................................................................................................3

Introduction .............................................................................................................................4

1. The Conflict of Interest ......................................................................................................6
   1.1 Conflicts of Interest and Accountability .........................................................................8
   1.2 Conflicts of Interest and Administrative Ethics ............................................................10

2. Critical Management Study ...............................................................................................13
   Foucault’s Influence and the WPR Methodology .................................................................16

3. Context of the Public Sector Reforms ..............................................................................17
   Conflicts of Interest and ‘Good Governance’ .................................................................22

4. Methodology and Data .......................................................................................................25
   4.1 Applied Methodology ....................................................................................................25
   4.2 Data Description ...........................................................................................................26

5. Analysis ...............................................................................................................................30
   5.1 Problem Statement ........................................................................................................30
   5.2 Contextual Features .......................................................................................................32
   5.3 The Conflict of Interest Data and Problem Representation ..........................................38
   5.4 Emerging Themes ..........................................................................................................41
      5.4.1 Public-Private Partnership .....................................................................................41
      5.4.2 Individualism ........................................................................................................44
      5.4.3 The Problem of ‘Overregulation’ ........................................................................48
      5.4.4 “Roman Law” vs. “Common Law” Countries ........................................................51
   5.5 How did the Representation of the Problem Come about? .........................................53
      5.6 What is Left Unproblematic?
         Can the ‘Problem’ be thought about Differently? .........................................................56
   5.7 Alternative models for consideration ............................................................................59

Conclusion .............................................................................................................................60

References ..............................................................................................................................62
Introduction

The thesis centres on the problem of conflict of interest in the public sector analysed through policy documents of the EU and the OECD. The very fact of its persistence and continuous character demand attention\(^1\). In order to search for explanations, first, the concept itself was studied; second, the main developments within the public administration of European states of the same period were observed; on the basis of information gathered, data was selected for further investigation. The choice fell on the OECD, the EU and their subsidiary organisations, as well as an academic study (the European Commission’s delegated assignment for making a comparative research). An attempt is made to discover the presentation, explanation, and possible resolution of the conflict of interest problem through data from these organisations.

The research considers the period from the 1990s until 2010, when the majority of western democratic countries were practising new administrative methods borrowed from the business administration exercised in the private sector. This major change in European governance is brought to light in order to check for possible correlations with the conflict of interest recommendations and the empirical study commissioned by the EU. The success of those reforms in terms of the effective and efficient administration of public affairs is still debated; however, its irreconcilable impact on public administration cannot be underestimated. The first task is to investigate the emerging dominant themes and principles that have shaped the subsequent contextual features of European governance; then, key findings will be compared with the conflict of interest data for possible correlation. For example, conceptual, ideological and normative underpinnings used in the data will be paralleled with the dominant themes, aspirations and objectives expressed in public governance. This will illustrate the ideological orientation, conformity and adjustability of the conflict of interest data within the larger public administrative framework. Such a comparison might delineate key variables with the capacity to explain the persistence of the conflict of interest problem, and its strong presence within public sector governance.

To accomplish this, task two papers are chosen: 1) The ‘European Principles for Public Administration’ (OECD, 1999) - the main contributors to this document were the subsidiary agencies, SIGMA and PUMA, under the patronage of the OECD and EU, and 2) the ‘Commission of European Communities’ paper popularly known as ‘European Governance, A White Paper’ (COM, 2001). With the help of this data, the EU’s administrative context will be compared with the conflict of interest policy guidelines (OECD, 2003) and an empirical study (Salminen et al., 2007).

These two latter papers directly deal with the conflict of interest problem in public administration: 1) ‘Managing Conflict of Interest in the Public Services’ (OECD, 2003), represents the OECD’s policy guidelines and recommendations; and 2) ‘Regulating Conflict of Interest for Holders of Public Office in the European Union’ (Salminen et al., 2007), is a comparative study of the rules and standards of professional ethics for holders of public office in the EU-27 and EU institutions. The conflict of interest data was selected on the basis of several aspects: first, the appropriate period; second, the text’s authoritative character (familiarity and applicability of the recommendations among European countries); and third, a broad and detailed description of the state of affairs regarding conflict of interest within the EU. This was accomplished through the empirical study administered by several independent bodies commissioned by the EU (Salminen et al., 2007).

Thus, the two initial papers describe the European administrative environment with its fundamental principles and legal norms. They represent the framework in which manifestations of conflict of interest reside, which is important for controlling possible activators, or causative agents; and the two later works deal with the problem at stake, in other words, the issue of conflict of interest.

The main research questions of the thesis are: **How is the problem of conflict of interest represented by the OECD and EU? And how consistent are they with the broader EU administrative framework?**

---

2 As described by the data used in this thesis ('European Principles for Public Administration’ (1999); ‘European Governance, A White Paper’ (2001)).
The Critical Management Study (CMS) is chosen as a theoretical framework for this research. Because of its widespread streams and accommodating character, the poststructuralist branch is taken as an additional focus. Carol Bacchi’s WPR (Bacchi, 2009) methodology of policy analysis shares to a large extent a poststructuralist orientation based on Michael Foucault’s insights. For this reason, it is used as an additional explanatory device to supplement the core theoretical underpinning of the Critical Management Study, and the main methodological tool. The analysis proceeds through the six staple questions that the author advises should be followed continuously when dealing with policy texts.

To summarise the structure of the thesis, first the concept of conflict of interest and closely related themes are elaborated, followed by the theoretical framework. Then the main developments within the public administration of European states are observed; in other words, the context of the public sector reform is presented. This is followed by the data representation and methodological description, and finally, the analysis and conclusion.

1. The Conflict of Interest

The concept of conflict of interest, as it is understood today, is almost half a century old: in effect, most prominent thinkers in business ethics, such as Aristotle, Kant, and J.S. Mill did not refer to it at all. Logically it can be assumed that this concept appeared in response to new developments in our world and our political culture that had no analogy in history (Norman & MacDonald, 2009, p.2). However, poststructuralists oppose such an argument, believing that any phenomenon has a tendency to reappear within modern discourses with renewed vigour as a result of wider normative changes (Foucault, 1979 in Bacchi 2009, p.9).

The first contemporary philosophical encounters with the concept in business ethics can be traced back to a 1982 article written by Michael Davis (1982). He produced a “rough formulation and thorough conceptual definition with five necessary conditions that
characterized the conflict of interest cases”. The crucial terms were “relationship, judgement, interest, and proper exercise” (Norman & MacDonald, 2009, p. 5).

Davis instigated further debates within academic circles which resulted in the production of new definitions of the conflict of interest concept. For example, John Boatright (1987) stressed that conflict of interest should not be explained in terms of judgement rather than in terms of acting in another’s interest (Boatright, 1987 in Carson, 1994, p. 390).

However, the most frequently used and cited concept in academic literature is viewed to be Thomas Carson’s (1994). He was able to grasp different aspects and approached the problem with much vigour. Here Carson’s insights supplement Boyce and Davids’ (2009) work, which targeted the conflict of interest concept in the public sector.

To describe this mental image following Carson, the phenomenon of conflict of interest should be referred to in a similar way to Boatright’s definition, rather than its broader ‘Davisian’ version. The stress should be placed on the fact that “the conflict of interest should somehow hinder the individual to discharge the duties of his/her office or position” (Carson, 1994, p.388). Therefore, a more comprehensive description of the nature of conflict of interest would be:

“Conflict of interest exists in any situation where an individual (I) has difficulties discharging the official (conventional/ fiduciary) duties attached to a position or office she/he holds because either: (i) there is (or believed that there is) an actual or potential conflict between her/his own personal interests and the interests of the party (P) to whom she/he owns those duties, or (ii) (I) has a desire to promote (or thwart) the interests of (X) and there is, (or believes that there is), an actual or potential conflict between promoting (or thwarting) X’s interests and interests of P.” (Carson, 1994, p. 388)

According to Carson’s rationale, conflict of interest does not necessarily appear only in cases where a person fails to perform the duties of his/her position, but rather situations in which he/she is hindered from discharging professional duties are very common, and more difficult to discern (Carson, 1994, p. 390).
The above conceptual elaboration is classic definition found in the mainstream managerial tradition. The whole idea of conflict of interest is reduced to the managerial level. The individual is the centre of enquiry: he/she is an activator, promoter and agent for resolution (Alvesson & Willmott, 2003, pp. 2-3). This instrumental approach is mainly based on the individual’s inner characteristic features. However, there are other approaches to the concept as well, which will be presented below through an examination of the academic literature.

1.1 Conflicts of Interest and Accountability

To take the conflict of interest concept into the public sector, the importance of Boyce and Davids’ (2009) definition based on the concept of accountability brings needed scope into Carson’s initial account. “At the heart of many conflict of interest problems are issues of accountability – recognized to be the core public sector ethical value” (Boyce & Davids, 2009, p. 603). The basic idea is viewed as “a relationship in which people are required to explain and take responsibility for their actions” (Boyce & Davids, 2009, p. 603). Often the concept of ‘accountability’ is interchangeably used with its synonymous counterpart of ‘responsibility’. To define the meanings of these two concepts, the classic exchange between Carl Friedrich (1940) and Herman Finer (1941) concerning ‘the different senses of responsibility’ will be of use. Friedrich focused on the ‘inward’ responsibility of public servants to their professional standards and values, while Finer advocated the ‘external’ character responsibility in terms of political direction. He highlighted the concept’s ‘external’ sense with the help of another concept known as ‘accountability’. However, later “this debate was described as an argument over the relative merit of different types of ‘accountability’, external or internal” (Friedrich, 1940, Finer, 1941 in Mulgan, 2000, p. 557). Nevertheless, despite the different approaches to the concepts of ‘accountability’ and ‘responsibility’, the demarcating line is one that views ‘responsibility’ as the “ethical terrain of personal liability, freedom of action and discretion that are more ‘internal’ aspects of official activity, whereas the concept of ‘accountability’ is ‘concerned with ‘external’ functions and scrutiny, such as calling into account, requiring justifications and imposing sanctions” (Mulgan, 2000, p.556).
Based on this classic definition of the external/internal dichotomy further studies proliferated. The concept of “accountability” was approached in its own manner, non-the less, retaining internal/external definition. For example, the typology of “accountability systems” by Romzek and Dubnik (1987) describe professional, personal and subjective accountability. For the purpose of this work, the norm of management of expectations by public servants is brought to the fore. This forms part of professional accountability and has relevance to the case of conflict of interest. Thus, according to the authors, “management of expectations by public servants denote that these expectations are generated both internally and externally, but even when the source of accountability of expectations is internal, it is internal to the organisation not to the individual” (Romzek & Dubnik, 1987, p. 228).

Another notion of accountability known as ‘social accountability’ (Boyce & Davids, 2009, p. 604) comprises multiple dimensions, and is closely interwined with answerability and responsibility. This means that “any public official who possesses and exercises legal power and authority must be accountable to the community for the exercise of that power. However, social accountability centres on bottom-up social rather than top-down organisational perspective on it” (Boyce & Davids, 2009, p. 604).

“Social accountability in this context centres on the public ethics dimension of the conflict of interest, and the responsibility of the public sector has to include ex post answerability for past decisions and actions, as well as, built in mechanisms that apprehend the neglects of duties in the future”. In this connection, the way in which ‘political optics’ (Boyce & Davids, 2009) play a significant role in terms of how things look to ‘reasonable members’ of the public is intrinsic here (Boyce & Davids, 2009, p. 604).

Thompson (2005) divided the concept of conflict of interest into three distinct levels within the society: the “micro, middle and macro levels” (Thompson, 2005, p. 274). According to this argument, theoretical and applied ethics centre on the use of the micro level concept, and neglect its importance and applicability at the middle and macro level. The micro-level focuses on the moral obligations and interests of individuals that are at the centre of typical conflict of interest situations. For the normative theory of the
conflict of interest, this micro-level tradition is the focus of enquiry which should be broadened and include the middle level theory of institutional design for different types of organisation, private and public. In addition, the focus should be placed on the macro theory for the design and regulation of markets, or global governance, within or across the democratic societies (Thompson, 2005, p. 274 in Norman & MacDonald, 2009, p.4).

This underdeveloped middle level of theoretical and applied ethics concerns a vast range of institutions. It is less analysed and in need of multiple investigations concerning conflict of interest situations. According to Thompson, the novelty and unrecognised character of the conflict of interest concept is mostly indicative of its “thriving in this neglected realm” (Thompson, 2005, p. 274, in Norman & MacDonald, 2009, p. 4).

1.2 Conflicts of Interest and Administrative Ethics

The academic literature regards the conflict of interest to be a phenomenon with a short history as well-known concept, but with an intrinsic character that is impossible to disguise. According to the literature, the conflict of interest has instrumental, structural and psychological features. For example, as already discussed, Thomas Carlson accounts for typical conflict of interest cases caused by structural aspects and factors dependent on peculiarities of human nature (Carlson, 1994, pp. 393-395).

Recent developments in the empirical research regarding conflict of interest literature supplements more traditional philosophical and political thinking with the works of psychologists and experimental engineers. The importance of good institutional design is paramount, according to Norman and MacDonald (2009). The combination of philosophers with political thinkers, psychologists and experimental economists, structures institutions where not only the education of personnel, but also judgement is effectively insulated from interests that might interfere (Norman & MacDonald, 2009, p. 17).

Patrick Dobel views ethic policies to be mostly built on ad hoc responses to scandals that temper public discontent. Similar to Boyce and Davids’ (2009) argument concerning the importance of ‘political optics’ (Boyce & Davids 2009, p. 607), Dobel
sees media and ethics policies to be mutually supportive. Media coverage is interested in providing sensational news to the public; in doing this it drives public institutions to provide immediate responses instead of thoroughly elaborated, holistic policies (Dobel, 2006, p. 16).

“High integrity and ethics are accepted norms in the public administration of the democratic societies, and they are prerequisites for the legitimacy of the political order” (Dobel 2007, p. 16). In regard to this, internal management provides the public with accountability that creates a successful foundation. The way in which this is accomplished is a wider theme that is in need of much deeper investigation and overview, nevertheless, relying on the existent conflict of interest literature, certain structures can be drawn with descriptive capacity: first, there are policy agendas which are divided into three areas and highlight the boundaries between public institutions and the outside environment. This is done with the help of laws that try to discourage corruption or the abuse of power through the disclosure of interests, contacts and procedures. In the main, senior civil servants are required to disclose and recuse themselves from decisions, or divest investments in sensitive areas if necessary, when they encounter conflict of interest situations (Dobel, 2006, p. 17).

Dobel argues that such disclosure procedures need further elaboration and proper implementation to be effective and have a reasonable outcome. The second cluster revolves around internal management practices where the code of ethics is the main instrument for enumerating the obligations and responsibilities of public managers and employees. The code of ethics can be considered to be effective when it supports already existing high ethical performance standards. The culture is based on the necessary education, modelling, incentives and promotion practices in support of the stated values (Dobel, 2006, p. 17).

Unfortunately, codes are often written and promulgated in reaction to newly uncovered scandals, as Dobel states. Commonly, after their official introduction they are left “as dead letters with no strong institutional backing and enforcement” (Dobel, 2006, p. 18). The question of the effectiveness and usefulness of codes of ethics are often discussed: some authors regard their existence positively and some do not (Antechiarico & Jacobs, 1996; Light, 1993; Kernaghan, 1993 in Dobel, 2006). On the other hand, codes recently
introduced by the OECD and influenced by the NPM school are viewed by Dobel to be expressed laconically, based on principles adaptive to the institutional particularities. However, the privilege of such codes of ethics lies in their advantage to “distil the essence of the values that liberal democracies are preaching. Together with the media, codes erode the distinction between private and public lives, and keep public managers’ private lives under increasing scrutiny” (Dobel, 2006, pp. 18-19). The final cluster represents oversight, scrutiny and control mechanisms from parallel agencies such as ombudsmen, inspectors general, and active civil society.

The codes of ethics incorporated within organisations are also widely reviewed in the work of Heidi von Weltzien Hoivik (2002), where collectively and personally held professional values and values that are observed at the organisational level are discussed. The argument is that managers are expected to recognise and combine both professional and personal value systems while pursuing goals defined by the organisation (von Weltzien Hoivik, 2002, p. 3).

In summary, the concept of conflict of interest does not have radically different interpretations. The literature mostly regards it to be an organisational problem centred on managers’ personal liabilities (Davis, 1982; Norman & McDonalds, 2009; Boatright, 1987; Carson, 1994). However, some studies recognise this instrumental approach to be insufficient and point to the existence of other aspects that are in need of further elaboration (Romzek & Dubnik, 1987; Boyce & Davids, 2009; Thompson, 2005; Dobel, 2006).

Developments that might have an impact on the conflict of interest concept’s particular character will be examined through the observation of public administrative reforms introduced since 1980s. But, first the main theoretical and methodological underpinning of the thesis will be introduced. This directs the study towards the framework needed to simplify the conceptual and analytical elaboration.
2. Critical Management Study

The tradition of Critical Theory (CT) can be traced back to 1930s Germany, where thinkers such as Horkheimer, Benjamin, Adorno, Marcuse, and Habermas represented a new direction in philosophical thinking known as the Frankfurt School tradition. The focal point of this tradition is its counterforce to the “ego administration of modern, advanced, industrial society. It opposes a dominant tendency of the instrumental rationality that treats people as parts of well-oiled societal machine” (Alvesson & Willmott, 2003, p. 2).

In the 1990s, new streams of Critical Theory appeared, some complementing and others challenging the main direction of critical studies (Alvesson & Willmott, 2003, p. 3). The Critical Management Study (CMS) is one such branch that emerged in the UK (Fournier & Grey, 2000, p.10). It presents an intellectual counterpoint to the mainstream management studies literature, especially in its assumptions concerning forms of management where the manager is taken to be the main force for problem resolution. CMS’s strength is centred on its breadth, which accommodates various critical approaches on a large number of central issues in management studies (Alvesson & Willmott, 2003, p. 2).

The conflict of interest phenomenon in public administration is largely viewed to be a management issue. Despite the ethical aspects that constitute conflict of interest, it is downgraded to this managerial level. Expressions of conflict of interest are seen as instrumental in nature and to be dealt with technically. The analysis of the policies through CMS will bring the necessary scope into the theme under consideration, examining wider developments that may have decisive implications for better understanding the phenomenon (Alvesson & Willmott, 2003, pp. 2-3).

As already remarked, the strength of the theory lies in its accommodation of diverse streams. This results in a diversity of approaches and writings, for example, noticeable in Habermas and Foucault’s texts. By no means should such diversity within the theory be taken as deficiency; instead, challenging normative ideals is the maxim on which critical thinking is built (Foucault, 1991b, 1978, 1980; Habermas, 1984, 1974 in
Alvesson & Willmott, 2003, p. 3). By being open and inclusive it provides constant irritation to its intellectual currents (Alvesson & Willmott, 2003, p. 3). However, this theoretical diversity\(^3\) does complicate the distinction between critical and non-critical work on management; the boundary between them can, nevertheless, be drawn.

Fournier and Grey highlight the distinction by focusing on three main conceptual norms: “performativity, denaturalisation and reflexivity” (Fournier & Grey, 2000, pp. 16-17).

The principle of *performativity* is one where knowledge and truth can be subordinated in the name of efficiency. The main stress is placed on the practices of effective management. Non-critical management studies commonly follow this *performativity* path in designing management models. Alternatively, Critical Management Studies is *non-performativity*: it is concerned with the elements of knowledge, truth and efficiency, and *performativity* is of interest only when it uncovers the reality thus gained. It is helpful to uncover the dichotomy of critical and non-critical management studies by following the lexicon of concepts used. For example, “notions such as power, control and inequality is typically used in critical management approaches, whereas efficiency, effectiveness and profitability” are concepts normally used in non-critical management studies literature (Fournier & Grey, 2000, p. 17).

Another principle that demarcates CMS from mainstream management theories is *denaturalisation*. Twentieth-century management theories predominantly constructed their main organisational platform through imperatives that have no alternatives (e.g. globalisation, competitiveness). Developments that question the ‘reality’ or ‘truthfulness’ of organisational knowledge and life are undertaken through this principle of *denaturalisation* (Fournier & Grey, 2000, p. 18).

The concept of *reflexivity* is the final distinction between critical and non-critical works. Non-critical schools of management are predominantly based on a positivistic philosophical and methodological *reflexivity*, which can be accused of being built on rather weak positivistic assumptions without explicit reflexion on “epistemology,

\(^3\) Intellectual traditions invoked by critical management academics include: neo-Marxism, labour process theory, Frankfurt School of Critical Theory, Gramscian Hegemony theory, post-structuralism, deconstructionism, feminism, psychoanalysis, cultural studies, environmentalism (Fournier & Grey, 2000).
ontology, and discussions of methodology” (Fournier & Grey, 2000, p. 19), rather than they mainly rely on description of method and statistical techniques. CMS can be differentiated in terms of the extent of its philosophical and methodological *reflexivity*.

Michael Reynolds stipulates that *reflexivity* is the key element of problem-solving in the process of management learning. The questioning of contextually taken-for-granted social, cultural and political aspects of management is the “hallmark of critical reflection and methodological foundation within the tradition of critical theory overall” (Reynolds, 1998, p. 183).

Similar to Alvesson and Willmott’s (2003) argument, Reynolds contends that “managers as a social group exercise considerable influence. Collectively, if not individually, they are in a position to create or constrain employment opportunities for others and to help determine whether the ethos of the workplace is sustaining or oppressive, and they have power to foster or resist approaches to work and business which are in more or less harmony with the environment” (Reynolds, 1998, p. 184).

In summary, CMS urges the critical examination of management, considering not only means-end relations, but also entrenched conditions of action and discourse. “Marginalised interests, silenced perspectives, corporate talk and decision making all are linked with the issue of power and ideology that should be taken seriously”. Therefore, “there are several foci for critical theory research of management to follow”: “resisting technicistic and objectivistic views; drawing attention to asymmetrical power relations and discursive closures associated with taken for granted assumptions and ideologies; exploring the partiality of shared and conflictual interests; and paying careful attention to the centrality of language and communication” (Alvesson & Willmott, 2003, p. 16).

This emphasis on communication, language and the politics of power had an impact on the choice of methodology for this research work. Carol Bacchi’s method of analysing policy using the WPR (What’s the problem represented to be?) approach accommodates critical management studies and its poststructural branch in analysing data discursively using Bacchi’s methodology. Albeit poststructuralism emerged in management studies partly as a challenger to the analyses guided by Critical Theory, the insights produced
by Michael Foucault are important supplements to critical management thought. He questions the idea of humanist autonomy and knowledge cleansed of power, which is also one of the important points adjudicated within CMS (Foucault, 1988, p. 18 in Alvesson & Willmott, 2003, p. 3). He is also concerned with the impact of discourses on the ‘subject’ which he considers to be a domain “where competing powers have always sought to inscribe their preferred narrations” (Foucault, 1972, p. 132, in Dumont, 1998, p. 222). The main data analysed here benefits from this poststructural turn in terms of its methodological and theoretical purposes.

Foucault’s Influence and the WPR Methodology

The WPR approach is influenced by Foucault’s ideas, especially by the stress placed on the concept of governmentality. Foucault uses the term in two ways: first, it denotes “different rationalities or mentalities of rule that influence particular approaches to government”, and second, the term denotes the rule focused on population that emerged in the late eighteenth century. ‘Governmentality’ operates on the level of population and utilises means such as social and economic policy to ensure security and order (Bacchi, 2009, p. 27).

Such developments had an impact on the emergence of political economy, where people were treated statistically as “both an object and an end of government” (Foucault, 1979, p. 139). Individuals became less important; rather emphasis was placed on an organic whole represented by people, in Foucault’s terms a ‘special body’ (Foucault, 1979, p.139 in Bacchi, 2009, p.27).

However, Foucault did not exclude either sovereign or discipline forms of rule; rather he used the concept of the triangle formed by sovereignty, discipline and governmentality (Foucault, 1991b, p. 102 in Bacchi, 2009, p. 28). Furthermore, he distinguished two poles where those triangle powers intersect: biopower (biopolitics) (Foucault, 1991b), where society is seen as a single body, and anatomo-politics, where individuals and not the organic whole are the centre of interest. He considers a modern state to be a ‘normalising state’ that accomplishes its tasks by focusing on either disciplinary or societal measures (Bacchi, 2009, p. 28).
Government enlists professional groups to accomplish the assignment of norm definition. This forms standards for expectable behaviour that will give guidance for self-regulated individuals. Foucault sees liberalism and neoliberalism as a “form of rule (government rationalities) that display such character as ‘government at a distance’” (Foucault, 1991b in Bacchi, 2009, p. 29).

These controlling tasks of government should not be understood as international manipulation on the part of government; instead they are forms of rule that accomplish the maintenance of order within the population. This does not mean that these forms of rules are unintentional in their character, and this should not be searched for the contradictions or real intentions within them. This is done by the WPR approach through analysing problematisations (Bacchi, 2009, p. 30).

Problematisations are used in two ways: first, they search for the means by which issues are conceived as problems, “identifying the thinking behind particular forms of rule”. The second use of the term indicates interrogation: once the real issues behind the official wording have been defined, there is a necessity for a further elaboration of the problem by problematising it: in other words, interrogating. According to the WPR approach “every policy, by its nature, constitutes problematisations,” thus, “we are governed through problematisations rather than through policies” (Bacchi, 2009, p. 31). The approach does not deny that governments confront some real difficult conditions that should be addressed; however, it does not focus on the nature of those troubled conditions, but rather ‘on the shape of the implied problems in specific proposals. “No concept and category is accepted to be value-free and uncontested”(Bacchi, 2009, p. 32). The first step is to investigate the plan of action offered in the policy proposal, problem representation, which is behind the formal policy statement.

3. Context of the Public Sector Reforms

The investigation of the problem of conflict of interest stimulates a closer look at the public sector domain itself. Its evolution might shed light on developments that have
influence the presentation of the conflict of interest phenomenon and its elaboration by the organisations analysed here.

Thus, the formation of the neo-liberal approach to governance in advanced capitalist countries around the 1980s restructured the public sector ideologically and distributed the same process worldwide throughout globalisation. The dominant trend in such reforms presupposed the application of business principles and practices, which were supported by the political and economic forces of advanced capitalist states. Such developments resulted in changes within public sector norms, objectives, structures, roles and service recipients, and had critical implications for public accountability (Hague, 2000, p. 600).

During the 1980s, the main responsibilities, assignments and roles of public sector services were changed. Since then, their main tasks have been, “facilitating and supporting services to the private sector, maintenance of conducive atmosphere for market competition, implementation and monitoring of divestment and contracting out” (Hague, 2000, p. 602).

Mathiasen (2007) lists six major sources for the overall change in the public sphere: the need for effective public management exacerbated by the globalisation of economy, trade and capital movements; fiscal problems encountered by nation-states; frustration emanating from the “size, effectiveness and cost of government”; ex-authoritarian countries’ need for renewed public management; the revived interest in issues of democratisation preached by non-governmental entities and public interest groups; scholarly interest in subsidiarity; and finally, the new ascendancy of the Total Quality Management orthodoxy as a panacea for all problems (Mathiasen, 2007, p. 7).

A single significant development was the publication of the book Reinventing Government by Osborne and Gaebler in 1992. Advanced capitalist states showed great interest in applying the ideas described there in practice (Osborn & Gaebler, 1992, in Fox, 1996, p. 257; Kamensky, 1996).

The appearance of New Public Management cannot be clearly described and specifically shaped: it lacks a theoretical orientation, and its ideas constantly overlap,
and as such it is more viewed as the combination of its predecessors (Mathiasen, 2007, p. 18). More precisely, this movement can be described as international public management. It is notable that these management reforms used concepts and models developed from beyond the boundaries of the country involved. The emergent trend retarded the traditional flow of public administrative affairs and resulted in a change in the normative standards, instead of the established public service ethos of “human progress, maintaining law and order, resolving poverty and employment, providing public welfare, impartiality and equal treatment, safeguarding citizen’s rights, guaranteeing justice and fairness, there were priorities that underlined economic growth and productivity, related to it norms of efficiency, competition and profit” (Hague, 2000, p. 602).

Such developments in the public sphere unleashed a less-anticipated effect of public disenchantment with civil service administrations. Public administration was blamed for abandoning its public law foundation, instead devoting itself to the management principles taught in business schools (Mathiasen, 2007; Moe & Gilmour, 1995; Aucoin, 1994; Boyce & Davids, 2009; Caiden, 1994; Moe, 1994). The traditional hallmark of ‘Public services’ was its relative neutrality from the power-driven political sphere and the profit-driven business world; however, it took just a decade to reorient itself and become more supportive to political leaders and private investors (Hague, 2004, p. 1).

Moe and Gilmour saw the problem as lying in daily practice, where the ‘grand synthesis’ of public administrations (Moe & Gilmour, 1995, p. 135) does not fit with government agencies’ programme requirements. Misled public officers find themselves in the situation of losing their theoretical foundation. Their intellectual tradition emerges from public, rather than behavioural, theories of management. These are based on different foundations: one is based on “judge-made common law”, and the other on the body of the Constitution and the Bill of Rights articulated by the “enormous body of statutory, regulatory and case laws” (Moe & Gilmour, 1995, p. 135).

---

As a result of such innovations, fragmentation in coordination has revealed further problems. Today, independent agencies are places headed by entrepreneurial managers employed on a contractual basis rather than permanently employed public servants. Central coordination and control are difficult to achieve in such entities. Furthermore, administrative tasks are less constrained by conventional in-built administrative norms such as ‘hierarchy’ and ‘public law’. The self-financing capacities of agencies make financial control through budgetary processes meaningless. Customer orientation, which logically follows the entrepreneurial trend, changes the political role of citizens into the economic role of consumer (Peters & Savoie, 1996, p. 283).

Furthermore, the past several decades have witnessed interesting developments: the unexpected and unplanned evolution of economic institutions as conduits for public management knowledge and experience. The World Bank and the OECD are the most formidable actors in this group. Mathiasen (2007) argued that one explanation is the insufficient development of governance theories in comparison to the unequivocal dominance of economic trends. “Today governance has moved alongside economics and many of the conditions illustrative of international public management are similar to those applied to the developmental economics in the 1960s”. However, the author argues that “the economy does not have sufficient tools for rehabilitation processes that public management needs today” (Mathiasen, 2007, pp. 31-32). However, despite the economic ascendancy, the public law paradigm in public administration remains paramount for a class of government administrators that still have considerable confidence in it (Moe & Gilmour, 1995, p.142).

In summary, this dominant shift has resulted in a change within the public administration’s normative standards. Instead of the traditional public service ethos, priorities have arisen that underline economic growth and productivity, and related norms of efficiency, competition and profit. New developments have become difficult to scrutinise, as the direct products and distribution of public services have been less tangible and controllable, and new ‘steering’ activities are less explicit and difficult to keep accountable (Hague, 2000, pp. 602-603).
All of this may have controversial consequences for public sector accountability. Business priorities dictate different standards that do not necessarily fit with the accepted norms of democratic governance. Then, doubts are expressed concerning the legitimacy of the new public sector norms. Interest in the nascent theme is seen in the headlines of media attention; announcements of misconduct and fraud are abundant and give additional attention to the subject of concern. The public sector’s trend towards looking like the private sector does not necessarily address the ethical dimension; rather, the headlines on the new developments are full of instrumental issues of efficiency and productivity (Gregory, 1999, p. 64).

Foucault’s principle of government rationality (Foucault, 1991b in Bacchi, 2009, p. 27) partly explains the above-mentioned developments. According to him, different rationalities affect government approaches (Miller & Rose, 1990, p. 1 in Bacchi, 2009, p.26). The change of government rationality transformed the old contextual design into a different model of public administration. The conflict of interest problem also resides within this newly formed domain. Its literature parallels concepts and normative principles found in the academic texts concerning ethical, practical and administrative dimensions.

Possible remedies cannot be searched for separately from the wider contextual structure and ideological orientation. This is in line with the main insight of Critical Management Study that highlights the importance of investigating policy with the help of a holistic approach. In this particular case, conflict of interest data is observed to detect its compatibility with broader contextual features of public governance: does this ideological shift, in Foucault’s terms government rationality, play a significant role in the elaboration of the problem? This can be detected through the selection of common principles, aspirations, norms and concepts that are made central. One such concept that claims particular attention is the concept of good governance.
Conflicts of Interest and ‘Good Governance’

The previous section more or less summarises developments in the context of public administration. Thus, at the end of the twentieth century, the majority of western democratic countries were practising new administrative methods borrowed from business administration in the private sector. The success of those reforms in terms of the effective and efficient administration of public affairs is still debated, but it is noteworthy that, first, the conflict of interest phenomenon’s growing prominence and escalation coincided with the radical change in the main platform on which the traditional, classical model of public administration rested, when the fortified sense of the administrative ethos (Hague, 2000, p. 602), that is the honour of being protectors and executors of the public will and interest, became less central; second, the public administrative reform literature points to the unstable and dynamic context largely shaped by market-orientated tendencies. However, there were no parallel developments in public governance techniques for withstanding the newly introduced practices without major ethical repercussions (Hague, 2000, 2004; Mathiasen, 2007; Fox, 1996; Kamensky, 1996; Moe and & Gilmour, 1995; Aucoin, 1994; Boyce & Davids, 2009).

Third, problems in the realm of public sector administration are often expressed through diverse concepts and analytical expressions. Some prominent principles demand attention, the concept of ‘good governance’ (Dreshler, 2004, p. 388) being one of them. It is recognised to be the most formidable mechanism in today’s public sector administration.

The term ‘governance’ is a neutral concept that represents a “steering mechanism in a certain political unit compiled on the basis of interaction between three sectors of state (first), business (second) and society (third)”. On the other hand, the favoured term of good governance is a normative concept with a strong emphasis on “retrenchment of the State in favour of business standards, principles and interests. Thus, the second sector dominates the first one even in such purely non-second sector affairs as the state’s administrative sphere capacities” (Dreshler, 2004, p. 388).

In order to understand the true meaning of this popular concept, it is advised to look to the history of its formation. Laura Zanotti discussed the emergence of good governance
in connection with the “United Nations’ political rationale”. Its origination coincides with “the Anglo-American neoliberal critique of the interventionist welfare state”. Because the concept has multiple discursive connotations, she streamlined it into six core suggestions: “the minimal state, governance, the new public management, ‘good governance’, socio-cybernetic systems, and self-organising networks” (Zanotti, 2005, p. 468). The World Bank is regarded as one of the main agitators of the good governance debate in the arena of international organisations in the 1990s. It is defined in terms of “efficiency in the public service, rule of law with regard to contracts, an effective judiciary sector, respect for human rights, a free press, and pluralistic institutional structure” (Zanotti, 2005, p. 468). The listed priorities are achieved mainly through the means of “marketization of public services, reduction of public sector overstaffing, budgetary discipline, administrative decentralisation, and NGO participation” (Zanotti, 2005, p. 468). In short, these definitions closely follow the staple principles expressed in the new public management reforms.

Due to the superlative characteristics that the concept of good governance undoubtedly possesses, the determination of ‘goodness’ cannot be applied or debated without confusion. Nevertheless, at the time that the IFIs (International Financial Institutions) were trying to make sense of this newly formed concept, in the 1980s, they were committed to the principles and ideological orientation of neo-liberalism, the free market and the retrenchment of the State (Dreshler, 2004, p. 389).

Argyriades related the emergence of good governance to the period of prominent attacks on ‘government’ and the welfare state (Argyriades 2006, p. 157). Similar to Zanotti, he also regarded the World Bank to be the author of this concept (Argyriades, 2006, p 158).

“Good governance is epitomized by predictable and enlightened policy making (that is transparent processes): a bureaucracy imbued with a professional ethos; an executive arm of government accountable for its actions; and a strong civil society participation in public affairs and all behaving under the rule of law.” (World Bank, 1994, p. 7)
This citation represents a broadly stated and well-intentioned normative description; in other words, a desired posture. However, the achievement of the prospective objective can only be accomplished through reforms that first change the normative parameters (Argyriades, 2006, p. 158).

“The new model requires a smaller state equipped with a professional, accountable bureaucracy that can provide an enabling environment for private sector-led growth, to discharge effectively core functions, such as economic management, and to pursue sustained poverty reduction.” (World Bank, 1994, p. 16)

Subsequently, the administrative scene in 1990s was accompanied by ‘state shrinking’ in the name of economic growth vanguarded by the private sector. (Argyriades, 2006, pp. 158-159).

These developments undoubtedly had an impact on the administrative state, which sought to transform itself along the lines of the market model. Conventional bureaucrats acquired a new shape and profile. Instead of their traditional role of administrators, from now on they were regarded as ‘entrepreneurial managers’ (Argyriades, 2006, p. 161).

Thus, the concept of good governance is viewed as one of the main anchoring principles defined in the new administrative reality. This is the staple principle, frequently referred in the literature on public administration. Conflict of interest data will also be analysed for this concept’s importance. How is conflict of interest data connected to or influenced by the priorities expressed in the concept of good governance? Does it provide a certain conceptual framework within which the conflict of interest recommendations also evolved?
4. Methodology and Data

4.1 Applied Methodology

Carol Bacchi’s (2009) methodology, known as the WPR (What is the Problem Represented) approach is a policy analysing technique. Here it supplies the Critical Management Study with additional tools for the execution of an effective enquiry, and shares with it an ability to accommodate multiple discourses. Contributions that diverse authors have made to the development and proliferation of critical thinking have also had an impact on Bacchi’s work, for example, Michael Foucault, discussed earlier in the theory section.

The WPR approach is centred on policy-making and policy representation, which is understood as an elaboration of the particular policy problem. The concept of the problem is given special attention in Carol Bacchi’s methodology. According to the author, all policies by their very nature contain implicit representations. The way in which they are developed, discussed and presented is very important, because it shows “all sorts of implications for how the issue is thought about and for how the people involved are treated, and are evoked to think about themselves” (Bacchi, 2009, p. 1).

Six key questions should be asked continuously when dealing with documents:

1) “What is the ‘problem’ represented to be in a specific policy? 2) What presuppositions or assumptions underlie this representation of the ‘problem’? 3) How has this representation of the ‘problem’ came about? 4) What is left unproblematic in this problem representation? Where are the silences? Can the problem be thought differently? 5) What effects are produced by this representation of the ‘problem’? 6) How/ where has this representation of the ‘problem’ been produced, disseminated and defended? How could it be questioned, disrupted and replaced?” (Bacchi, 2009, p.12)

In addition, three propositions are fundamental to the work of policy analysis:
1) We are governed through problematisations, 2) We need to study problematisations (through analysing the problem representations they contain), rather than ‘problems’, 3) We need to problematise (interrogate) the problematisation on offer through scrutinizing the premises and effects of the problem representation they contain” (Bacchi, 2009, p. 21).

The conventional distinction between state and civil society is blurred; the state is still viewed as one of the significant actors in the general administration of societal relations, along with other players. The role of experts is highlighted; such professional groups nowadays wield considerable power to “link individuals and organisations to objects of politics” (Miller & Rose, 1990, p. 1 in Bacchi, 2009, p. 26). The WPR approach focuses on experts’ knowledge-producing capacities and roles as participants in policy processes (Bacchi, 2009, p. 26).

4.2 Data Description

As already mentioned in the introduction, this research is based on the analysis of four papers, mainly written by two international organisations. These authoritative organisations are the European Union (EU) and the Organisation for Economic Cooperation and Development (OECD). Their subsidiary organisations make feasible contributions to the preparation of policies; nevertheless, they are working under the auspices of the EU and the OECD.

Two starting papers describe the main administrative context envisioned in the public sector of the European countries, and two others give guidance and recommendations, as well as the state of affairs, concerning conflict of interest problems within the same public governance.

The ‘European Principles for Public Administration’\(^5\) (OECD, 1999) prepared by SIGMA (Support for Improvement in Governance and Management in Central and

\(^5\) At its inception the OECD provided technical assistance to the member countries on purely economic matters. Later it began to experiment with conferences and publications on aspects of public management. The organisation’s functions were formalised under the new organisational
Eastern European Countries) and PUMA (Public Management Service) is a joint venture of the OECD and the EU to support reform initiatives within countries in transition.

This paper was produced for new and future members of the EU. The description of the main principles, the foundation on which EU governance rests, is explicitly drawn. Thus, it is a useful presentation of the fundamental norms for which the EU strives in its governance. The first version of this paper was presented at the meeting of the Heads of Civil Services held in Vienna 1998. This meeting significantly contributed to the assessment of countries’ public sector administrative capacities and their progress in developing civil service practices. “Established in 1992, SIGMA works within the OECD’s Public Management Directorate, which provides information and expert analysis on public management to policy-makers and facilitates contact and exchange of experience amongst public sector managers. SIGMA is a joint initiative of the OECD and the European Union and is principally financed by the European Union’s Phare Programme” (OECD, 1999, p. 2).

In order to understand the relevance of the document to the interest of this enquiry, the space devoted to laying the ground rules for officials’ expected behaviour will be investigated. It is of interest to note how the document elaborates principles and recommended practices for the infrastructure that public service organisations should possess first in order to be able to cope with the introduction of reforms. As already mentioned, the staple concepts, steering mechanisms, normative and operational soundness of public governance and the conflict of interest data will be compared.

department known as the Public Management Service (PUMA). Later, PUMA used its experience to assist in the transition from centrally managed countries to market economies. To execute such a mission, a subsidiary organisation was created, known as SIGMA (Support for Improvement in Governance and Management in Central and Eastern European Countries). The public management project was reorganised into the new Public Governance and Territorial Development Directorate (GOV), which assists countries in adapting their public sector governance arrangements to the changing needs of society (Salzman, 2000, pp. 774-775); Mathiasen, 2007, pp. 22-24). The OECD helps to identify problems and search for best practice solutions, this in turn reflects its ability to contribute to larger ideological shifts (Mahon & McBride, 2009, p. 84).
Conflict of interest cases have moral and ethical repercussions: this logically indicates that the administration of public affairs should be based on the appropriate ethical infrastructure. What matters is the approach with which the problem encountered is thought to be resolved; in Foucault’s words, the “government rationalities” (Foucault, 1991b in Bacchi, 2009, p.29).

The Commission of the European Communities is the author of the second document, titled ‘European Governance, a White Paper’ (COM, 2001). This was prepared in July 2001, with the purpose of being widely accessible to the public. It is easily retrieved from the Internet, and was disseminated in the form of brochures (COM, 2001). As discussed above, the concept of governance is the domain where conflict of interest resides and finds its worst expressions. Observing the EU’s 2000 initiative to reform European governance will reveal key developments related to the main theme of interest.

‘Managing Conflicts of Interest in the Public Service’ (OECD, 2003), written by the OECD, is the third document analysed here. It was the first international benchmark and official report concerning the problem of conflict of interest. “It was developed in collaboration with the Expert group on conflict of interest, under the chairmanship of Howard R. Wilson, Ethics counsellor of the government of Canada, and under the direction of the OECD Public Management Committee. The OECD Council endorsed the Guidelines in the form of Council’s recommendations in June 2003” (OECD, 2003, p. 3). Close observation of the organisation is made in order to better understand the recommendations of the policy guidelines. It is important to be aware of the initial reason for its creation, which was purely economic (Salzman, 2000, pp. 774-775).

In 2006, the European Commission delegated responsibility for making a comparative study of administration. The European Institute for Public Administration in cooperation with University of Helsinki, the University of Vaasa and the Utrecht school of Governance proceeded with this comparative study, later named ‘Regulating Conflicts of Interest for Holders of Public Office in the European Union’ (Salminen et al., 2007, p. 15). It can be regarded as “the pioneering work in the field of conflict of interest in Europe” due to its comparative and inter-institutional approach (Salminen et al., 2007, p.17). This study investigates in detail the state of affairs of the conflict of
interest phenomenon. It addresses the nascent problem of regulating conflict of interest for holders of public office (HPO) in the European Union and analyses the existing rules and standards for HPO regarding the conflict of interest issue among EU member states and institutions. More precisely, it focuses on the observation and comparison of the various rules and standards contained in the laws, regulations and codes of conduct for members of government, elected members of parliament (legislators), Judges of the Court of Justice (Supreme Courts or Constitutional Courts), and members or directors of the Court of Audit and Central or National Banks (Salminen et al., 2007, p. 13).

These two conflict of interest papers are viewed in connection to the broader EU principles. An attempt is made to detect the conflict of interest discourses that organisations promulgate and check their correlation with the developments in public governance. Do modern tendencies within European public governance influence models suggested by the conflict of interest data? Subsequently, a more or less clear picture can be drawn that will hopefully answer the main research question: **How is the problem of conflict of interest represented by the OECD and EU? And how consistent are they with the broader EU administrative framework?**

All of these papers were written in the period from the end of the 1990s until 2010, instigated by the growth of moral scandals and ethical downturns. The focus is placed on those assumptions that attempt to fill the holes formed by improper conduct; solutions provided to resolve problems; compatibility of the data with the main platform of European governance; techniques and mechanisms described for dealing with conflict of interest cases; core principles that coincide, or do not coincide with the *government rationality* (Foucault, 1991b in Bacchi, 2009, p. 29) legalised within the normative framework of European public governance.
5. Analysis

5.1 Problem Statement

Critical Management Theory (CMT) warns against “counteractive discursive closures” (Alvesson & Willmott, 2003, p. 17); in other words, clear and objective statements. Questioning and uncovering what has come to be seen as a given, unproblematic and natural in WPR is done by focusing not on the generally stated problem but rather on its implicit representation.

The first staple question of Bacchi’s methodology, what is the problem represented to be in a specific policy? (Bacchi, 2009, p. 79) opens the analysis.

The problems explicitly stated in the first two documents are linked mostly to the structural aspects of public administration. For example, the ‘European Principles for Public Administration’ paper mainly focuses on the development of the common European system based on administrative forms that are deeply convergent with each other. Modern forms of administration are so intertwined and interconnected that their effective working dictates convergence between the national administrative legal orders and administrative practices of Member States (OECD, 1999, p. 6). Therefore, the European Administrative Space (EAS) is the metaphor invoked for accomplishing this end. In brief, the problem that the policy tries to deal with is that of institutional fragmentation among the Member States.

‘European Governance, A White Paper’ defines the explicit problem as peoples’ increasing distrust of European institutions and politics. Stating this, the document presents a plan of action, which presupposes a reform initiative to accomplish the goal of connecting Europe with its citizens (COM, 2003, p.3). The proposals for change unleash technical and structural issues that affect power politics, interest representations, and redistribution of the balance of power. The implicit problem representation is recognized to be a lack of concerted and efficient governance within the EU.
The problems described above by the European governance papers (1999; 2001) were prominent more or less at the same period as the conflict of interest papers were published (2003, 2007). The statements presented below are the conflict of interest data’s recognition of the explicit and implicit problem representation (Bacchi, 2009) in their texts.

The ‘Managing Conflict of Interest in the Public Service’ guideline defines the main challenge as a loss of integrity and trust in government agencies in today’s public administration (OECD, 2003, p. 11). Such a clearly stated representation of the problem nevertheless directs attention to the proposed resolution that the guideline recommends. These recommendations draw a slightly different picture, which is the attempt to retain the status quo in public administration despite growing evidence of conflict of interest cases.

‘Regulating Conflicts of Interest for Holders of Public Office in the European Union’ sees the problem to be the ineffectiveness of modern conflict of interest models to remedy the situation at stake due to the constant drop in the public’s trust in government integrity and administration of public affairs in particular (Salminen et al., 2007, p. 14).

Thus, the loss of integrity and trust in government agencies, which is clearly sounded in at least three papers out of the four (in ‘European Governance, A White Paper’ (2001) this is more implied than concretely stated, stipulating more structural aspects than lamenting the public’s mood), shows disillusionment in state agencies due to an inability to organise effectively, and point to overall systemic problems.

Before proceeding to the second of Bacchi’s (2009) questions, space is devoted to a closer elaboration of Europe’s administrative platform. For this reason, the first two data papers are examined (‘European Principles for Public Administration’ and ‘European Governance, A White Paper’). The information gained can be useful supporting material for unveiling the broader administrative rationale (Foucault, 1991b in Bacchi, 2009, p.29), due to the congruent themes and principles common to the conflict of interest data and the data representing the European administrative context. Some findings might be useful descriptive tools and others ignored as irrelevant to the
conflict of interest data analysed here. The idea of *reflexivity* (Reynolds, 1998, p. 183) that Critical Management Study adjudicates questions the contextually taken-for-granted assumptions, therefore a closer look at the main principles and developments found within European public administration is the next task to perform.

5.2 Contextual Features

The first two papers’ contextual characteristics describe administrative change on the basis of several key principles. Examining these issues, a certain picture can be formed of the main currents that European governance make central. These issues are subsumed under the category of *structural change*, which consists of principles of *Convergence/coherence, balance of power, decentralisation, and managerialism* (OECD, 1999; COM, 2001).

The pivotal concept of *good governance* discussed in the above section also finds its expression in both papers on European governance. However, it is not made central, but rather mentioned in connection to the EU’s acceptance and appreciation of its authoritative character. For example, ‘European Principles for Public Administration’ sees the achievement of *good governance*’s main priorities through the process of standardisation. The principle of *good governance* is equated with the *acquis communautaire* principle that EU Member States implement. Candidate countries are advised to follow general standards of *good governance* in order to meet the administrative priorities defined within the EU (OECD, 1999, p. 6).

‘European Governance, A White Paper’ refers to the *good governance* principle in connection with the debate on global governance: “The Union should seek to apply the principles of *good governance* to its global responsibilities. It should aim to boost the effectiveness and enforcement power of international institutions” (COM, 2001, p. 5).

A relatively clear understanding exists of the idea behind the *good governance* due to the earlier elaboration of the concept. Hence, these priorities are acknowledged and appreciated by the wider EU administrative framework. However, it is not central in the data’s discourses, and for this reason, will not be included in the group addressed here.
However, there should be an acknowledgement that *good governance* is a meta-concept within European public administration from which other principles and priorities proliferate.

The concept of *convergence* is important in the European setting. Both documents on European governance see the necessity for synergy or *coherence* among their institutions, legal systems, operations and structures as one of the key points for the efficient and effective functioning of the EU. Actually, both documents see the main deficiency of the Union as lying in its unwieldy and complicated nature. Therefore, this process of synergy is presented as a safeguard for reliable administrative principles and procedures (OECD, 1999, p. 6; COM, 2001, p. 10).

‘European Governance, A White Paper’ sees that simplicity can be achieved in operations through the principle of *coherence*. It argues:

> “Policies and action must be coherent and easily understood. The need for coherence in the Union is increasing … coherence requires political leadership and a strong responsibility on the part of the institutions to ensure a consistent approach within a complex system” (COM, 2001, p. 10)

‘European Principles for Public Administration’ elaborates this aspect of *convergence* as indicator against which the reliability of the public administration and the degree of accountability of civil servants and public authorities is checked (OECD, 1999, p. 19). On the basis of this assumption, synergy in the operations of EU governance presupposes policy models that will be easily transferable and applicable across countries and institutions. Therefore, the problem of ethical administration, where the principles of the *reliability* and *accountability* of civil servants play an important part, is a deficiency to be transformed through the introduction of *convergence* models in civil service operations.

> “The European Administrative Space (EAS) represents an evolving process of increasing convergence between national administrative legal orders and administrative practices of Member States. This convergence is influenced by several driving forces, such as economic pressures from individuals and firms,
regular and continuous contacts between public officials of Member States and, finally and especially, the Jurisprudence of the European Court of Justice.” (OECD, 1999, p. 6)

“Co-operation and change have the effect of creating informal peer pressure for setting shared standards for the way in which national public administration meet their supranational commitments and of ensuring the attainment of the policy results … These intergovernmental cooperation contribute to spreading and sharing a shared ideal role model for the behaviour of civil servants throughout the Union.” (OECD, 1999, p. 17)

While ‘European Governance, A White paper’ addresses the change through power redistribution between institutional operations and functions, mainly through empowering the Commission (COM, 2001, pp. 30-32),

“The Commission brings forward at the next intergovernmental Conference proposals to refocus executive responsibility on the Commission while streamlining the control by Council and the European Parliament over how the Commission uses its executive powers.” (COM, 2001, p. 32)

The reform outlined in ‘European Principles for Public Administration is less focused on the aspect of power redistribution. The impetus for change comes from the reorganisation of the role of administrators for the sake of efficiency and effectiveness. For example, the paper introduces the main administrative law principles that shape the European administrative space through fundamental norms for acceptable behaviour on the part of public administrators. These are the principles of reliability and predictability (legal certainty); openness and transparency; accountability; and efficiency/effectiveness. Issues of employment, mobility, discretion and rule-following are important (OECD, 1999, pp. 8-13):

“The recognition of efficiency as an important value for public administration and civil service is relatively recent. Insofar as the State has become the producer of public services, the notion of productivity has entered the public administration. Today, because of fiscal constraints in many States, the efficient and effective performance of public administration in delivering public services
to the society is increasingly studied. Efficiency is characteristically a managerial value consisting in essence of maintaining a good ration between resources employed and results attained.” (OECD, 1999, p. 13)

The change of the balance of power is demonstrated in ‘European Governance, A White Paper’ through institutional refocusing’. As already mentioned, the Commission has acquired increased executive responsibility; at the same time, the role of experts has grown as a source of professional advice employed through specially created regulatory agencies (COM, 2001, pp. 22-24).

“The Commission will: - use its right initiative to focus more strongly on policy coherence and identifying long-term objectives, building upon on-going efforts for strategic planning and reporting.” (COM, 2001, p. 32)

The concept of decentralisation also plays an important part in power redistribution. It is central to the change envisaged in ‘European Governance, A White Paper’s’. It sees this process to be one of the key elements. The dialogue with representatives of regional and local governments takes on a systematic character and guarantees the fulfilment of the principles of ‘subsidiarity and proportionality’ (execution of the policy on the appropriate level, and proportionate to the end result pursued by the policy); this should be accomplished through more flexibility in implementation, minimisation of standards for consultation on EU policy, and through partnership arrangements (COM, 2001, p. 1). ‘European Principles for Public Administration’ is rather concerned with the democratic aspects of its functions. The reestablishment of the link between people and the EU is accomplished through civil service acts of standard behaviour on the part of public administrators rather than through the participation of devolved bodies in decision-making (OECD, 1999, p. 22). The struggle for power and influence between institutional settings is less envisaged. However, some redistribution of priorities and obligations is advised; for example, the reorganisation of civil administration. The document argues in support of the creation of professional administration. This newly created body, in line with the popular practices of managerialism, devolves all responsibilities to the public administrators; in other words, managers, in the modern sense of the word (OECD, 1999, pp. 24-25). Does redistribution of power and influence
guarantee more independence and autonomy to those individuals? This issue brings the next category under scrutiny.

“Improving the performance of the public administration means seeking better standards of efficiency and effectiveness within the rule of law. This usually requires delegation and devolution of responsibilities in favour of public managers, accompanied by ex ante and ex post control mechanism. In such a situation, the quality of public managers, vested with these public powers, becomes of the utmost importance. Moreover, when national policy-making becomes more and more complex and more and more exposed to international co-ordination, as it is the case in all EU Member States, the need for top public managers, with broad perspectives and ability to co-ordinate their work with both national and international institutions becomes even more apparent” (OECD, 1999, p. 24)

‘European Principles for Public Administration’ (OECD, 1999) pays special attention to the exercise of managerial power. It sees the reformation of the public governance system in this modern direction. However, it is wrong to use the category of managerialism here in its classic sense (the reason will be explained below). Here it is used in exaggerated form only so as to parallel the principle of managerialism with its softer version.

The regulation of the civil services, according to ‘European Principles for Public Administration’, is a necessary task for relieving pressure. It sees the enactment of specific civil service regulations to be important for consolidating the core administrative principles. Professional public management should be based on the highest official position in government, which resembles senior officials traditionally found in France with its career system of the corps (OECD, 1999, p. 21). The advancement of the common professional public managers “entails actions in several domains: training managers, introducing regulations, defining duties, accountabilities, and corresponding rights of staff, as in the civil service specific regulation, improving personnel management and management standards, and above all, establishing administrative context in which officials and public managers can carry out their duties in professional, impartial, transparent and controllable way” (OECD, 1999, p. 25).
“Modern, constitutional civil service in democracy is regarded as possible only when a set of conditions are in place:

- Separation between a public sphere and a private sphere.
- Separation between politics and administration.
- Development of individual accountability of civil servants by overcoming former collegial decision-making processes. This calls for well-educated and skilful public managers.
- Sufficient job protection, stability, and level of pay, and clearly defined rights and duties of civil servants.
- Recruitment and promotion based on merit.” (OECD, 1999, p. 21)

This is a good example of the attempt to strike a balance between the modern administrative reality, which has changed since the days of classic bureaucracy, on the one hand, and the attempt to preserve key, fundamental principles of administrative law and basic legal conditions, such as merit, equal rights and duties, on the other hand (OECD, 1999, p. 26). Despite the attempt to supplement traditional public administration with the modern tools of management, the proposed model still retains some fundamental principles prominent in classical forms of bureaucracy.

In summary, based on the data analysed here, the European context for public governance is characterised by fragmentation. The environment of public administration is dynamic. The need for coordinated action between the administrative institutions of Member States is unavoidable in order to withstand pressures exerted by the economy, inter-institutional contacts, the mobility of public administrators, inter-sectoral overlaps, public-private partnerships, contract-based employment, etc. An interesting development is seen in the OECD’s ‘European Principles for Public Administration’, where the creation of a professional body of public managers is based on contradictory principles and practices addressed below in detail. Therefore each document sees that synergy should be achieved through different means, albeit the objective of restoring the public’s trust and integrity in civil service administration is shared.

How can this description be of help or connect with the conflict of interest problem? First, it is more or less clear now what problems were upsetting the domain of European
governance at the time when the conflict of interest data was created: 1) the unwieldy and over-complicated nature of the administration that both papers seek to remedy through the process of *convergence* and *coherence*; 2) structural and functional modification sought by the European governance through the change of the *balance of power* and the extensive *decentralisation*; and 3) new principles and tendencies borrowed from mainstream management schools such as *managerialism*, that should be properly incorporated within existent civil services.

Second, some developments presented above are less correlated with the conflict of interest issue but nevertheless give a basic picture of the environment within which the problem of conflict of interest also resides (for example, the *redistribution of balance of power* and *decentralisation* presented by ‘European Governance, A White Paper’ (COM, 2001). Third, some of these are closely related to the conflict of interest data. *Convergence/coherence* and *managerialism* will be equated with the conflict of interest papers’ analysis. The WPR methodology’s staple questions bring to the fore the presuppositions and assumptions behind the stated problem representations. The findings will be compared with the principles selected from the European contextual data presented above of *convergence/coherence* and *managerialism*. The conflict of interest data is divided into the themes that render special attention: *public/private partnership, individualism, overregulation*, and *Roman law vs. Common law countries*.

5.3 The Conflict of Interest Data and Problem Representation

So, the conflict of interest phenomenon resides within the fragmented institutional setting where institutional fragmentation and lack of concerted and efficient governance (OECD, 1999; COM, 2001) are the main characteristic problems. An attempt is made to introduce changes in order to accommodate new developments.

The next focus is on the data that deal directly with the issue of conflict of interest. They are examined and checked for correlation with the above recounted contextual features of European governance. **What presuppositions or assumptions underlie the policies representation of the problem there?** (Bacchi, 2009, p. 81).
First, the problem representation in the conflict of interest guidelines (‘Managing Conflict of Interest in the Public Service’ (OECD, 2003)), which is explicitly stated as loss of integrity and trust in government agencies in today’s public administration (OECD, 2003, p. 11), also find expression in ‘European Principles for Public Administration’.

“Professional integrity of civil service relies upon the notions of impartiality and professional independence. Impartiality refers to the absence of bias. Within the public administration domain, bias means having an inclination in favour of a particular outcome in assessing a given situation, causing as a consequence an unjustified or unfair detriment to the general interest or to the right of other interested parties.” (OECD, 1999, p. 11).

Such ethical issues are dealt through structural change targeted towards the obliteration of institutional fragmentation in the name of concerted and efficient governance. The main mechanism for this is the introduction of convergent and coherent models to resolve the problem of integrity (OECD, 1999; COM, 2001).

‘Managing Conflict of Interest in the Public Service’ (OECD, 2003) supports the European governance’s strive for coherence through convergence models. It “provides a comprehensive reference for public institutions seeking to ensure probity in public decision-making” (OECD, 2003, p. 23).


In opposition to EU’s aspiration towards standardisation and convergence, ‘Regulating Conflicts of Interests for Holders of Public Office in the European Union’ states that there cannot be a “patent recipe” for all institutions and countries to incorporate. Their diversity suggests the use of a “careful design and implementation of ethic regimes that is most appropriate to each institution” (Salminen et al., 2007, p. 10).
This statement actually disqualifies all ready-made policy models, and encourages an individual approach to problem resolution. This argument is totally in line with the fundamental orientation of Critical Management Study, which dismisses the prototypical application of policies and management styles across different administrative entities. However, it is in disagreement with the principles and aspirations that were examined above in the papers addressing the main European priorities. The convergence that the EU strives to achieve between its Member States and different institutions is the foundation on which the whole idea of unionisation rests. The unwieldy and ineffective forms of administration, which fragment collaboration and widen the gap between EU institutions, Member States, and citizens are developments that the EU strives to reverse. This nevertheless raises doubts about the applicability of such approaches, at least in relation to the conflict of interest problem.

Although ‘Managing Conflict of Interest in the Public Service’ (OECD, 2003) admits the application of standard models for the conflict of interest policy, the compatibility of such a model with its own recommendations is examined below. For example, there is encouragement to introduce “standards for policy design and implementation that will encourage partnership between the public sector and the business and non-profit sectors by suggesting the responsibilities of each for improving integrity and strengthening the business environment” (OECD, 2003, p. 11). However, incorporation of business and non-profit sectors within the workings of public sector institutions is difficult to systematise into the standards for policy design and implementation.

An attempt is made to adjust different spheres of public administration and economic interests to produce efficient partnerships despite the acknowledged difficulties of ethical character that are produced as a result of such encounters.

“The new forms of relationships have developed between public sector, business and non-profit sector, giving rise for example to increasing close forms of collaboration such as public/private partnerships, self regulation, interchanges of personnel, and sponsorships. New forms of employment in the public sector have also emerged with potential for changes of traditional employment obligations and loyalties. In consequence, there is clearly emerging potential for new forms
of conflicts of interest involving individual official’s private interests and public duties and growing concern has put pressure on governments to ensure that the integrity of official decisions-making is not compromised.” (OECD, 2003, p. 22)

Several themes selected from the conflict of interest data need to be addressed separately. Their elaboration may better explain the character of the conflict of interest recommendations and their applicability within the contextual environment of European public governance.

5.4 Emerging Themes

The WPR methodology advises to centre on key presuppositions, or concepts, that the policies contain. Those may be explicit statements, as well as, implicit assumptions (Bacchi, 2009, p. 8). In both cases, these main themes are important ingredients in creation of desired policy. Here, those prominent themes are defined and compared with the contextual analysis’s main principles.

5.4.1 Public-Private Partnership

The principles of public–private partnership, which is in the group of main prerogatives defined by the ‘Managing Conflict of Interest in the Public Service’ guideline (OECD, 2003), are counterpoised to the standards of European public administration (OECD, 1999).

A contextual space offered by the ‘European Principles for Public Administration’ necessitates: 1) separation between a public and a private sphere; 2) separation between politics and administration; 3) sufficient job protection, stability, and level of pay, and clearly defined rights and duties of civil servants; 4) Recruitment and promotion based on merit; 5) stressing individual accountability of civil servants by overcoming former collegial decision-making (OECD, 1999, p. 21). All except the last principle are difficult to reconcile with the OECD’s conflict of interest guideline (OECD, 2003). Its adjustment within the public governance based on ‘European Principles for Public Administration’ is questionable. According to this document, the European administrative space of a modern constitutional civil service in a democracy
should be safeguarded from excessive manifestations of managerialism (OECD, 1999, p. 21), but at the same time, there is an admixture of norms based on the rational-actor model that are less compatible with the fundamental principles pursued by the same paper (OECD, 1999).

Salminen and his colleagues (‘Regulating Conflict of Interest for Holders of Public Office in the European Union’) mostly regard this issue in connection to post-employment cases (due to the later period of their study’s publication in 2007), since by then public-private intersections had become more widespread and common.

“New forms of relationship have developed between the public and private sector and give rise to increasingly close forms of collaboration between the two sectors.” (Salminen et al., 2007, p. 32)

Their main argument concerning the issue is based on the comparison made between Member States and European institutions. They detect that the regulation of post-employment issues is handled insufficiently, mostly being approached formally without built-in mechanisms of oversight, control and supervision. The disclosure procedures found in most Member States’ administration and institutions are predominantly internal and less transparent to public scrutiny (Salminen et al., 2007, p. 11).

“New forms of mobility between the public and private sectors may provoke more potential conflicts of interest as regards post-employment issues.”
(Salminen et al., 2007, p. 32)

“As to the specific conflict of interest issues, some categories are highly regulated, whereas others are not. The category of post-employment is the least regulated conflict of interest area among the Member States.” (Salminen et al., 2007, p. 11).

Changing practices and expectations, for example, in areas such as additional employment, outside appointment, post-public employment, use of inside information, public contracts, new forms of gifts and other benefits are presented as widespread developments that are generalised in today’s public sector environment (OECD, 2003, p. 18).
Despite the acknowledged risks that the partnerships of such kind presuppose, ‘Managing Conflicts of Interest in the Public Service’ (OECD, 2003) develops no detailed elaboration of this issue. Post-employment should be examined with attention and care, as it is the most fertile ground on which conflict of interest cases manifest. However, according to the OECD guideline, there is sufficient foundation on which such relationships can exist. The mechanisms incorporated for control and supervision guard against conflict of interest (OECD, 2003, p. 35). There is no detailed elaboration of those mechanisms, but the definition of the circumstances under which public officials may engage in ancillary employment while retaining their official position is suggested. There are also authorisation procedures under which public officials undertake post-employment appointments which are involved in a contractual, regulatory, partnership or sponsorship arrangement with their employer organisation (OECD, 2003, p. 33).

However, the details of these procedures and control mechanisms, and how they should be effectively incorporated are less concretely explained, apart from the suggestion that control and supervision be mainly entrusted to individual managers as the key remedying force in keeping the public administration accountable. Disclosure procedures should also be handled internally, and in the cases of noncompliance, management and internal controls, as well as external oversight institutions – such as independent auditors or an ombudsman – should work together to detect those who do not comply with required standards (OECD, 2003, pp. 35-36). The problem of public/private partnerships is handled by its own means. In other words, the business and non-profit sectors are involved in the elaboration and implementation of the conflict of interest policy for public officials:

“Mechanisms for resolving conflict-of-interest situations must be kept up-to-date in the context of increasing co-operation between public organisations and the business and non-profit sectors. This is particularly crucial when appointing representatives to public bodies from other sectors to benefit from their particular experience, knowledge and involvement. Create partnerships for integrity with the business and non-profit sectors by involving them in the elaboration and
implementation of the conflict-of-interest policy for public officials.” (OECD, 2003, p. 36).

‘European Principles for Public Administration’ in this regard is based on a rather different idea, and the principle of *public/private partnership* is not supported. At least three of the five principles it discusses present administrative domains that are incompatible with the conflict of interest guideline.

The emphasis placed on individual managers’ ability to functionally resolve problems resulting from public/private partnerships brings the next category under scrutiny: the concept of *individualism*.

### 5.4.2 Individualism

The most prominent category in ‘Managing Conflict of Interest in the Public Service’ guideline is a ‘public manager’ who is individually responsible for the conflict of interest policies’ implementation and monitoring. They are obliged to be aware that polices are updated, observed by all, and consistent with the continuously evolving situation (OECD, 2003, p. 18).

The principle of *individualism* is also tangible in ‘European Principles for Public Administration’, and absent from ‘European Governance, A White Paper’, where the main problem representation centres on structural aspects of governance with institutional and functional refocusing. Despite ‘European Principles for Public Administration’s tendency to be conservative in its approach concerning the main priorities on which the European civil service should rest, widespread administrative developments, in the form of reforms, have had their logical influence on it. For example, “*individual accountability of civil servants by overcoming former collegial decision-making*” is one of the five staple principles of European governance (OECD, 1999, p. 21). The civil service model strives for a public administration based on standards of *efficiency and effectiveness* within the rule of law. ‘This is achieved by delegation and devolution of responsibilities in favour of public managers” (OECD, 1999, p. 24). The professionalisation of civil servants, nevertheless, is based on priorities that call for some kind of central capacity-building for the management of
civil services. This in turn is a common management function within public administration (OECD, 1999, pp. 25-26), rather than the individual endeavour stipulated in the ‘Managing Conflict of Interest in the Public Service’ guideline (OECD, 2003).

The conflict of interest guideline underlines the idea that organisational culture and its preservation is also the public manager’s responsibility. They should uphold an ‘organisational culture’ that is based on ‘an open management culture’. This is one in which employees and their managers meet from time to time, and discuss conflicts of interest matters: employees disclose conflicting interest, and analyse it, then together with their supervisors make a final decision concerning these matters (OECD, 2003, p.18).

The emphasis is on the individual characteristics of a reasonable person to decide on such morally weighted questions as that of whether the organisation’s integrity is at risk from unresolved conflict of interest cases, and which prerogative should be chosen when the interests of employees, organisations, businesses and the public clash (OECD, 2003, pp. 29-37); this is not an exception but rather a standard condition inherent in the management of administrative affairs.

That such a tremendous burden would totally rely on the individual raises the question of ability. Researchers in the field of cognitive and motivational biases have found fertile ground for the application of their work in the study of conflict of interest. Based on empirical and theoretical knowledge concerning human judgement, the answer has been produced that “if consistent and persistent biases are found at the level of an individual, it seems unlikely that effective solutions are going to be found through the self-reflective practices of those consistently and persistently biased individuals” (Norman & MacDonald, 2009, p. 18), which is in disagreement with the mainstream conflict of interest literature (addressed at the beginning of this work). The ‘Managing Conflicts of Interest in the Public Sector’ (OECD, 2003) policy guideline also underpins this Davisian/Carlsonian (Davis, 1982; Carlson, 1994) stress on the personal responsibilities of civil servants in relation to the conflict of interest problem. The focus is on humans’ cognitive capabilities of recognition, anticipation and disclosure that enable them to deal with ethical problems if they are trained and previously familiarised with the relevant principles.
Kahneman and Tversky described their views of heuristic and biases as follows: “In making predictions and judgements under uncertainty, people do not appear to follow calculus of chance or the statistical theory of prediction. Instead, they rely on a limited number of heuristics, which sometimes yield reasonable judgements and sometimes lead to severe and systematic errors” (Kahneman & Tversky, 1973, p. 237; Shanteau, 1989, p. 166).

Alternatively, the reliance of ‘Regulating Conflicts of Interest for Holders of Public Office in the European Union’ (Salminen et al., 2007) on personal capabilities in relation to the conflict of interest issues is reduced to a minimum. Nowhere is the inner ethical predisposition of individuals considered as a viable standard to be followed. The document recognises the necessity for the conflict of interest regulations and codes of conduct to be formalised and legally defined in organisational statutes and laws; however, management on the basis of rule following and the routine compilation of principles is regarded to be insufficient. With the passage of time and emergence of new public administrative realities, as a result of decades of experience with the new forms of administration, the domain of public officials has become ever more complicated, infused with additional problems that aggravate an already difficult situation (Salminen et al., 2007, p. 14).

‘Regulating Conflicts of Interest for Holders of Public Office in the European Union’ may be seen as a counterweight to its predecessor, the OECD guideline (2003). It sees public registers and independent ethic committees as one possible remedy for resolving the conflict of interest challenge. The focus of such bodies should be on their reporting capacities being easily accessible to the public (Salminen et al., 2007, p. 7).

The instrumental measures recommended by the OECD guideline (OECD, 2003) are under–questioned in this policy. Their widespread use is suspected to be often ineffective and sometimes impractical (Salminen et al., 2007, p. 7-8). Rules and standards should be appropriately managed and with their application, the issues of implementation and enforcement should be closely surveyed. In real life they are usually left neglected. The means of implementation, control and monitoring is left without sufficient attention; therefore the situation is far from being changed (Salminen
et al., 2007, p. 8). Despite the debate in the OECD guideline concerning prosecutions and sanctions in cases of non-compliance, ‘Regulating Conflicts of interest for Holders of Public Office in the European Union’ presents self-regulation of ethics as being the least advisable. The famous maxim that “no one should be the judge in his own cause” is the “foundation on which fundamental values of due process, limited government, separation of powers and judicial review rest” (Salminen et al., 2007, p. 85).

This reliance on individual ability in self-assessment and discipline is discredited “since only outside and independent bodies are able to monitor and oversee ethics rules and standards in a fair and impartial way” (Salminen et al., 2007, p. 85). Independent bodies are expected to show greater objectivity and impartial judgement, and protect rights and institutional obligations, by being untainted by political or personal loyalties. They thus better guarantee public confidence. Nevertheless, the empirical findings show that holders of public office are not supportive of the introduction of the external mechanisms of control. They prefer the establishment of institutional self-control forms, internal reporting obligations and monitoring mechanisms. Despite such practices, there is widespread recognition of the viability of external committees’ monitoring capacities, and such direction is viewed to be forthcoming (Salminen et al., 2007, p. 85).

“In the case of holders of public office (HPO) independent and outside control is rare. Mostly the different institutions (or HPO) control themselves – if at all. This current practice is not satisfying since only outside and independent bodies are able to oversee and monitor ethics rules and standards in a fair and impartial way” (Salminen et al., 2007, p. 85).

The negative side is that there is insufficient knowledge about the functions and powers of ethics committees or relevant ethic commissions. These are usually consulting bodies rather than fully fledged organisations with investigating and sanctioning capacities (Salminen et al., 2007, p. 86). It is interesting to discover such committees’ usefulness in effectively overcoming the problems related to conflict of interest. Despite the lack of empirical evidence concerning the effectiveness of such bodies, the paper encourages their deployment, especially if their absence can be interpreted as support for the current model of self-regulation, which favours weak monitoring bodies (Salminen et al., 2007, p. 9).
Another problem that the policy recognises is a modern trend of introducing new forms of rules and standards that regretfully avoid the evaluation of already existing conflict of interest systems. “Success in implementation of new rules and standards is only possible if the different conflict of interest regulations are shaped to the needs of the specific administrative culture and political context” (Salminen et al., 2007, p. 9).

This discussion of regulation and standardisation brings the next focus under scrutiny. This is the concept of regulation density, which acquires central importance in the study (Salminen et al., 2007, pp. 106-107). ‘Regulating Conflicts of Interest for Holders of Public Office in the European Union’ thoroughly elaborates the principle of regulation density and related issues emanating from the historical legacies of European countries. This information gives a better understanding of the public administrative traditions inherited by member states and organisations, and allows parallels to be drawn between different approaches in conflict of interest matters.

5.4.3 The Problem of ‘Overregulation’

The problem of ‘overregulation’ inverts the whole idea of control through the means of supervision and rule-following. ‘Regulating Conflicts of Interest for Holders of Public Office in the European Union’ (Salminen et al., 2007) points out that countries and institutions reach a point in their regulating activities where they find themselves to be overregulated despite the fact that they are insufficiently aware of daily practices in implementation, management and enforcement (Salminen et al., 2007, p. 107).

The US and UK, where conflict of interest rules and effects are approached critically and are often at the centre of discussions, have greater control and monitoring mechanisms incorporated in their systems. In Europe, this issue has traditionally been less critically approached. Many experts relate this to cultural diversity. For example, Germany is seen to be least centred on conflict of interest issues, and ethics policy causes much less attention and debate there; some argue that this is due to its strong public service ethos in contrast with the US and UK (Salminen et al., 2007, p. 107).
In Germany, most senior officials come up through a legal administrative culture. The positive side of the lawyer monopoly of the holders of public office is their general awareness of existing rules and standards in the field of ethics. Other issues also play an important role: “traditionally German top-officials are less mobile (for example the practice of moving between the public/private sectors) than their US counterparts and face fewer ethical risks” (Salminen et al., 2007, p. 207).

Most ethics experts claim that strong ethics rules and regulations work contrary to the desired outcome of public trust and confidence. These critics (Antechiarico and Jacobs, Mackenzie, Stark, Saint-Martin, F. Thompson, Behncke, Bovens, etc.) argue that more ethical rules provide more prosecutions and investigations and reveal more allegations of unethical conduct that contribute little, if at all, to the reduction of publicity and public controversy on the subject. According to them, more rules increasingly undermine public trust and create more violations of ethics rules and the legitimacy of the institutions; this creates collective costs that outweigh the individual benefits. More rules and standards automatically result in and correlate with more violations of those rules. Therefore, the paper’s argument is that the visibility of unethical behaviour increases as a result, while at the same time public confidence in public institutions decreases. The appearance thus produced is contrary to the expected outcome (Salminen et al., 2007, pp. 108-109).

Similar to Dobel’s (2006, p. 16) and Boyce and Davids’ (2009) arguments about the importance of “political optics” (Boyce & Davids, 2009, p. 607) presented in the above section on the conflicts of interest literature, ‘Regulating Conflicts of Interest for Holders of Public Office in the European Union’ (Salminen et al., 2007) sees today an unequivocal tendency to be supportive of new regulations and rules in the field of ethical behaviour. The explanation is the political soundness of such a subject as an effective tool in an election campaign. The regulation of political ethics is popular today; therefore being in the opposing camp is risky from the political point of view (Salminen et al., 2007, p. 109).

The study sees a positive correlation between the adoption of rules and regulations and the rate of corruption in a country. ‘The rules are introduced with the best intention, however, their implementation, management, monitoring, and enforcement is closely
dependent on the existence of necessary capacity and skills for this” (Salminen et al., 2007, p. 110). The low level of corruption and bribery of the Scandinavian countries with their low level of regulation density is informative here. The hypothesis can be stated to be that “more regulations do not lead to less corruption. Instead, it seems that more regulation is not required in those situations or countries where high level of public trust exists” (Salminen et al., 2007, p. 110).

From this, two conclusions can be made: first, that there is no automatic link between strict rules and a low degree of corruption, and that a low degree of regulation density is compatible with a low number of conflicts of interest; and second, that this is not to say that countries with a high level of corruption and conflict of interest should have fewer rules in place (Salminen et al., 2007, p. 111). Modern conflict of interest issues concentrate on striking a balance between over-imposed regulations, individuals and organisational freedom and flexibility (Salminen et al., 2007, p. 113).

The ‘Managing Conflict of Interest in the public Service’ guideline (OECD, 2003) introduces a conflict of interest policy model mainly based on procedural rule-following and the introduction of rules and codes of conduct that define the obligations of public servants. Public entities are advised to introduce and uphold practices and procedures introduced there. The regulation density (Salminen et al., 2007) is quite extensive, albeit based on ‘soft’ instruments rather than ‘hard regulations’ (Salminen et al., 2007; OECD, 2003, pp. 33-37).

The extent to which rules and regulations are introduced in a particular country is also a matter of historical legacy and conventions. ‘Regulating Conflicts of Interest for Holders of Public Office in the European Union’ contrasts two administrative legacies that to a large extent explain the different approaches supported by international organisations and States in their policy preferences. In line with the emphasis of Critical Management Theory on the importance of historical legacies, Salminen and his colleagues adjudicate on this matter in their study.
5.4.4 “Roman Law” vs. “Common Law” Countries

The particular administrative legacies on which most liberal-democratic states are built have an impact on the subsequent public administrative trends and models adopted by countries. Salminen and his colleagues researched two dominant traditions in detail, and related insights from their work are presented here.

Traditionally countries with the “Roman Law” legacy more precisely regulate the status and conditions of civil servants than countries with a “Common Law” nature. Constitutions and legislations are the main bodies where corruption and ethics stipulations are regulated. Therefore, the ‘soft-law’ approaches are unnecessary complements to already properly functioning ‘hard-law’ models. The “strong public service ethics of acting in the public interest and fulfilling of ones duties administratively regulated the ‘Roman-Law’ countries” (Salminen et al., 2007, p. 124). Senior public servants often have a legal education and are much less mobile than their counterparts from the ‘Common Law’ tradition countries. Conflicts of interest are regarded to be sufficiently regulated, and bureaucratic features of the public service systems provide additional safeguards to positions that make the use of ‘soft instruments’ unnecessary (Salminen et al., 2007, p. 125).

The ‘Common Law’ countries, such as the UK (the most ardent protagonist of the NPM model) are based on different system of ethics regulation. The ‘hard law’ is silent regarding the ethical role of civil servants and their status. The field of conflict of interest is almost entirely regulated through codes; this fact logically indicates that informal institutions and procedures are widely used in ‘soft regulation’ countries and are less popular in the ‘Roman Law’ tradition. In addition, a correlation can be made on the basis of the ‘Common Law’ countries’ adherence to the neo-liberal governmental rationale (Foucault (1991b)) and the ‘Roman Law’ countries’ softer social liberal or social-democratic orientation (Salminen et al, 2007, p. 125).

Following this argument, the OECD’s history and traditional orientation can be attributed to the ‘soft regulation’ model, with interruptions in cases where ‘Roman Law’ expressions interfere with the mainstream. Such exceptions can be observed in ‘European Principles for Public Administration’ (OECD, 1999), where EU
collaboration resulted in some expressions of ‘hard law’ because of the legacy from its oldest and largest members (e.g. Germany and France).

Dostal argued that since the 1970s the OECD has relentlessly pursued neo-liberal economic norms. Market signals and rational actor assumptions have been sufficient for promoting valuable analysis in almost all fields of enquiry. ‘Particular knowledge’ which is a result of an expert’s enquiry on a particular political problem, and the ‘general knowledge’ of the organisation, which is based on neo-liberal economic ideas, can often clash, with the latter always more authoritative and influencing the OECD’s policy advice (Dostal, 2004, p. 447). From time to time, there are more socially orientated policy proposals, as is the case with ‘inclusive liberalism’, (Craig & Porter 2004) demonstrate, however, these are usually short lived initiatives, and the main stance of the organisation remains staunchly neo-liberal.

Despite such historical adherence, traditional ‘Roman Law’ countries have started to undertake reform initiatives in the field of ethics. “Today, changing values, more mobility, public-private partnerships, more contracts between public and private sectors, the flexibility of career systems, the introduction of new public management instruments etc.” (Salminen et al., 2007, p. 125) have had great impact on the reorientation of ethical approaches. Public service ethos and administrative conduct is more and more based on managerial thinking, performance, incentives, motivation and individual responsibility. No one proceeds without providing performance incentives, because public service ethics and duty ethics represent a performance ethic that is based not only on values, but also on material performance incentives. “Changing values, decentralisation and individualisation processes force especially the ‘Roman Law’ countries to adopt ‘soft-law’ approaches and offer more individual guidance and training (Salminen et al., 2007, p. 125).

This tendency can also be discerned in political organisations such as the EU. Despite its historical roots lying in the ‘Roman Law’ model, new tendencies have weakened its traditional orientation. The combinatorial character of ‘European Principles for Public Administration’ can also be explained in these terms. On one hand, it introduces practices with the emphasis on economic efficiency and related developments; on the
other hand, such priorities still coexist with the principles inherited from the classical models of bureaucracy (OECD, 1999, pp. 21-24).

From this follow accusations regarding abuses of public power and the maladministration of public resources, falling confidence in public administration in the eyes of citizens and taxpayers, blurred differences between the public domain of politics and the public domain of administration, administrative fragmentation and institutional obliteration, and a shortage in the pool of viable candidates for positions in the public employment system (OECD, 1999, p. 23; COM, 2001, p. 30; OECD, 2003, p.11; Salminen et al., 2007, pp. 7-8).

5.5 How did the Representation of the Problem Come about?\(^6\)

Whereas the OECD’s guideline approaches the problem from *government rationality* (Foucault, 1991b in Bacchi, 2009, p. 29), based on purely neo-liberal economic underpinnings, Salminen and his colleagues assume that this approach is counterproductive (Salminen et al., 2007, pp. 13-14).

The OECD’s conflict of interest guideline’s implicit *problem representation* tries to *retain the status quo in public administration despite the growing evidence of conflict of interest cases*. The problem is dealt with instrumentally, along the lines of the established systemic framework. The conflict of interest model should be suitably adjusted within this structure.

‘Regulating Conflicts of Interest for Holders of Public Office in the European Union’ sees a deficiency in such instrumental approaches to the problem of conflict of interest.

“When considering all the existent levels of regulation and the use of the variety of soft and legally binding instruments, it is no surprise that in the field of conflicts of interest, Member States face increasing challenges as to the quality of existing rules, overlaps of rules, legal fragmentation and a lack of coherence of approaches. As this study shows, there is no shortage of rules and standards in the field of conflicts of interest. In fact, conflicts of interest are becoming more

\(^6\) The third question (Bacchi, 2009, p. 86).
regulated but not necessarily better managed and enforced in many countries.” (Salminen et al., 2007, p. 13)

“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.” (Salminen et al., 2007, p. 13).

As ‘Regulating Conflict of Interest for Holders of Public office in the European Union’ contends, “success in implementing new rules and standards is only possible if the different conflicts of interest systems are shaped to the needs of the specific administration, taking the particularities of the administrative culture and political context into account” (Salminen et al., 2007, p. 9).

Today, the mainstream disciplines and activities of management are mostly devoted to improving the managerial practices and functioning of organisations. Such management practices and theories unequivocally include the staple issues of management’s functional efficiency and effectiveness. Managers are routinely regarded as the sole carriers of rationality and initiative. The transfer of responsibility for the execution of policies to a class of well-trained technocrats is often regarded to be the main solution to diverse political, social and economic problems. However, Critical Management Study warns against images and ideals of ‘professional management’ which emphasise the skilled employment of neutral and objective techniques. This technocratic understanding of knowledge and social affairs conceal the political nature of what is seemingly neutral or technological. There are hidden dangers that technocracy can impose problems for human autonomy and responsibility. Emphasis should be placed on overseeing the effects of managerial actions on the wider, politico-economic institutional arrangements that operate to steer and constrain, as well as enable, managerial action (Alvesson & Willmott, 2003, p. 8).

The ‘Managing Conflict of Interest in the Public Service’ guideline (OECD, 2003) is a vivid example of mainstream managerial theory, which is characterised by the wholesale use of the tools of ‘technocratic management’ (Alvesson & Willmott, 2003, p. 8). It is based on such priorities as personal responsibility, instrumental application
of rules and statutes, mechanisms of monitoring and control, supervision entrusted in managers’ ability to assure colleagues of the importance of being ethical and that by not doing so they are personally answerable for repercussions. Public-private partnerships and intersection and mobility are welcomed. Culture is seen to be created and upheld by the manager, who develops and sustains the needed environment for ethical behaviour through the means of training, meeting, persuasion and personal example. Organisational culture is developed through preventive measures and positive enforcement properly endorsed to the organisation’s legal, institutional and procedural frameworks. At the same time, mechanisms that are incorporated in lobbying and partnerships with the private sectors are rather similarly based on personal cognitive capacities, accountability and some standard auditing of behaviour for integrity (OECD, 2003, pp. 27-36), the workability of which in real lobbying situations, or even in normal administrative conditions, is continuously questioned.

There is no attempt to reconsider the instrumental principles borrowed from business management practices in order to accommodate it to the domain of public governance, where traditionally the interests of the public have been given priority. What priorities serve the practices introduced in this document today? What kind of safeguards should be incorporated that will prepare a better foundation for withstanding the emerging expressions of conflict of interest? According to the text of ‘Managing Conflict of Interest in the Public Service’ (OECD, 2003), the reasonable person should be guided by the ‘balancing’ principle, which reconciles public, organisational, employee and business interests with each other (OECD, 2003, p. 18). Even if this is possible, the idea is not entertained further, what is unsurprising, given its nebulous character.

‘Regulating Conflict of Interest for Holders of Public Office in the European Union’ (Salminen et al., 2007), as mentioned above, is in line with the arguments of Critical Management Study. It questions the pure instrumental approach of managerialism in relation to the problem of conflict of interest. It is concerned with the suitable contextual environment that is viable for the accommodation of policies directed towards resolution of the problem. Salminen and his colleagues argue that in order for the code of conduct to fulfil its purpose, a viable network of engagement should be in place first. The authors argue that codes of ethics 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 that are well designed, understood and supported by those who have an “atmosphere of trust” (Salminen et al., 2007, p. 14).

5.6 What is Left Unproblematic? Can the ‘Problem’ be thought about Differently?\(^7\)

The contextual change in European public administration, accompanied by the enlargement of the EU, has pushed the European institutions, together with the Member States, to reconsider existing arrangements, especially in the field of governance. The persistence of conflict of interest cases there, (despite their existence in other fields and sectors as well), is thought of as a deficiency to be resolved in order to restore the public image of those institutions and governments. However, comparing European contextual features of administrative mores and principles with the conflict of interest policies of the same period, and a little later, draws an ambivalent picture.

How is the problem of conflict of interest represented by the OECD and EU? And how consistent are they with the broader EU administrative framework? First, the two conflict of interest papers analysed here can be divided into two divergent approaches to the problem. One is *instrumental*, or as Critical Management Study calls it, *technocratic* (Alvesson & Willmott, 2003, p. 8), in line with the mainstream managerial schools of thought, and the other can be called *comprehensible*. It approaches the problem all-inclusively and questions all of the models that are based on instrumental approaches, in line with the Critical Management Theory tradition. Second, both of these papers are difficult to reconcile with the contextual characteristics of European governance, at least as drawn by the data introduced here. The ‘Management of the Conflict of Interest in the Public Sector’ guideline’s policy model can be adjusted to the European public administration if the professional civil service standards are based on the same fundamental principles. This is not the case, as already discussed above: so there is friction between the priorities of the conflict of interest guideline and the core European administrative principles. Despite this dichotomy, there are points of attachment, such as the devolution of the principle of *collective accountability* to the *personal responsibility* of civil servants, and the stress on *efficiency* and *effectiveness* in their operations. Nevertheless, separation between a public sphere and a private sphere,

\(^7\) Bacchi (2009, p. 89).
separation between politics and administration, job protection, stability in pay, etc. (OECD, 1999, p. 21) are principles that are difficult to reconcile with the OECD guideline’s stress on mobility between sections, public/private overlaps, partnerships, lobbyism and so on (OECD, 2003).

“Improving the performance of the public administration means seeking better standards of efficiency and effectiveness within the rule of law. This usually requires delegation and devolution of responsibilities in favour of public managers, accompanied by ex ante and ex post control mechanism. In such situation the quality of public managers becomes of the utmost importance” (OECD, 1999, p. 24).

Third, ‘Regulating Conflicts of Interest for Holders of Public office in the European Union’ explicitly downgrades convergence models for widespread use across countries and different institutions and organisations, while both papers on European governance (OECD, 1999; COM, 2001) adjudicate the principle of convergence for the sake of simplicity and effectiveness. In this regard, the ‘Managing Conflict of Interest in the Public Service’ guideline does not see major obstacles to the standardised application of policy models, albeit recognising “the importance of the specific national contexts for policy application, therefore it provides a comprehensive reference model for public institutions seeking to ensure integrity in public decision-making” (OECD, 2003, p.14).

The factor that is made clear in ‘Regulating Conflicts of Interest for Holders of Public Office in the European Governance’ is the importance that this study gives to the right contextual environment.

“Codes of ethics 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” (Salminen et al., 2007, p. 14).

Then how can the problem be thought about differently? And where are the possible
silences? Salminen and his colleagues see the introduction of independent ethic
committees and commissions, as fully fledged organisations with prosecution
capacities, to be one possible remedy for resolving the conflict of interest problem
(Salminen et al., 2007, p. 9). However, it is less clear how such bodies should also
provide the atmosphere of trust, due to the lack of empirical evidence or studies
investigating this matter.

However, the views of other authors who may partly give alternative answers to the
above stated question can be brought in here. The traditional values upon which the
civil service was built, at least in western democratic systems, incorporated norms that
upheld an ideal of socialisation (Aucoin, 1994, p. 26), which is the underpinning force
for institutional integrity. Aucoin believed that informal socialisation was the main
component which helped the values of public service to continue to be consolidated

For such an ethical policy to be a viable alternative, it should not only be described in
detail within the statutes and legal documents, but also mutually shared by colleagues
within a certain public sector domain. Aucoin argued that “recommendations,
communications, teamwork, respect, trust, reciprocal expectations, and group-
enforcement of norms - in short collegiality – are the hallmarks of a professional
organisation, even when a hierarchy of offices are required for constitutional and
administrative purposes” (Aucoin, 1994, p. 38).

‘European Principles for Public Administration’ (OECD, 1999), albeit recognising the
importance of a centrally managed professional body claims that the values that such a
body is infused with are mutually exclusive. The principle of collective accountability
(OECD, 1999, p. 21) is discounted from the administration of public affairs, and its
alternative of individual responsibility exercised by managers is taken to be important in
developing an ethical organisational context. However, due to the persistence of
maladministration within the realm of public governance, the failure of such
instrumental means and practices in the effective resolution of administrative deficiencies is considerable. “The lack of collective action and self-defeating opportunism depends on the broader social context within which any game is played” (Gregory, 1999, p. 64).

5.7 Alternative models for consideration

**How can representation of the ‘problem’ be questioned, disrupted and replaced?** (Bacchi, 2009, p. 93). One possible model that can be tried in relation to the phenomenon of conflict of interest can be based on the main principles and norms of Critical Management Study; for instance, the holistic approach. There, the context is paramount: first the focus should be placed on the middle level of analysis (Thompson, 2005, p.274), in an organisational domain where hierarchically administered principles such as the chain of command is still preserved, and a clear organisational image in the form of norms, principles, customs, traditions and practices is sustained. Second, all policies that are thought to resolve ethical questions, such as cases of conflict of interest, should be properly accommodated within the larger organisational norms and principles. In other words, any policy design should be symbiotically matched with the wider organisational features and principles, especially in cases where the ethical dimension of an organisation’s functioning and operations is of concern. Furthermore, an attempt can be made to redirect the focus of the conflict of interest policy from personal/individual responsibility into organisational/ collective accountability without breaking the contextual compatibility addressed above.

Albeit there is an implicit understanding that the status quo arrangements are fundamental, and the wholesale ideological shifts are less expected and even desirable, policies which deal with ethical problems in public governance should take the particularities of public administration, and traditional safeguards with much care.

**What effects are produced by this representation of the problem?** (Bacchi, 2009, p. 92). On the basis of comparison made between the conflict of interest data and the broader contextual development in the public governance of EU, the conclusion can be made that they produce counterproductive effects. Mainstream managerial practices
may have a good application within certain sectoral interests, especially in the private sphere, but their application in the domain of public administration is very complicated. Under the current mode of governance, the standards of public accountability have become instrumental in nature, especially in terms of an over-emphasis on procedural, economic criteria (e.g. efficiency and productivity), rather than substantive public concerns (e.g. equality and representation) (Hague, 2000, p. 602).

Public management reforms at the international level were promoted by institutions that have as their primary mission economic development and globalisation, not management for its own sake (Mathiasen, 2007, p. 21).

Adherence to the accepted values is of utmost importance in keeping the correct course. Individualism is one such key concept, and the importance of the individual in resolving all ethical problems produces discursive effects (Bacchi, 2009, p. 40) that obliterate other developments. Here the CMT principle of denaturalisation is informative: it sees this denaturalisation norm as being a characteristic feature of mainstream managerial theories that disqualify other imperatives (Fournier & Grey, 2000, p. 18).

Conclusion

Thus, how do the OECD and EU represent the problem of conflict of interest? And how consistent are they with the broader EU administrative framework? Both papers represent the problem of conflict of interest diversely, and the contextual characteristics of European governance are in dissonance with the policy recommendations of the researched documents.

From the analysis undertaken above, key arguments can be moulded. There are two important factors: the first is the compatibility of the conflict of interest policy models, and the second is the contextual receptivity. The domain should be ready for the suitable accommodation of the chosen model. This in turn means that ready-made models would not be viable answers to resolve conflict of interest. The desired outcome can be difficult to achieve without the necessary contextual activators. For example, while the European public sector (OECD, 1999; COM, 2001) tries to define the appropriate
administrative context through the mores and principles that uphold the convergence model, such contextual ground is less welcoming to a viable conflict of interest policy. Thus, the resolution of the conflict of interest in both papers examined is ideologically and practically mutually contradictory. Whereas the ‘Management of the Conflict of Interest in the Public Service’ guideline (OECD, 2003) can be more or less adjusted to the European space (at least, the model can be uniformly incorporated through Member States’ administrations by means of convergence), ‘Regulating Conflicts of Interest for Holders of Public Office in the European Union’ (Salminen et al., 2007) is less supportive of such an accommodation.

‘Regulating Conflicts of Interest for Holders of Public Office in the European Union’ approaches the problem all-inclusively, in line with Critical Management Study. It questions all the ready-made suggestions concerning the conflict of interest phenomenon. For example, the instrumental approach that defines the problem as one to be remedied through the constant application of rules and regulations is downgraded, due to the empirical evidence, which shows no correlation between ethical probity and density of rules, codes and regulations (Salminen et al., 2007, pp. 7-10). This work is careful in its assumptions about best possible models for application. It not only recognises the particularities of public administration as a sector with its own characteristic and traditional forms of organisation, but it also stipulates the necessity of using approaches that are specially designed for each organisation and institution. Culture is recognised to be one of the key determinants for the context, without which regulations such as codes of conduct and disclosure procedures lose their reasonable application (Salminen et al., 2007, p. 9).

Therefore a viable conflict of interest policy cannot be modelled without already having a strong contextual foundation in place. Organisational changes are difficult to sustain without a strong ethical foundation and solid infrastructure. Recent developments in public service administration are in line with economically sounded paradigms. They rarely include visions for a long time frame. Alternatively, future-orientated, holistic approaches would revolve instead around different incentives than they do now.
References


OECD, (1999), CCNM/SIGMA/PUMA (99) 44/REV1, “European Principles for Public Administration”, SIGMA Papers, No. 27, OECD; OECDiLibrary, University of Helsinki, University Library.


