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**MODERNISING CONFLICT OF INTEREST POLICY AND PRACTICE:  
THE SPANISH EXPERIENCE**

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*This paper supports discussions in Session I by outlining recent efforts by Spain to modernise conflict-of-interest policy and practice.*

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## MODERNISING CONFLICT OF INTEREST POLICY AND PRACTICE: THE SPANISH EXPERIENCE

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### Introduction

The current Spanish Government has put substantial effort into modernising a national framework for conflict-of-interest policy in Spain. It has approved a Code of Good Government and prepared a draft Bill on Conflict of Interest. Considering the OECD's efforts to identify key elements of good practices and to determine conditions for their success in preventing and managing conflicts of interest, it would be interesting and useful to analyse the main Spanish issues and challenges for identifying and managing conflict of interest in the public service. Also, it is useful to review approaches and new measures for modernising conflict-of-interest policy and practice to promote good governance in Spain.

This paper is presented in three parts. The first part provides an overview of the key governance challenges that led to the enactment of the Code of Good Government and the commitment to modernise the legal framework for identifying and managing conflict of interest. The second part reviews the approaches that have been used in the formulation of the new Code of Good Government and the Bill on Conflict of Interest. The last part summarises the main lessons learned in the drafting process and from the debates during the preparation of the draft legislation.

### 1. General overview of context: Key governance challenges and preparation of the new law

#### *1.1. Key governance challenges*

The main challenge that led to the formulation of a policy in conflicts of interest was probably political disaffection. Public attitudes toward politics, politicians, political parties and Parliament<sup>2</sup> reflect a growing decline in confidence throughout Europe. Public opinion data clearly tell the story of this decline of confidence. Disillusionment with politics and politicians is an almost universal fact. It is likely that in Spain this trend toward political dissatisfaction, mistrust of political leaders and declining confidence in parliaments could be an expression of frustration with the traditional way of politics. The Code of Good Government and the draft Bill on Conflict of Interest attempt to change that trend and to improve the image of government and politicians.

According to its public announcements, the incumbent government has a keen interest in improving the quality of the Spanish democracy. That is the reason why in its party Manifesto (Programa Electoral, PSOE, 2004) scattered and diverse obligations but pointed concerns related to improving accountability, transparency and the rule of law are to be found. Clearly, improvement on conflict of interest policy is one of these commitments.

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<sup>2</sup>. Congreso or Low Chamber.

The current political party in government, PSOE, when it was in opposition made quite a severe criticism of former government policy making and public administration management. The reasons were that the quality of Spanish democracy and accountability of the public administration showed poor standards, and, according to the spokesmen of the mentioned party, there was an important capture of policies by some large interest groups, as well as too much media and economic attention. As a result, this situation brought about a lack of consideration toward transparency, democratic control and efficiency of public institutions and utilities. An example of this disinterest was its refusal to change an obsolete regulation on conflicts of interest of high-ranking officials. Subsequently, as already mentioned, the electoral programme of the party currently in office was characterised by a systematic proposal of improvements to generate a better democracy. Among these proposals was the change of the regulation of incompatibilities of the high-ranking officials.

It is also important to remember that on 23 April 2002 the Parliament already held a session on conflicts-of interest regulations and reached an agreement on the need to change the current law regarding political appointees and members of the Government. The dual reasons to change the law included the loopholes of the law and the lack of independence of the body in charge of the detection and investigation of the violations of the conflict-of-interest law. As a result, the Parliament mandated the Government to change the law and to improve the system of conflict of interest of the Government and political appointees. But the former Government did not act on the law.

Finally, it is important to note that conflicts of interest are not part of the systemic political agenda in Spain. Corruption was a socially perceived problem in the 1980s and in the beginning of the 1990s, but now it is not one of the problems that Spaniards consider important. Nevertheless, according to the Transparency International Global Corruption Barometer 2005, for the second year running, political parties are viewed as the most corrupt sector. When asked to indicate the degree of change over the past three years, almost 50% of Spaniards responded that corruption has increased. As a result, political parties and central, regional and local Governments should introduce measures to improve their image and to prevent corruption. Conflict-of-interest policy could help in regard to both objectives.

### ***1. 2. Preparation of the new law***

This section will introduce the key actors in the process; outline the positions of stakeholders and the motivation of driving forces.

The most important reform actors proved to be:

- The President of Government.
- Ministry of Public Administration (MAP).
- First Vice-presidency of the Government.
- Second Vice-presidency of the Government.
- Political parties and Parliament.
- Press and mass media.
- Business organisations.
- Trade Unions.
- NGOs linked to the fight against the corruption.
- International bodies.

We will now examine their positions and motivations:

*The President of Government:* the President, during the period as a candidate placed great emphasis on the need to reinforce transparency in government and to implement qualitative improvements in Spanish democracy. Because of that, he presented a “code of good government”, to be implemented in the case of taking office. That code outlined essential principles of impartiality, equality and uprightness for the exercise of a good democratic government, and the candidate demonstrated a high-level of commitment to promote them in government actions. This commitment is behind the reform of the regulation on conflict of interest and of the approval of the Code of Good Government. However, the Cabinet Office is in charge of the implementation of this presidential portfolio. This Cabinet Office has promoted certain small changes to the government draft bill on conflict of interest presented to the Parliament. The rationale behind these changes was to introduce a more institutional and less compromised approach than in the phase of opposition. This is no doubt due to pressure by ministers and high-ranking officials to temper the contents of the law prepared by the Ministry of Public Administration.

*Ministry of Public Administration (MAP).* The Ministry, headed by one of the closest members of the Presidential team in opposition, has the competence to define the fundamental lines of organisation and operation of the government and the central public administration as well as the civil service. The conflict-of-interest policy of the executive, the interdepartmental codes of conduct, promotion and the training and education in ethics and good government are part of this department’s responsibilities. Therefore, this department has been responsible for initiating the reform of the conflict-of-interest policy as well as for the drafting of the Code of Good Government (a team of civil servants of the Ministry was in charge of drafting the Code and the draft law, in consultation with national experts and the OECD). The MAP is a key actor of this policy because it is a natural ‘venue’ for this policy processes. At the same time, the MAP’s members strongly promote and defend this policy.

*First Vice-presidency of the Government.* This represents the co-ordinating body of the present Government, acting as government spokesperson and also heading the Commission of Under Secretaries, where projects and draft laws are analysed before being discussed by the Cabinet. All proposals of the Ministry of Public Administrations on conflict-of-interest have been discussed in the Commission of Under Secretaries and the Vice-presidency has supported such measures, communicating them to the press as commitments of the Government, once approved by the Cabinet.

*Second Vice-presidency of the Government,* in charge of the direction of the economic and fiscal policies of the Government, where most discrepancies have arisen on the reform of the regulation of conflicts of interest (more so, in Ministries that represent more the business world interests). The main reason has been the difficulty to find people from the business and economic world to work for Government if it potentially complicates their employment after cessation or if they are obliged to disinvest or to use a “blind management” for its assets and investments. It also raises questions about costs of the measures and the detection and investigation process.

*Political parties and Parliament.* Overall, Spanish political parties have supported the reform, even when they have proposed improvements in the text of the governmental project, in particular those measures aimed at assuring the existence of an impartial body acting as an administering body of the conflicts-of-interest policy. The opposition has criticised particularly the Code of Good Government because of the lack of any type of sanctioning regime.

*Press and mass media.* Generally they have also been in favour of the reform project. Recently, certain press representatives denounced the Minister of Industry because on a decision he had to make on an issue they thought he had a personal interest. According to the current law it is difficult to defend the

Minister's recusal and incompatibility, but the new draft law is stricter and could help to avoid these kinds of conflicts.

*Business organisations.* Considering that on the one hand some of the proposed measures of the reform project affect business contracting and staffing liberty, and that on the other hand it sanctions business in a case where breach of the law is established, the silence with which this project has been received by Spanish business organisations is striking. The meetings with representatives of business organisations have been warm and no objections to the draft law were expressed at these meetings.

*Trade Unions.* As transformations of conflict-of-interest policy affect so far high-ranking officials, trade unions have not shown much response, except for general support for the measures. Nevertheless, in the framework of the negotiations of the new Statute of the civil service they will have to respond as such regulation affects civil servants. Clear support is expected on all the measures that aim to promote integrity in the public service, provided that they do not affect established patronage interests, i.e. many public jobs.

*The NGOs linked to the fight against corruption.* Transparency International, the main NGO on this matter, have supported the reform, but they have stated that a deficit of independence exists regarding the body responsible for implementing the policy.

*International bodies.* The OECD as well as the Council of Europe, through the Group of States against Corruption programme (GRECO), have been important actors in the development of this reform and on the Code of Good Government. The OECD has been a very important help in the elaboration of normative texts.

Certainly, a policy of conflicts of interest aimed at integrating measures for the three branches of powers (legislative, executive and judicial) would diminish discrepancies and would open the road map to other actors, but no project of integration of that type exists. On the other hand, in the establishment of the new conflict-of-interest policy, other actors will emerge in the process, for example, administrative courts, or the Ombudsman, who can receive complaints from citizens on the operation of the administration and investigate such complaints, promoting suggestions to public authorities<sup>3</sup>.

The Bill is still before the Parliament and discussions follow regular procedures. After analysing the most important amendments it is possible to say that there are no serious disagreements among political parties. Later we will outline the main amendments supported by political parties.

## **2. The Code of Good Government and the Bill on Conflict of Interest**

This part of the paper reviews the approaches that have been used in the formulation of the new Code of Good Government and the Bill on Conflict of Interest. It will also analyse the strengths and weaknesses of the provisions of the Code of Good Government, as well as review the main features and key provisions of the Bill on Conflict of Interest. In particular the new disclosure system, cooling-off period for post-employment, sanctions - both disciplinary and civil law, institutional arrangements for implementation, etc.

In general terms, the strategy on preventing conflict of interest has been implemented fundamentally through norms of legal rank, which established regulatory regimes on incompatibilities. But these norms not only introduced limitations to the activities public officials could perform but to other decisive aspects

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<sup>3</sup>. The Ombudsman, plays a very important role in the control of administrative action. Thus, for example, from more than 20.000 complaints received every year, accepts around 60%, and, of these, obtains positive results for citizens of almost 60%.

on conflict-of-interest policy, such as norms of abstention and recusal, as well as ownership limitations with private companies such as those contracted-out or privatised by government. The norms on conflict of interest have been included in the Bill on Conflict of Interest and the Code of Good Government. Both norms are binding for members of Government of the Nation and high-ranking officials of the General Administration of the State, they claim to reach the same outcome: improving citizen's trust in their government and administration, and to make difficult a breach of the principles of impartiality, neutrality and objectivity that the Spanish Constitution and the laws proclaim for any government and administration.

### ***2.1 Code of Good Government: Overview***

In regard to the *Code of Good Government*, it is interesting to note that successive reports of international bodies such as the "GRECO 2001 report" stated that Spain did not have a code of conduct within its public administration. Even though legal norms existed, no codes of conduct were designed and implemented to guide and help employees. Because of this, the present Government, following the electoral manifesto, and the OECD Guidelines on Managing Conflict of Interest, approved in February 2005 a Code of Good Government. Its objective is to offer "to the citizens the commitment that all the high-ranking officials in the exercise of their functions should comply not only with the obligations predicted in the laws, but, also, its action should be inspired and guided by ethical principles of conduct that up to now have not been expressed explicitly in the norms".

Some of the principles that high-ranking officials are obliged to respect are:

#### *Transparency of information*

High-ranking officials will provide information to citizens about the operation of public services for which they are responsible and, when they carry out information campaigns, they will avoid any action that goes beyond an informative content.

#### *Documents custody*

They will guarantee a continuity of documents for their broadcast and delivery to new incoming Governments.

#### *Full-time public service*

High-ranking officials of the General Administration of the State will abstain from accepting posts and executive positions in organisations that limit the availability and dedication of their public duties.

#### *Austerity in the use of the power*

High-ranking officials will avoid external inappropriate or ostentatious action that can lessen the dignity with which public office should be exercised.

#### *Prohibition to accept gifts*

Any gift will be rejected, as well as any favour or service which goes beyond usual uses, social and courtesy, or affect the performance of their functions. Gifts of greater value will become part of the patrimony of the State.

#### *Promotion of the cultural environment*

The protection of the cultural environment and of the linguistic diversity will inspire the actions of high-ranking officials adopted in the exercise of their competences, as well as the protection of the environment.

#### *Protection and respect for gender equality*

In administrative action and, particularly, in the adoption of decisions attention will be paid to promoting respect for gender equality, and obstacles that can create difficulties will be removed.

*Objectivity*

The action of high-ranking officials will lay the foundations of objective considerations oriented toward the common interest, as opposed to any other factor that expresses corporate, family, personal interest or any other interest in contradiction with this principle. They will abstain from all kinds of business that can compromise the objectivity of the administration.

*Impartiality*

High-ranking officials will abstain from any private activity or interest that risks being a conflict-of-interest with their public position.

*Neutrality*

High-ranking officials will not speed up or influence the processing of paperwork or administrative procedure without a cause.

The Minister of Public Administrations will report annually to the Cabinet on the possible breaches of these ethical principles, in order to correct erroneous procedures and to propose appropriate measures to assure the objectivity of the decisions of the administration. The sanctions could include cessation.

## ***2. 2 Draft Bill on Conflict of Interest of the members of the Government and of the high-ranking officials of the General Administration of the State: Overview.***

Regarding the second norm, the government Bill on Conflict of Interest of the members of the Government and of the High-ranking Officials of the General Administration of the State, its objective is “to establish the obligations that are incumbent on members of the Government and on high-ranking officials of the General Administration of the State to prevent situations that can cause conflicts of interest”. This Bill (still before the Parliament) was initiated after the recognition that there was a shortage of the current law in force. An evaluation of its operation since 1995 recognised that the high-ranking officials’ incompatibilities and conflict-of-interest regulation needed an urgent reform. The present regulation establishes an absolute incompatibility with any another position, as well as a direct prohibition to have, directly or indirectly, more than 10% shares in companies that work with the public administration. Furthermore, a declaration of activities when taking office; a declaration of goods and rights; and an annual declaration of income is obligatory.

However, this norm has enormous gaps which might impede practical effects. Thus, breach of this norm is sanctioned with a mere communication in the Official Bulletin of the State and the investigation of the presumed irregular actions corresponds to a unit without any organic and functional independence of the Government. Certainly, the main existing problem is that the control of what is declared and the investigation of incompatible activities are in an inadequate body. Irrespective of the recognition of the professionalism of officials working in the Inspection Services of the Ministry of Public Administration it, is evident that its real capacity to declare incompatible to a Minister or Secretary of State is null and void. They occupy positions with rank of deputy director and are bound to the principle of hierarchy. Also, they do not have any capacity to investigate, neither the possibility to summon to the bureau high-ranking officials. Consequently, the role of the Inspection is that of registering documents, documents that cannot even be thoroughly analysed.

All these circumstances made it necessary to proceed with reform. The most important characteristics of the current Bill being discussed in Parliament are:

A. *Incompatibilities regulatory regime: stricter, more demanding and clearer*

High-ranking officials<sup>4</sup> will exercise their functions with absolute dedication and will not be able to harmonise their activity with any other position, whether of a public or a private character, on its own or others, for which they will not be able to perceive any other remuneration.

*Limitations to the exercise of private activities*

Following two years after their cessation, high-ranking officials will not be able to work in businesses or private companies related directly with the competences carried out.

*Declaration of Assets and Income*

The declaration of assets that Secretaries of state and Ministers will have to present in Registry of Activities, Goods and Patrimony will be published in the Official Bulletin of the State. Also, high-ranking officials will provide statements of assets at the start and end of their activity, and they will provide an annual declaration of income.

*Control and management of values and financial assets*

Financial assets of high-ranking officials will be managed in a "blind" trust fund, which cannot be operated by those interested parties.

*Management bodies, vigilance and control*

The Office of Conflicts of Interest is created under the Ministry of Public Administration's portfolio. It will be the body responsible for the management of the Registry of Activities, Goods and Patrimony, and responsible for the custody, security and integrity of the data and documents filed.

*Sanctions regime*

In the event of incompatibility special sanctions will be applied and proceedings started, publication of which will appear in the Official Bulletin of the State and a special communication given to the business contractor of a high-ranking official. Those that infringe the regulation, if still in office, will lose the right to get compensatory pension and should return the amounts perceived.

The business contractor will stop working with central, autonomous and local governments if he/she decides to continue with the contracting of a former high-ranking official that infringe upon of the incompatibility rules during the period that is applicable to that person. High-ranking officials who infringe this regulation will not hold a public position for a period of five to ten years.

### ***2.3 Definition of a conflict of interest***

The current definition of conflict of interest is based upon that provided in the OECD Guidelines. In this sense the new normative texts - Code of Good Government and the Bill on Conflict of Interest of the members of the Government and High-ranking officials of the General Administration of the State – it is established explicitly that conflict of interest exists when high-ranking officials intervene in decisions related to matters in which duties of their public position are influenced by their own private interests, that of their direct relatives, or interests shared with a third party.

The problem with this definition is that neither "potential" conflict of interest nor "apparent" conflict of interest is covered by it. OECD considers the following to be within the broad concept of conflict of

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<sup>4</sup> From this point the term "high-ranking officials" also includes members of Government.



interest: not only the situation where there is, in fact, an unacceptable conflict between a public official's interests as a private citizen and their duty as a public official, but also situations when there is an apparent conflict of interest and where there is potential conflict of interest. An apparent conflict of interest appears when there is a personal interest which might reasonably be thought by others to influence the public official's duties although there is not, in fact, such an undue influence, or may not be such an influence. The potential for doubt to arise about the official's integrity, and the integrity of the official's organisation, obliges one to consider the apparent conflict of interest as a situation that should be avoided. The potential conflict of interest may exist where an official has private-capacity interests which could cause a conflict of interest to arise at some time in the future. For example, if the official's spouse is going to be appointed in some time in the following weeks as executive director or CEO of a company involved in a current decision made by the public official, and the public official is aware of such an appointment. As a result, the basic definition used here assumes that a reasonable person, aware of all the relevant facts, would conclude that the official's private-capacity interest could improperly influence the official's conduct or decision making.

Consequently, a better definition could be: conflict of interest exists when high-ranking officials intervene in decisions related to their public duties that could be improperly influenced by real or apparent private interests of high-ranking officials, that of their direct relatives, or interests shared with a third party.

#### ***2. 4. Instruments to prevent conflicts of interest: the Spanish regulation***

The most important instruments to prevent and avoid conflict of interest are:

- a. Restrictions on additional ancillary employment.
- b. Declaration of personal income.
- c. Declaration of family income.
- d. Declaration of personal assets.
- e. Declaration of family assets.
- f. Declaration of gifts.
- g. Security and control in access to inside information.
- h. Declaration of private interests relevant to the management of contracts.
- i. Declaration of private interests relevant to decision making.
- j. Declaration of private interests relevant to participation in preparing or giving policy advice.
- k. Public disclosure of declarations of income and assets.
- l. Restrictions and control of post-employment business or NGO activities.
- m. Restrictions and control of gifts and other forms of benefits.
- n. Restrictions and control of outside concurrent appointments, for example, an NGO, a political organisation, a government-owned corporation, etc.
- o. Recusal (routine withdrawal from public duties when public officials realise that to participate in a meeting or to make a decision would place them in a position of conflict).
- p. Personal and family restrictions on property titles of private companies.
- q. Divestment either by sale or by the establishment of a trust or a blind management agreement.

We will now analyse how these instruments are regulated in both norms (Code of Good Government and the Draft Bill on Conflict of Interest of members of the Government and High-ranking officials of the General Administration of the State).

A. *Restrictions on additional ancillary employment.* According to the Draft Law on Conflicts of Interest, high-ranking officials will exercise their functions with absolute dedication and will not be allowed to to harmonise their activity with any other position, whether of a public or a private character, on its own or others, for which they will not be able to perceive any other remuneration. But high-ranking officials will be able to take up temporary activities of an international nature if the government appoints them to that position (i.e. in international organisations or international conferences). In addition, they are allowed to administrate the family and personal patrimony, to participate in colloquiums, conferences and seminars, provided that it does not interfere with the accomplishment of their duties, and to produce and publish technical, scientific, artistic and literary activities.

According to the Code of Conduct, high-ranking officials of the General Administration of the State will abstain from accepting posts and executive positions in organisations that limit the availability and dedication of their responsibilities.

B. *Declaration of personal income.* High-ranking officials will provide an annual declaration of income to the Registry of Activities, Goods and Patrimony. The required process to do that is to submit a copy of the last Declaration of Income Tax.

C. *Declaration of family income.* According to the Draft Law on Conflicts of Interest the declaration of income is voluntary for political appointees' spouses. The process to provide the annual declaration of income is to send a copy of the last Declaration of Income Tax.

D. *Declaration of personal assets.* High-ranking officials will provide a detailed declaration of goods, rights and debts to the Registry of Activities, Goods and Patrimony at the start and the end of their activity. They must also declare the main activity of the companies in which they, or their spouses and children, have an interest. They have a period of 30 days for providing that information, starting from the day they take over or from the day they leave office.

E. *Declaration of family assets.* According to the Draft Law on Conflicts of Interest the declaration of assets is voluntary for political appointees' spouses.

F. *Declaration of gifts.* According to the Code of Good Government any gift will be rejected, as well as any favour or service given under advantageous conditions, which goes beyond usual uses, social and courtesy, or can condition the performance of their functions. In the case of gifts of greater value, these will belong to the Patrimony of the State.

G. *Security and control in the access to inside information.* According to the Code of Good Government high-ranking officials must keep secret inside information they obtain because of their position.

H. *Declaration of private interests.* According to the Code of Good Government high-ranking officials in their action will abstain from any private activity or interest that may imply a risk of conflicts of interest with their public position. Consequently, according to the Draft Law on Conflicts of Interest, high ranking officials must:

- A. Declare in detail their private interests including information on the two years prior to the appointment. This declaration will be sent to the Registry of Activities, Goods and Patrimony.

They have a period of one month to provide this information, starting from the day they take up their position.

Declare any remunerated or unremunerated activity carried out directly or indirectly, i.e. through trustees or partners. This declaration will be sent to the Registry of Activities, Goods and Patrimony. The Registry will check these declarations. High-ranking officials have a period of three months to provide this information, starting from the day they take up their position. They must also report any change in the declared situation.

Declare any remunerated or unremunerated activity, employment, office, trade or profession carried out in the two years prior to the appointment. This declaration will be sent to the Registry of Activities, Goods and Patrimony and the Registry will check these declarations. High-ranking officials have a period of three months to provide this information, starting from the day they take up their position.

Declare any remunerated or unremunerated activity that will be carried out directly or indirectly after leaving office. This declaration will be sent to the Registry of Activities, Goods and Patrimony. The Registry will check these declarations. High-ranking officials have a period of three months to provide this information, starting from the day they leave office.

I. *Public disclosure of declarations of income and assets.* The declaration of assets that Secretaries of State and Ministers must present in the Registry of Activities, Goods and Patrimony will be published in the Official Bulletin of the State. In any case, there will be provisions to protect privacy and security of members of government.

J. *Restrictions and control of post-employment business or NGO activities.* Following two years after their cessation, high-ranking officials will not be able to work in businesses or private companies related directly to the competences carried out. It is considered that a direct relation exists in any of the following cases

- In the case of high-ranking officials, or their superiors after a high-ranking official proposition, or any head of dependent bodies by delegation or substitution, when they dictated resolutions in the last two years on the companies involved in the post-employment issue
- When high-ranking officials get involved in any collegian commission session where an agreement had been reached on those companies.

Members of government and high-ranking officials will not breach incompatibility regulation when they return to the private company in which they worked before being appointed as long as the activity they are going to carry out in the private sector is not directly related to the competences of their previous office, or where they cannot take decisions related to that office.

Also following two years after their cessation, it is forbidden for high-ranking officials to draw up contracts of technical assistance, directly or through companies where they hold more than 10% of the share capital, with public administrations.

The process of control of post-employment business is as follows:

- Former high-ranking officials should inform the Office of Conflict of Interest before carrying out any activity.

- The Office will analyse the situation and it will consider whether or not the activity violates the law.
- The Office will communicate its opinion to the interested party.
- The interested party is allowed to reply.
- Finally, the Office will make a decision.

K. *Restrictions and control of outside concurrent appointments* (for example, in an NGO, a political organisation, a government-owned corporation). According to the Code of Good Government high-ranking officials are allowed to occupy top positions in political parties but these party positions should not interfere with their public duties. High-ranking officials are also allowed to hold an unremunerated directorship or membership of the board of directors of a public company when the purpose of the company has a relationship with the responsibilities of the public position held. It is not allowed to be part of more than two public company boards of directors. Finally, high-ranking officials can participate in NGOs, charity organisations or foundations provided that they do not receive any kind of remuneration.

L. *Recusal* (routine withdrawal from public duties when public officials realise that to participate in a meeting or to make a decision would place them in a position of conflict). In general, according to the Law of the Legal Regime of the Public Administrations and of the Common Administrative Procedure of 1992, all public officials and political appointees must abstain from the release of an administrative act or an administrative contract when:

- They are involved in the administrative procedure on behalf of the administration and as persons concerned.
- They are acting for somebody who is concerned by the administrative procedure.
- They are related to somebody, who is acting for a person concerned by the administrative procedure.
- They are employees of a person concerned by the administrative procedure.
- They have a close friendship with or clear hostility to someone concerned.
- They delivered expertise on topics which are relevant to the decision on the administrative procedure.

According to the Draft Law on Conflicts of Interest high-ranking officials must also abstain from intervening in procedures where the companies they (or their family) managed or represented in the two years prior to the appointment are concerned. All cases of abstention must be communicated in writing to the Registry of Activities, Goods and Patrimony.

M. *Personal and family restrictions on property titles of private companies*. High ranking officials cannot hold more than 10% of the share capital of companies when:

- These companies are concessionary companies of the public sector.
- These companies are contractors of work, services or supplies for the public sector.
- These companies receive subsidies or grants from the public sector.

If a person is appointed as a high-ranking official and holds more than 10% of the share capital of companies in the circumstances mentioned above he/she must disassociate himself/herself by selling the share capital within a period of six months. Financial assets of members of government and high-ranking

officials who work on regulatory agencies will be managed in a "blind" trust fund; that is without knowledge or operation by those interested parties.

### ***2.5. The body in charge of overseeing the conflict-of-interest policy***

An Office of Conflicts of Interest is foreseen in the Draft Law on Conflicts of Interest. This is a body with functional autonomy, and comprising public officials, though under the Department of Public Administration. As such a body does not exist as yet, it is impossible to give data on its operation, budget, or personnel. According to the law its responsibilities are:

- Demand of the high-ranking officials' observance of the law.
- Be in charge of the Registry of Activities, Goods and Patrimony.
- Report to the government every six months on the observance of the law and the sanctions.
- Detect violations of the law.
- Investigate the violation cases (the Office can have access to tax and social security records).
- Prosecute violations following a due process.
- Approve post-employment activities.

The sanctions are imposed by the Cabinet when there is a very serious violation or when the person sanctioned is a member of the government or a Secretary of State. When the violations are serious the sanctions are imposed by the Ministry of Public Administration. If high-ranking officials do not submit declarations the violation is considered as serious but if they submit declarations with false information the violation is considered as very serious.

### ***2.6. The amendments to the Draft Law on Conflicts of Interest***

The most interesting amendments are:

- A. From United Left. 1. The Office of Conflicts of Interest should be a board composed by 10 members, chosen by the Parliament among people proposed by political parties. The head of the office will be chosen among these 10 board members. The members should be chosen by a majority of 3/5 of MPs votes.
- B. From the Popular Party. 1. The Office of Conflicts of Interest should be part of the Parliament. 2. The Office will have functional autonomy. 3. The Head of the Office should be appointed by the Parliament (Congreso or Low Chamber) among members of the State Council. 4. The Office will have a board of between 10 and 20 members appointed half by the Parliament (Congreso or Low Chamber) and half by the Government. 5. Every six months the Office will submit to the Parliament and to the Government a report on the compliance of the law. 6. All cases of abstention must be communicated in writing to the Registry of Activities, Goods and Patrimony within a period of one month. 7. Former high-ranking officials should inform the Office of Conflict of Interest before carrying out any activity. The Office will analyse the situation and it will consider whether or not the activity violates the law. The Office will inform the interested party and the company affected of its opinion within one month. 8. High ranking officials will provide an annual declaration of income to the Registry of Activities, Goods and Patrimony within a period of three months starting from July. 9. The declaration of assets that Secretaries

of State and Ministers must present to the Registry of Activities, Goods and Patrimony should not be published in the Official Bulletin of the State.

C. From the PSOE. 1. The Directors and General Secretaries of the independent regulatory agencies should be included in article 3 and bound by the law. 2. It should be considered a serious violation of the law to omit required documents voluntarily.

D. From CiU. 1. The declaration of assets that Secretaries of State and Ministers must present to the Registry of Activities, Goods and Patrimony should not be published in the Official Bulletin of the State. 2. Public officials who work in the Office of Conflicts of Interest must keep secret all information they obtain.

Negotiations are still in progress, but we are aware that the Government will not accept that the Office of Conflicts of Interest be part of the Parliament. Probably, there will be an agreement on the other issues, and the law will guarantee a certain level of functional autonomy to the Office under the Department of Public Administration.

## ***2. 7. Strengths and weaknesses***

The Code is considered very complete and detailed, based on discussions with academics and comparative experience. The President of the Government was personally involved in the definition of values. As mentioned above, the Minister of Public Administrations will report annually to the Cabinet on the possible breaches of these ethical principles, in order to correct the erroneous procedures and to propose appropriate measures to assure the objectivity of the decisions of the administration. The sanctions could include cessation. But, it is true that the annual report to the Government will not be very useful if it is secret and the Minister does not have support from the President and the other members of the Government. The sanctions will not lead to cessation if there is no social pressure or political support. The report can be a very difficult task for the Minister, and it will be a source of trouble and tension without any benefit. A Minister is part of a team and he/she cannot forget that. In conclusion, the report should be drafted by an autonomous body, and not by a Minister.

The Draft Law on Conflicts of Interest is one of the most complete and sophisticated in the world. The law includes all the most important instruments to prevent and to avoid conflicts of interest but only high-ranking officials and members of the national Government are bound by the law. Spain is a decentralised country and central government cannot regulate conflicts of interest at the regional level. The law could have included civil servants, but the problems and circumstances of the vast majority of civil servants are different from the problems of political appointees. Spain needs a law on conflicts of interest of local elected officials, but the Draft Law was not the best instrument in which to solve that problem.

There are two particular weaknesses in the law. First, the Office of Conflicts of Interest is under the Ministry of Public Administration and its functional autonomy is not guaranteed. The law should include certain provisions to guarantee a certain level of independence. If not, an independent body in charge of the implementation of the norm the law could be a failure. There will be a lot of political pressures to avoid disciplinary actions against violations and to keep secret all the erroneous procedures. An office under a ministry is not sufficiently protected against political pressures. Second, there is certain inconsistency in the system of sanctions. It is a very serious offence to submit a declaration with false information to the Office of Conflict of Interest. The sanction could be dismissal and the high-ranking official charged with that offence would not hold a public position for a period of five to ten years. But it is a serious offence not to submit the declaration. The sanction in this case is publication of the violation in the Official Bulletin of the State. Probably, both offences should be considered as very serious. Finally, there is no sanction for the violation of the duty of recusal.

### **3. The implementation process and conclusions**

This last part summarises the main lessons learned in the drafting process and at the debates. It also reviews the small number of measures planned for implementing the new Code of Good Government and the Bill on Conflict of Interest. It should review the functionality and consistency of measures to achieve declared policy objectives, and should try to identify certain key elements of good practice and to determine conditions for their success in preventing and managing conflict of interest. Nevertheless, it is almost impossible to give thorough information on these issues, considering that the Bill is still in Parliament and the Code was enacted nine months ago.

The Code of Good Government is already in force, though an implementation plan has not been established as yet. The Code was published in the Official Bulletin of the State and a handbook with the Code and the Draft Law has been distributed in the ministries and agencies of the central government. Some seminars, courses, and conferences on conflicts of interest have been scheduled in the National Institute of Public Administration.

Probably, the main lesson learnt was to recognise that, in order to be successful in developing a sound policy on conflicts of interest, it is necessary to have the commitment of the President of Government. It is also true that it is very difficult to have an independent body in charge of the implementation process. Governments tend to avoid the independence of the body in charge of the implementation of the conflict-of-interest policy. But, it should also be understood that the fact of being dependent on the Parliament does not guarantee the independence of the body because political parties could influence the composition of the board and introduce party politics in the body.

In conclusion, Spain has begun a reliable process to prevent and to avoid conflicts of interest, and we sincerely believe that these first steps are encouraging.