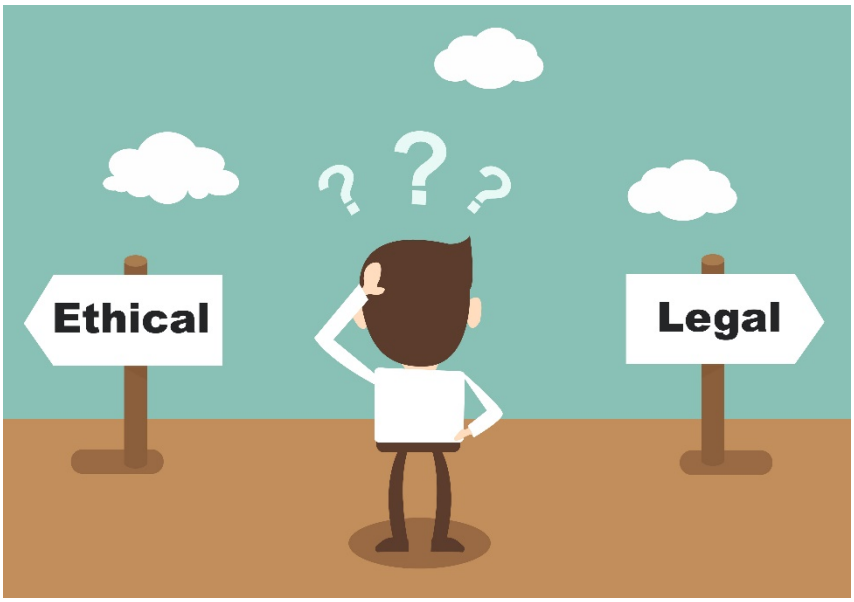
STUDY

Requested by the Committee on Budgetary Control

European Parliament

Practices on the Side-Earnings of EU Public Office Holders and Functionaries



Policy Department for Budgetary Affairs
Author: Centre for Strategy & Evaluation Services (CSES)
Directorate-General for Internal Policies
PE 732.269 – May 2022

EN

Practices on the Side-Earnings of EU Public Office Holders and Functionaries

Final Report

Abstract

The study on 'Practices on the Side-Earnings of EU Public Office Holders and Functionaries' was carried out for the European Parliament's Budgetary Control Committee in 2022. The study highlights significant differences in the rules being applied in the various EU Institutions and Member States. It highlights a number of good practices and the possible implications for the proposed EU ethics body.

This document was requested by the European Parliament's Committee on Budgetary Control.

AUTHORS
Jack MALAN, Marta DIMAURO, Giorgio CACCIAGUERRA RANGHIERI, Centre for Strategy & Evaluation Services (CSES).

ADMINISTRATOR RESPONSIBLE
Niels FISCHER

EDITORIAL ASSISTANT
Adrienn BORKA

LINGUISTIC VERSIONS
Original: EN

ABOUT THE EDITOR
Policy departments provide in-house and external expertise to support EP committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU internal policies.

To contact the Policy Department or to subscribe for updates, please write to:
Policy Department for Budgetary Affairs
European Parliament
B-1047 Brussels
Email: Poldep-Budg@ep.europa.eu

Manuscript completed in May 2022

This document is available on the internet at:
http://www.europarl.europa.eu/supporting-analyses

DISCLAIMER AND COPYRIGHT

CONTENTS

LIST OF ABBREVIATIONS

CoE	Council of Europe
DG HR	DG Human Resources and Security
ECA	European Court of Auditors
ECB	European Central Bank
EC	European Commission
ECJ	European Court of Justice
EIB	European Investment Bank
EP	European Parliament
EPPO	European Public Prosecutor's Office
EU	European Union
EUPAN	European Public Administration Network
GRECO	Groupe d'Etats contre la corruption
HATVP	Haute Autorité pour la transparence de la vie publique
MEP	Member of the European Parliament
OECD	Organisation for Economic Cooperation and Development
OLAF	Office européen de lutte antifraude (European Anti-Fraud Office)
UN	United Nations

LIST OF BOXES

LIST OF FIGURES

LIST OF TABLES

EXECUTIVE SUMMARY

The study on 'Practices on the Side-Earnings of EU Public Office Holders and Functionaries' was carried out for the European Parliament's Budgetary Control Committee by the Centre for Strategy & Evaluation Services (CSES) in the period December 2021 to May 2022.

1. Resume of Study Objectives

To summarise, according to the European Parliament's terms of reference, the objectives of this study were to:

- Provide information about different practices of regulation on side-earnings in the main EU Institutions and in a sample of EU Member States, third countries and international organisations.
- Identify, classify and assess different types of regulation including situations where there is no regulation, internal notification, the requirement for a request for authorisation, public disclosure (with different degrees of transparency), financial and/or timely limitation, or a complete ban.
- Identify the forms of sanctions that exist in case of breaches, including their application in practice, the rationale for such sanctions and their effectiveness in regulating side-earnings.

In terms of scope, the study examined the situation with regard to side-earnings in the EU Institutions (European Parliament, European Commission, European Council and Council of the European Union, European Court of Auditors, European Court of Justice, European Central Bank, and the EU's decentralised agencies) as well as a sample of EU Member States (BE, BG, CZ, DE, ES, FR, IT, PL, RO and SE). In addition, experience in several third countries has been analysed (the UK and the US) along with a number of international organisations (Council of Europe, OECD, UN and World Bank). Within the EU Institutions, Member States and third countries, and the international organisations, the study examined the rules and practices with regard to side-earnings for different types of public office holders, notably officials, members of parliament and appointed members of the institutions.

For the purpose of this study, a 'side activity' refers to any secondary activity (gainful or voluntary, self-employed or dependent) which is performed by the public office holder in addition to their main mandate and which could have an impact on the public interest the public office holder represents. 'Side earnings' are generated from some side activities and are the particular focus of this study.

2. Key Conclusions

Overall, it is clear from the research that there are some significant differences in the rules on side earnings between different EU Institutions and between these institutions and EU Member States. There are also similarities.

2.1 EU Member States

The definitions of side earnings are similar in terms of rationale and ultimate purpose in different EU Member States covered by this research. However, these definitions place varying degrees of emphasis on underlying principles such as avoiding conflict of interests, external influence on the public office and preserving good conduct, transparency and ethics as opposed to simply using a 'neutral' definition based on a financial and/or time threshold.

There are quite different rules across EU Member States on the type of outside activities that can be undertaken by public office holders alongside their main job. Some EU Member States have all-embracing restrictions but provide some specific exemptions whereas in other cases a list of specific permitted or forbidden outside activities is provided. In a few cases there is no prior

definition of prohibited outside activities and all cases are assessed on a case-by-case basis. Only a minority of EU Member States have financial thresholds for side earnings.

In all Member States, the procedure for obtaining approval to engage in outside activities is similar. This procedure involves a written application to a line manager or competent department explaining the extent and nature of the proposed outside activity and other details including the side earnings that may be obtained. However, the precise information that should be disclosed varies. Furthermore, the sanctions and penalties that can be applied if the rules on side earnings are breached are not always defined in the legislation and rules.

There are, however, different rules and procedures in EU Member States for the side earnings of elected and non-elected public office holders. In general, there is a much greater emphasis on the principle of self-regulation in the case of elected public office holders than is the case of officials but the rules on transparency and public accountability are stricter in the first category.

2.2 EU Institutions

Compared with the Member States, international organisations and the comparator third countries covered by this study, the EU Institutions have relatively strict rules on side earnings. This applies particularly to the rules for officials. There is a considerable diversity of approaches to regulating side earnings in the EU Member States but in general, the EU Institutions have stricter rules.

There are significant differences in the rules on side earnings between different EU Institutions. These differences mainly relate to: definitions; whether or not outside activities and earnings are permitted; the financial thresholds relating to side earnings, the requirements with regard to declarations of interest; and rules on gift and hospitality.

The variations in the rules in different EU Institutions on side earnings - which often result from the founding Treaties themselves - can be justified on the grounds that they reflect the specificities and traditions of the various EU Institutions, in particular the extent to which officials and members are likely to face an actual or potential conflict of interests. However, it is difficult to see why this could justify some of the differences that actually exist (e.g. on the financial thresholds for side earnings or types of permitted activities). Moreover, it could be argued that the principle of equity applies and that EU officials should be treated equally irrespective of the EU entity they work for, even though discrepancies are inherent to the legal framework set by the legislator in the EU Staff Regulations and the principle of administrative autonomy of each EU institution.

There are also differences in the rules on side earnings that apply to different types of officials, members and other public office holders. As in the Member States, the rules for elected public office holders in the European Parliament tend to be less strict than those for officials and rely more on self-policing. There are differences in these rules between the different EU Institutions since Members of the Commission, the Court of Justice and the Court of Auditors cannot engage in any other occupation during their term of office whereas Members of the European Parliament can.

2.3 Classifying the different side earnings rules

In relation to the second study aim – to identify, classify and assess different types of regulation including situations where there is no regulation – the report highlights a number of findings.

First, some EU Member States have very precisely defined rules indicating the situation in which outside activities are permitted. In other cases, there a greater reliance on a 'principle-based' approach with a higher degree of discretion allowed for officials and their superiors to decide what constitutes appropriate behaviour in relation to side earnings.

The study underlines the fact that the rules on side earnings should ideally balance several considerations – allowing some discretion to pursue personal interests but at the same time ensuring that there is no conflict of interests. Allowing public office holders to pursue 'side'

interests is a way of keeping in touch with the 'real world' and enabling useful knowledge and expertise to be deployed in official duties. It also enabled the know-how of public office holders to benefit other institutions. At the same time it is necessary to avoid a situation where a public office holder's duties are neglected and/or undue influence is brought to bear on policymaking.

The legal basis for the regulation of side earnings is quite fragmented in several countries and spread across a quite large number of pieces of legislation and codes. Whilst this is not in itself necessarily problematical from a regulatory point of view, it can make the rules less transparent and more difficult to understand. In most cases, the rules on side earnings form part of an overarching ethics or integrity framework that regulates all aspects of the behaviour of public office holders.

Likewise, the institutional structures being used to oversee and enforce the rules on side earnings range from highly centralised, single agency set-ups to more fragmented systems. Relatively few EU Member States have single agencies or departments with overall responsibility for ensuring compliance with the rules on side earnings. However, the study suggests that this approach has a number of advantages.

Assessing the effectiveness of different approaches to regulating side earnings is not straightforward as there are no simple measures of effectiveness. However, although difficult to assess, ultimately the most appropriate measure is the extent to which the rules help to promote trust and the legitimacy of democratic institutions. Different approaches also reflect different cultures and traditions.

3. Possible Implications for the Proposed EU Ethics Body

This study supports the case put forward in the European Parliament's 2021 Resolution for setting up an independent EU ethics body to strengthen trust in the EU Institutions and their democratic legitimacy. This study highlights differences in the rules being applied by different EU Institutions. It can be argued that these differences are justified given the different roles of the various EU Institutions. However, the complexity of the system reduces transparency and makes it more difficult for both EU citizens and those who are subject to the rules to understand and apply them. Variations in the rules on side earnings are also at odds with the principle of equity and the notion that all EU officials should be subject to the same regulations (even though discrepancies are inherent to the legal framework set by the legislator in the EU Staff Regulations and the principle of administrative autonomy of each EU institution). An EU ethics body could also help strengthen public trust in EU Institutions.

The proposed EU ethics body could have a useful role in promoting harmonisation of the rules on side earnings and their implementation across the various EU Institution. Despite the different roles of the various EU Institutions, there is no obvious justification for most of the differences in the rules, especially in the case of officials and other civil servants. Whilst it might be to some extent appropriate for each institution to decide for itself which outside activities and side earnings should be permitted or not permitted (although even here there is likely to be a lot of common ground), the rules for officials on financial thresholds, procedures for obtaining authorisation, disclosure requirements, and gifts and hospitality could be brought closer together if not harmonised entirely.

The proposed EU ethics body could also have a useful role in encouraging the sharing of information and good practices. The competent services of the European Parliament, Commission and the Council Secretariat already regularly exchange information and good practices. Although the internal provisions are not identical, this exchange has nevertheless been useful for the alignment of procedures and rules, and to share ideas on the most effective awareness raising measures. In effect, the proposed EU ethics body would take over the hosting of this networking activity and could help to develop it further, both in terms of content and scope since several EU bodies do not participate in existing exchanges.

Because the way in which side earnings are regulated is influenced by the political culture and traditions in different countries and institutions, it is debatable whether it is appropriate to define 'best practices'. That said, it is possible to summarise some basic points that the proposed EU ethics body might consider as a guide:

Pointers to Best Practices in the Regulation of Side Earnings

- The rules on side earnings should form part of an **overarching ethics or integrity framework** that governs all aspects of the behaviour of public office holders.
- It is desirable to allow public office holders - within the applicable framework set by the EU treaties - to pursue certain **outside interests** as a way of keeping in touch with the 'real world' and enabling knowledge and expertise to be deployed – but only as long as this does not lead to duties being neglected and/or undue influence being brought to bear on policymaking.
- As such, the rules on officials' side earning should strike a balance between allowing some discretion to pursue paid and unpaid outside interests but at the same time ensuring that there is no **conflict of interests**. This is the case now albeit with some variation in the rules across the EU Institutions.
- In accordance with the **principle of equity**, civil servants of all types and seniority should be subject to the same basic rules on side earnings / outside activities – there is no obvious justification for significant differences. While all staff are subject to the Staff Regulation there are some differences in the implementing rules. While a degree of self-regulation is appropriate for elected members, the same basic rules should also apply to them across different institutions.
- Clearly defined **rules on side earnings** are needed to promote transparency and to help those covered by the rules to understand them. This applies particularly to: (a) the types of side activities that are not permitted; (b) financial limits on permitted side earnings; (c) the requirements with regard to declarations of interest (where applicable); (d) procedures for obtaining permission to engage in outside activities; (e) the penalties and sanctions if the rules are breached.
- From an **institutional and regulatory perspective**, there is a case for a degree of centralisation as long as this is not taken too far and leads to excessive bureaucracy and disregards the independence and specificities of different entities. An ethics body must be able to fulfil its mandate independently and have sufficient resources to exercise an effective role.

Overall, this study suggests that the proposed EU ethics body should have a relatively loose coordinating role in relation to the regulation of side earnings rather than taking over and centralising the functions that are currently exercised by individual EU Institutions. The competent services within the different EU Institutions already have well-established systems and these seem to generally work well. Over centralising the enforcement of side earnings rules would almost certainly lead to more bureaucratic procedures and possibly less effective application of the rules.

Furthermore, there is a case for the proposed EU ethics body having varying degrees of involvement in the regulation of side earnings (and possibly other ethical issues) for elected and non-elected office holders in the EU Institutions, respectively. Feedback from the research suggests that there would be advantages in terms of transparency and independence in giving the proposed EU ethics body overall responsibility for helping to enforce the side earnings rules that apply to senior officials and elected public office holders, including MEPs. The role of the proposed EU ethics body in relation to officials would be limited to the points highlighted earlier – harmonisation of rules, sharing information and good practices, etc. It could also have a role in

reviewing certain cases where the outcome of an investigation is disputed. In the case of Members, the self-policing approach could be retained but with the proposed EU ethics body monitoring the concrete application of the rules, bringing suspected cases of a breach to the competent bodies and advising on disputed cases.

1. INTRODUCTION

By way of introduction, this section provides a resume of the study objectives and scope and summarise the research plan. The final subsection outlines the report structure.

1.1 Resume of Study Objectives

To summarise, according to the European Parliament's terms of reference, the objectives of this study were to:

- Provide information about **different practices of regulation on side-earnings** in the main EU Institutions and in a sample of EU Member States, third countries and international organisations.
- Identify, classify and assess **different types of regulation** including situations where there is no regulation, internal notification, the requirement for a request for authorisation, public disclosure (with different degrees of transparency), financial and/or timely limitation, or a complete ban.
- Identify the forms of **sanctions that exist in case of breaches**, including their application in practice, the rationale for such sanctions and their effectiveness in regulating side-earnings.

For the purpose of this study, a **'side activity'** refers to any secondary activity (gainful or voluntary, self-employed or dependent) which is performed by the public office holder in addition to their main mandate and which is likely to have an impact on the public interest the public office holder represents. **'Side earnings'** are generated from some outside or external activities and are the particular focus of this study.

In the study we distinguish between **elected and non-elected public office holders**. In relation to the EU Institutions, the first category includes Members of the European Commission and Members of the European Parliament whilst the second category relates to officials of the various institutions (in this study we use the term 'official' to cover all types of civil servants).

On the basis of the comparative analysis of different regulations and their implementation, the purpose of the study was to **develop recommendations of good practices** that could be replicated across different institutional settings as well as other relevant conclusions which might contribute to an understanding of the issues at stake in their full complexity. The overall aim of the study is to provide evidence and relevant information to support the EP's Resolution on "Strengthening transparency and integrity in the EU Institutions by setting up an independent EU ethics body" and a possible inter-institutional agreement.

In terms of **scope**, the study examined the situation with regard to side-earnings in the EU Institutions (European Parliament, European Commission, European Council and Council of the European Union, European Court of Auditors, European Court of Justice, European Central Bank, and the EU's decentralised agencies) as well as a sample of EU Member States (BE, BG, CZ, DE, ES, FR, IT, PL, RO and SE). In addition, experience in several third countries has been analysed the UK and the US along with a number of international organisations (Council of Europe, OECD, UN and World Bank). Within the EU Institutions, Member States and third countries, and the international organisations, the study examined the rules and practices with regard to side-earnings for different types of public office holders, notably officials, members of parliament and appointed members of the institutions.

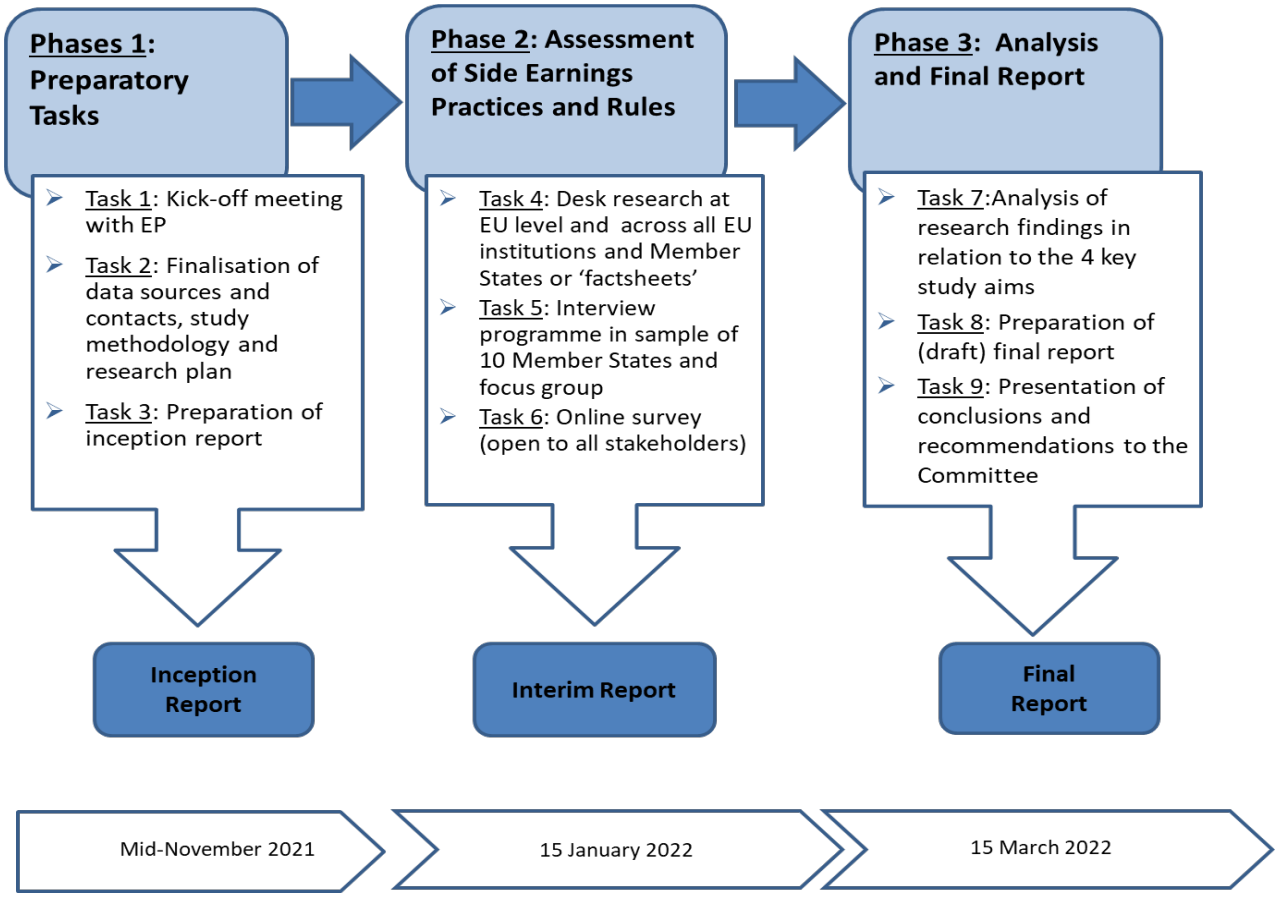
1.2 Methodological Approach

The study began in late 2021 with a kick-off meeting with the EP (18 November 2021). The Phase 1 'preparatory tasks' that were undertaken included finalising key research questions, developing the factsheet template and the research tools. The finalised research plan and tools were contained in an **inception report** (7 December 2021).

During Phase 2 of the study, desk research was undertaken to examine information on the rules on side-earnings in the EU Institutions, the sample of Member States, international organisations and the other comparators. The desk research focused on the first two research issues in the list of key study questions (see Box 1.1), i.e. side earnings rules at the EU and Member States levels. In parallel with this desk research, an interview programme was carried out to examine the other key issues in the checklist). A total of 26 interviews were undertaken at the EU and Member State levels. The interviews focused on Part B of the checklist.

An **interim report** was submitted to the European Parliament on 21 January 2021. The feedback has been taken into account in the further research and in this report. Figure 1.1 below reproduces the research plan that was contained in the inception report.

Figure 1.1: Research Plan



A number of key sources were used in this study:

- At the EU-level, in addition to the EU Treaties, regulations, codes of conduct, guides and other documentation available from the various EU Institutions, a number of other important sources have been examined. This includes the European Parliament's 2021 Resolution on "Strengthening transparency and integrity in the EU Institutions by setting up an independent EU ethics body" ((2020/2133(INI)), the various supporting studies and other research on side earnings.

- At the EU Member State level there is a lot of material on the regulation of side earnings available. Appendix B sets out the full list of the sources that we have used for the sample of 10 Member States.
- We also examined the relevant rules (codes of conduct, staff regulations, etc.) of several international organisations that used as comparators, namely the Council of Europe, the Organisation for Economic Co-operation and Development, the United Nations, and the World Bank.

The online survey was conducted via EUPAN (European Public Administration Network) which agreed to send a link to the questionnaire to each of its 85 members. EUPAN is an informal network of senior officials responsible for public administration in the Member States and the European Commission. At the time when this report was prepared, a total of 21 responses had been obtained but only a relatively small number of these were fully completed. A copy of the list of key research questions is shown below.

Box 1.1: Key Research Issues - Side-Earnings of the Public Office Holders

Part A: Existing Rules on Side-Earnings and Side-activities

1) How are side activities defined by the administration / institution you work for? Do you distinguish between different types of secondary activities (gainful or voluntary, self-employed or dependent)?
2) What sort of rules exist to regulate the side-earnings of public office holders in your country? Are these rules different for civil servants and elected public office holders? Please comment specifically on:
   - Under what circumstances (if any) are office holders allowed to engage in side-activities? Is there a financial threshold on the earnings that can be generated by a side-activities?
   - What is the procedure to request permission to engage in such activities and who is responsible for granting and removing this permission? How does this procedure work in practice?
   - What type of information (if any) has to be disclosed for permission to engage in side-activities? How often are you required to update this information?
   - Is it necessary to sign a declaration of interest at the start of public office? If yes, what type of information is required to be disclosed (e.g. all direct and indirect financial interests, business affiliations other)?
   - What precautions are in place to help prevent/mitigate potential conflicts of interests that arise from side-activities as well as concerns relating to the 'revolving door phenomenon'? To what extent do you think that these precautions are effective?
   - What sanctions and disciplinary procedures exist in cases where the rules on side activities are breached? How effective are the sanctions and procedures in deterring intentional breaches?
3) In your opinion, what is the rationale and underlying ethical considerations behind the current rules on side-activities and what factors could help explain the current level of regulation (or de-regulation/ lack of regulation) in your administration i.e. institutional culture, political and regulatory scrutiny, other?
4) In your opinion, what effect (if any) do side-activities have on the full availability of the civil servants or elected office holder for their main job?
5) To what extent can side-activities (gainful or not) adversely affect the integrity and independence of the national civil servant or the elected public office holder, in your view?
6) Overall, to what extent do the rules on side-activities strike an appropriate balance between allowing public office holders to engage in secondary activities and preserving the public interest?

Part B: Institutional Structures and Side Activities Best Practices

7) How well do the side-earnings rules work for civil servants and elected public officer holders? Is there a need to further improve the current regulatory framework in your country?
8) What sort of institutional set up is there for the regulation of side earnings? How centralised or decentralised is it? Is there an "ethics body" in your country? If yes, what are its powers and doe these cover all types of public office holders? How well is it resourced?
9) What are the main lessons to be learnt for the proposed EU ethics body?

1.3 Structure of the Report

Box 1.2: Structure of the Report

- Section 2: Background – Side Earnings and Proposed EU Ethics Body – this section examines the EP's 2021 Resolution on setting up an EU Ethics Body and previous research on the subject.
- Section 3: EU and Comparator Rules on Side Earnings – assesses the similarities and differences in the side earnings rules that have been adopted by the various EU Institutions. The existence of differences is part of the rationale for setting up an EU Ethics Body. We then compare the EU rules with those adopted by the Council of Europe, OECD, UN and World Bank.
- Section 4: Assessment of Key Issues in the Regulation of Side Earnings – here we review and compare the rules in force in a sample of 10 EU Member States and comparator countries and international organisations. In relation to each aspect of the rules we compare national experience with the rules in EU Institutions.
- Section 5: Conclusions and Implications for the Proposed EU Ethics Body – sets out the overall conclusions of the study and presents possible good practices and implications of the research for the proposed EU ethics body.
- Appendices: in addition to the list of secondary sources, there are appendices containing the factsheets for the different EU Institutions, the sample of 10 Member States and third countries.

2. BACKGROUND – SIDE EARNINGS & PROPOSED EU ETHICS BODY

This section reviews the background to the assignment. Section 2.1 examines the nature of side earnings and key issues with regard to their regulation. Section 2.2 then examines the European Parliament's 2021 Resolution on the proposed EU ethics body and other reports and studies.

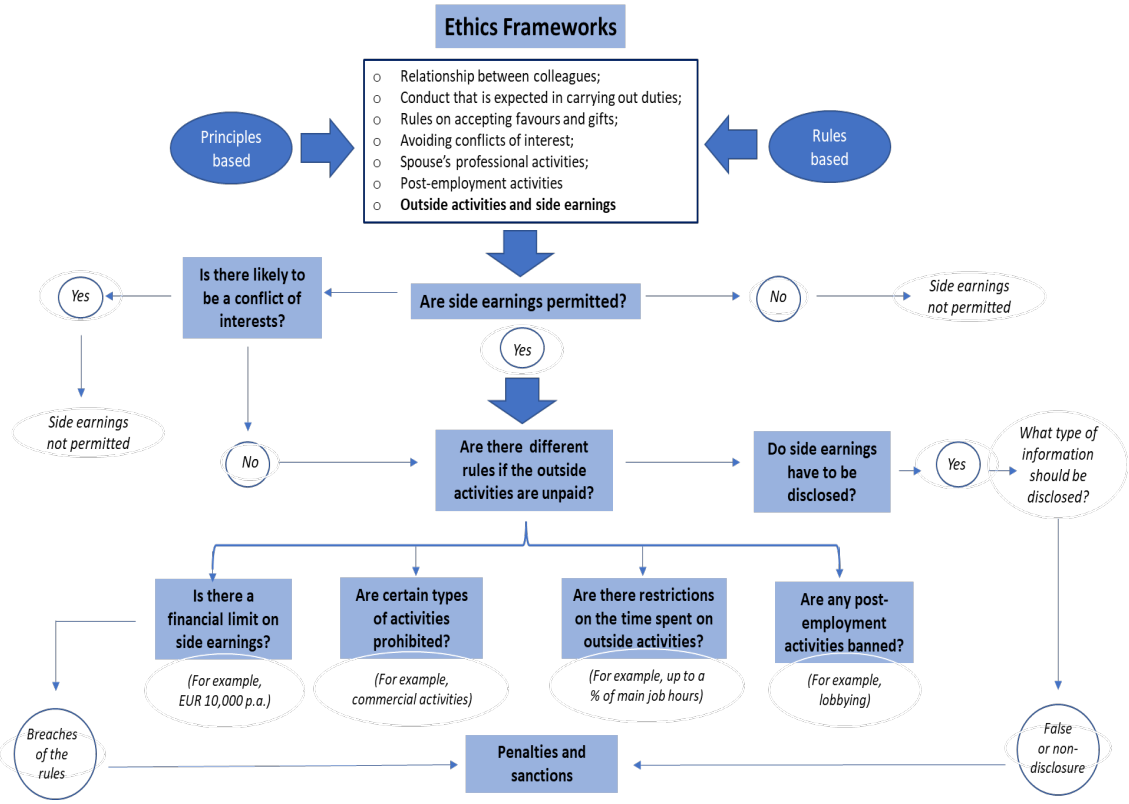
2.1 Background – Side Earnings and Ethics Frameworks

We begin by examining the nature of side earnings and key issues that arise in relation to their regulation and then consider the supporting ethics framework.

2.1.1 Side Earnings

In essence, **side earnings are income that a public office holder earns from activities that are undertaken in addition to his or her main job, duties and functions**. Under the EU Staff Regulation, these activities are defined as "an outside activity, whether paid or unpaid, or […] any assignment outside the Union"[1]. The definitions used by other EU Institutions, Member States and international organisations are similar, although some definitions and rules are more restrictive than others in terms of permitted 'external' activities. We examine the various definitions of side earnings in more detail in Section 3. The chart below provides a simplified depiction of the various components making up the regulatory framework for side earnings.

Figure 2.1: Overview – Regulation of Side Earnings



[1] Article 12b REGULATION No 31 (EEC), 11 (EAEC).

In the public domain, **the need for rules on side earnings stems from the risk that having 'outside' activities (whether remunerated or not) leads to conflict of interests (or 'double loyalties')** in which an office holder's behaviour is influenced by considerations that are not in the public interest. There are also purely practical considerations suggesting the need for restrictions – a side activity, whether paid or not, can potentially take up too much time and affect the level of commitment of the public office holder to his main role and duties. However, the need to avoid conflicts of interest needs to be balanced against **other considerations**. In particular, there is an argument in favour of some flexibility, partly because public office holders can contribute to outside activities that have a wider public benefit (e.g. lecturing). Moreover, a 'good' employer should arguably allow their staff some discretion to pursue personal interests (e.g. charitable work) as long as these do not conflict with the responsibilities of the public office.

As Section 4 of this report shows, striking an appropriate balance between these considerations is not straightforward and many factors need to be taken into consideration in devising an appropriate regulatory framework.

2.1.2 Ethics Frameworks

The regulation of side earnings is one aspect of the rules and obligations governing public office holders' conduct. The rules on side earnings usually form part of an overarching ethics or integrity framework. Most organisations – whether in the public or private sectors – have ethics frameworks.

The purpose of **ethics frameworks** is to define rules on what types of behaviour are acceptable or not acceptable, thereby helping to ensure that conflicts of interest do not arise and jeopardise the principles of good governance. Ethics frameworks typically include rules covering a range of issues relating to conduct in public life such as: the conduct that is expected in carrying out professional duties; rules on accepting favours, gifts, honours; the relationship between colleagues; rules on conflicts of interest; a spouse's financial interests; post-employment activities with a bearing on the institution; and standards of professional conduct generally. Underpinning the rules on professional conduct are fundamental principles such as loyalty, honesty, impartiality, competence, justice, public interests, accountability, efficiency and effectiveness, openness and transparency.

One of the **earliest initiatives to develop an ethics framework** for public office holders dates back to 1996 when the UN General Assembly adopted the *International Code of Conduct for Public Officials* and recommended that member states use it to develop their own guidelines. In the case of the EU Institutions, the Staff Regulations have for many years been used as a guide for the conduct that is expected of officials. For the political office holders, i.e. the Members of the EU Institutions, the ethical framework has been set from the EU's beginnings in 1954 and 1958 by the founding Treaties, i.e. the Treaty on European Union and the Treaty on the Functioning of the EU and the treaties preceding them. In addition, the European Parliament, Commission and other institutions have introduced their own more specific codes of conduct and rules of procedures. In each case, there are separate rules for different types of office holders, in particular civil servants on the one hand and elected members on the other. These along with the ethics frameworks used by EU Member States and international organisations such as the Council of Europe, OECD, UN and World Bank are examined in Section 0.

In its publication *Codes of Conduct – A Topic Guide*, Transparency International makes a useful distinction between **'aspirational' and 'rule-based' codes of conduct**. [2] It argues that while aspirational codes establish broad ethical principles for employees, they generally do not list prohibited kinds of behaviour or set out sanctions for violations of the code. Rule-based codes are "more legalistic, specifying and prohibiting inappropriate behaviours as well as providing

[2] Transparency International (2015), 'Codes of Conduct – A Topic Guide', p. 4.

enforceable sanctions for contraventions of the code".[3] Transparency International comment that whereas aspirational, peer-regulated codes are the norm in the private sector, public sector codes are more likely to be rule-based to help enforce compliance.[4] Indeed, adherence to these codes is normally a condition of ongoing employment and can be legally binding. Transparency International conclude that good codes of conduct for public officials incorporate aspects of both models into a single document.[5]

The **structures used to implement ethics frameworks** vary, ranging from quite small departmental units (typically human resources or legal services) to entities that have an overarching role across governments and other organisations as a whole. No particular approach prevails and as we explain in Section 4, there are both highly centralised and decentralised models to be found.

Assessing the **effectiveness of different types of ethics frameworks** is not straightforward. As noted above, several overarching principles and objectives which underpin the development of the legislative and ethical frameworks can be identified. Overall, they can be grouped into five broad categories: (i) safeguarding the ability of public office holders to effectively represent their constituents and citizens, (ii) preserving and enhancing public trust, (iii) increasing transparency, (iv) minimising the risks of conflict of interest and last (v) deterring unethical behaviour. The key issue in this respect is the extent to which different approaches help ensure that public office holders behave in a way that avoids any conflict of interests or other risks to ethical behaviour in fulfilling their duties. Although difficult to assess, the most appropriate measure is the extent to which the rules help promote trust in the legitimacy of democratic institutions.

2.2 European Parliament's 2021 Resolution on an EU Ethics Body

On 16 September 2021, the European Parliament passed a Resolution on "Strengthening transparency and integrity in the EU Institutions by setting up an independent EU ethics body"[6] (hereinafter 'the Resolution'.

The Resolution argues that "the independence, transparency and accountability of public institutions and their elected representatives, Commissioners and officials are of the utmost importance for promoting the trust of citizens, which is necessary for the legitimate functioning of democratic institutions." **The Resolution emphasises that whereas the ethical standards applicable to the EU Institutions are in many respects ahead of those applicable to their national equivalents, these standards "have not been enforced in a satisfactory manner".** This, it is argued, stems from the fact that the current EU ethical framework relies on a self-regulatory approach, the absence of EU criminal law, and insufficient resources and competences to verify information provided by EU public office holders.

A further weakness lies in the fact that the **ethical standard frameworks at the EU level are tailored to the specificities of each EU institution**, leading to different processes and levels of enforcement even of the same EU Staff Regulations in different EU Institutions, agencies and bodies. Moreover, within the EU Institutions different legislative and other provisions aimed at preventing conflicts of interest contain varying definitions of the term 'conflict of interest'. As a result, the Parliament concludes that there is a complex system which is difficult for both EU citizens and for those who have to respect the rules to understand.

The Resolution goes on to argue that any development of **the EU ethical framework must have a clear legal basis while respecting the separation of powers** as laid down in the Treaties, but that

---

3 Bruce, W. (1996), "Codes of ethics and codes of conduct: perceived contribution to the practice of ethics in local government", Public Integrity Annual, p. 23

4 https://blog.transparency.org/2012/08/03/codes-of-conduct-and-the-legal-system-ideas-and-implications/

5 Transparency International (2015), 'Codes of Conduct – A Topic Guide', p. 4.

6 European Parliament resolution of 16 September 2021 on strengthening transparency and integrity in the EU Institutions by setting up an independent EU ethics body (2020/2133(INI)).

the creation of an independent ethics body could contribute to strengthening trust in the EU Institutions and their democratic legitimacy. Amongst others, all lead candidates in the 2019 European elections supported the creation of an independent ethics body common to all EU Institutions. The Resolution argues that the new EU ethics body should be delegated a list of agreed tasks to propose and advise on ethical rules for Commissioners, Members of the European Parliament and staff of the participating institutions before, during and in some cases after their term of office or service in line with the applicable rules.[7]

The Resolution foresees that **the ethics body would be responsible both for defining the rules and carrying out the monitoring and enforcement** of the ethical obligations across the EU Institutions. Another proposal is that the ethics body should be able to exchange information (e.g. on tax) with national authorities where necessary for the performance of its tasks. It is envisaged that it would also work closely with EU bodies such as OLAF, EPPO, the Ombudsman and the European Court of Auditors.

2.3 Relevant Studies and Other Research

The EP's Resolution was preceded by the publication of several important studies and other research that helped to shape its contents.

2.3.1 EP - Strengthening Transparency and Integrity via the New 'Independent Ethics Body' (October 2020)

In October 2020, the EP's AFCO Committee published a report on *Strengthening Transparency and Integrity via the New Independent Ethics Body*[8]. The study examined experience in Canada, France and Ireland. The report argued that the there was a fragmented approach to ethics among the EU Institutions. Moreover, it claimed that integrity in public office cannot be guaranteed through a self-regulatory approach and yet this is the approach adopted by most of the EU Institutions.

The report argued in favour of **setting up an EU ethics body that is fully independent of the various EU Institutions** with external members (appointed via an open call) and its own staff. The ethics body would be tasked with upholding an overall code of conduct that would complement the more specific codes of individual EU Institutions. It was foreseen that the ethics body would have investigative powers. However, in the absence of the EU having competence in criminal law, the ethics body would have to rely on the individual institution's sanctions and enforcement mechanisms in case where a breach of the EU ethics framework is detected.

Whilst arguing in favour of a lower financial threshold for gifts, the 2020 EP report did not directly address the question of what sort of rules should be adopted by the EU ethics body for side earnings.

2.3.2 Prof. Alberto Alemanno - Legal Study on an EU Ethics Body (January 2021)

A few months later, in January 2021, a second study was published that is also very relevant. This was a study by Prof. Alberto Alemanno entitled *Legal Study on an EU Ethics Body*.[9] Whereas the current study being carried out by CSES focuses on side earnings rules and the possible remit of the proposed EU ethics body, Prof. Alemanno's earlier study focused on legal and institutional issues

---

[7] The applicable rules are defined as: (i) the Statute for Members of the European Parliament (Articles 2 and 3); (ii) Parliament's Rules of Procedure (Rules 2, 10 (5, 6 and 7) and 11, 176(1), Annex I (Articles 1 to 8), and Annex II); (iii) the Commission's Rules of Procedure (Article 9), its Code of Conduct (Articles 2 to 13 and Annex II), and its Decision of 25 November 2014 on the publication of information on meetings held between members of the Commission and organisations or self-employed individuals, and the same decision for its Directors-General; and (iv) the Staff Regulations' Articles 11, 11(a), 12, 12(a), 12(b), 13, 15, 16, 17, 19, 21(a), 22, 22(a), 22(c), 24, 26, 27, 40, 43, 86, 90, 91a and Annex IX, applying mutatis mutandis to all staff employed by the agencies if signatories of the IIA; (v) the IIA on a mandatory Transparency Register.

[8] Dr. Markus Frischhut (2020), *Strengthening transparency and integrity via the new 'Independent Ethics Body' (IEB)*

[9] Prof. Alberto Alemanno (2021), *Legal Study on EU Ethics Body*. The study was commissioned by Daniel Freund, MEP from the Group of the Greens/European Free Alliance.

relating to the new body, as well as the enforcement of rules rather than the mapping of different rules themselves. The study argues that **multiple cases of unethical behaviour in the EU Institutions have revealed significant systemic shortcomings in the implementation of the current framework.** In particular, it is argued that the current EU set-up is "highly fragmented, with each EU institution having its own dedicated framework, limited in its independence, lacking adequate investigatory authority and whose sanctioning powers are seldom used".[10]

To rectify these shortcomings, the report argues in favour of an **Inter-Institutional Agreement** between two, or more, EU Institutions aimed at pooling together – within the framework of their respective procedural autonomy – the monitoring of the respect for the ethical standards to an Inter-institutional Body (IIB), both for members and staff, as well as entrusting to it investigatory and partial sanctioning powers. Prof. Alemanno's study examines experience in several countries and he argues that this highlights the benefits of having one single and permanent ethics oversight body as this would guarantee a greater degree of independence, facilitate the efficient and consistent enforcement of rules, as well as pooling expertise and know-how, thereby helping to develop a critical mass of practice. The report foresees the EU ethics body autonomously implementing existing ethics rules, while acting under the control of the Ombudsman, the Court of Auditors as well as OLAF.

The **French 'Haute Autorité pour la Transparence de la Vie Publique'** is identified in the study as a potential model because it is a single agency with a role in relation to both officials and elected members at the national and regional levels. However, the author argues that this example cannot be replicated exactly for the EU Institutions because whereas the French agency has sanctioning powers, at the EU level these powers would lie with the European Court of Justice.[11]

2.3.3 ECA - The Ethical Frameworks of the Audited EU Institutions: Scope for Improvement (2019)

A third source that is directly relevant to the EP's September 2021 Resolution and this study was the Special Report No 13/2019 *The ethical Frameworks of the Audited EU Institutions: Scope for Improvement* published by the European Court of Auditors on the ethical frameworks of the EU Institutions. The ECA's special report covered the ethics frameworks for staff and Members of the European Parliament, the Council of the EU/European Council and the European Commission. Unlike the present study, the ECA's focus was on a wider range of issues relating to ethical conduct (not just on side earnings). The study's **overall conclusion was that "to a large extent, the audited institutions had established adequate ethical frameworks with room for improvement."** The study did not assess how the ethical frameworks have been implemented.

The weaknesses that were identified and applied in varying degrees to the different EU Institutions included shortcomings with regard to: the overall strategies on ethics, formalising procedures for checks on declarations and developing clearer guidance on the assessment criteria for staff, enhancing the scrutiny of Members' declarations by establishing a written standard procedure, gifts and entertainment policies, whistleblowing and post-mandate provisions (in the last two cases, specifically shortcomings applying to the Parliament's ethics framework). The ECA's report also found areas where **the ethical frameworks would benefit from cross-institutional harmonisation** (e.g. outside activities for staff, and declarations on Members' spouses and partners' activities). In particular, amongst other things, it highlighted the risks if there continues to be an absence of a common EU ethics framework with clear procedures and reporting channels that applies across the various Institutions.

The ECA's report adopted the OECD's 'integrity management framework' as a basis for its own assessment. It argues that while there are common provisions applicable to all EU Institutions there are also specific legal ethical requirements for the different bodies reflecting different roles,

[10] Prof. Alberto Alemanno (2021), *Legal Study on EU Ethics Body*, p. 7.
[11] Prof. Alberto Alemanno (2021), *Legal Study on EU Ethics Body*, p. 24-27.

responsibilities and risks. The report examines a **wide range of ethical issues of which side earnings** are but one element (other ethical issues include anti-harassment, transparency and enforcement mechanisms). At the time when the ECA wrote the report, it argued that while the Commission had an ethics strategy in place, neither the Council nor the Parliament had such a strategy in place containing objectives and priorities to be monitored, for either staff or Members. The ECA pointed out that there is no overview at the Council of all of the national ethical frameworks applicable to its Members, or whether these frameworks cover the requirements that guarantee ethical conduct in the Council's proceedings.

As part of the ECA's study, a survey was carried out to assess awareness of the ethical framework among the staff of these institutions. With regard to the effectiveness of the EU ethics and side earnings rules, the ECA's survey suggests that **only around half of EU staff have a good knowledge of the ethics rules** in their institutions while a further 59% claimed that the ethics culture was high in their workplace.

In different ways, the studies highlighted above, and the subsequent EP Resolution of September 2021, each conclude that the EU Institutions' ethics framework is fragmented with differences between one body and another in the rules for side earnings and other ethics issues. The conclusion is that this weakens the ability of the EU to ensure that the highest standards of integrity are maintained for office holders. Furthermore, it is argued that the example of several countries points to the merits of having a single EU ethics body that can uphold an overall EU ethics framework for the various institutions.

2.3.4 Other relevant reports and studies

There are several other relevant studies and sources of information for this study on side earnings.

European Public Accountability Mechanism

The first of these is the European Public Accountability Mechanism (EuroPAM) database, which is part of an EU-funded digital whistleblowing project (DIGIWHIST) which was developed by the European Research Centre for Anti-Corruption and State-Building (ERCAS) with support from HORIZON 2020.[12] The database provides details on the rules for political financing, financial disclosure, conflicts of interest, freedom of information and public procurement for a total of 32 countries as well as the European Parliament and Council.[13] EuroPAM uses a scoring system (0-1) to indicate the comprehensiveness of the rules, i.e. whether or not a country's laws include a provision for specific controls. These scores are then aggregated to produce an overall score of between 0 and 100 for each of the five fields. There is also a qualitative assessment and list of relevant legislation for each country. The two EuroPAM fields of greatest relevance to this study are **financial disclosure and conflicts of interest**.

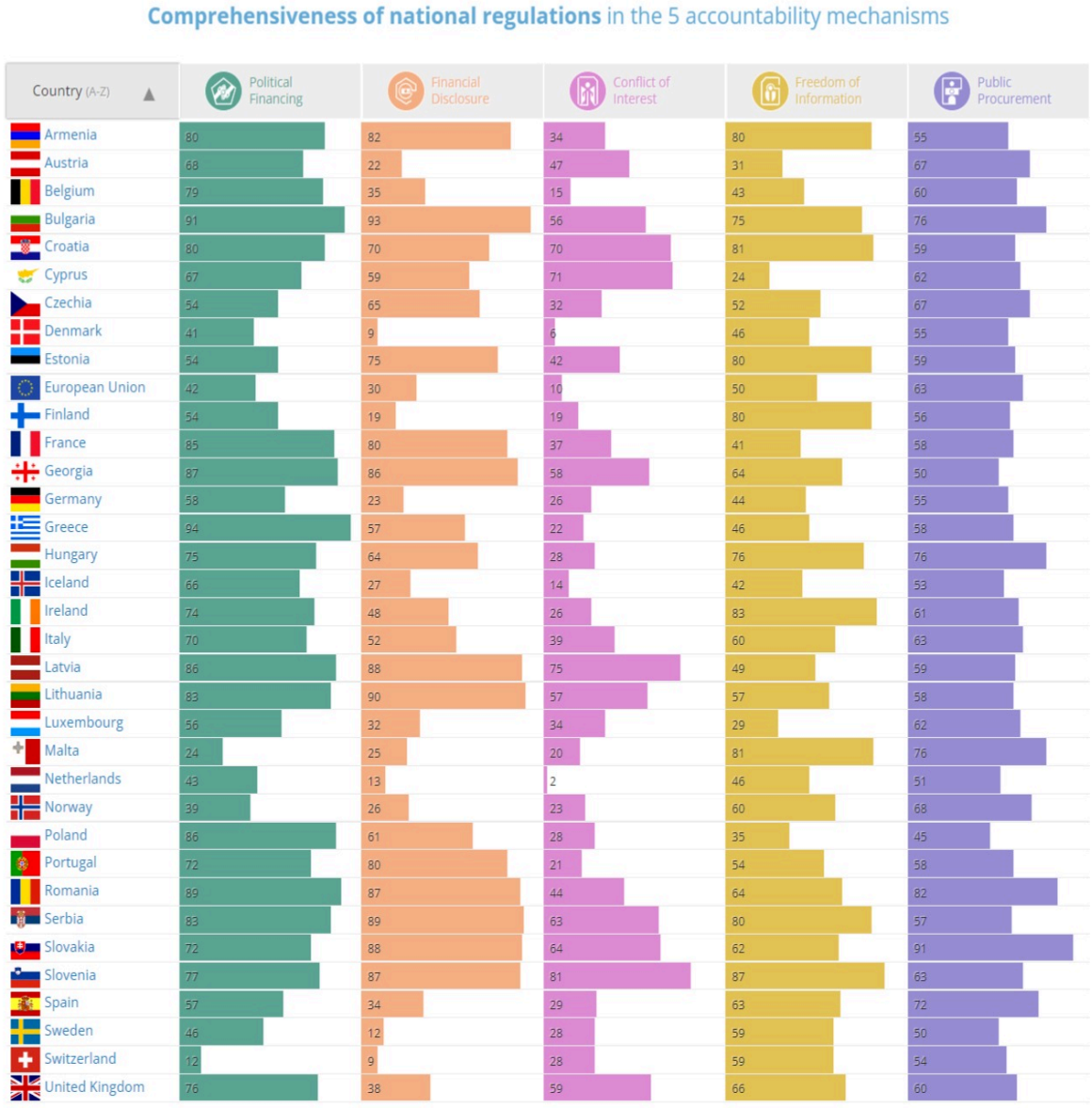
The dataset for the conflicts of interest field is based on 155 indicators spread across different types of public office holders (head of state, ministers, members of parliament, officials). In each case the indicators ranging from whether or not there is a rule for accepting gifts to the existence or otherwise of an enforcement body with the powers to enforce sanctions. There are separate scores for each indicator and for each category of public office holder. The last year for which data has been collected in 2020 and in that year, the overall 'comprehensiveness' score for the EU Institutions was 10[14] representing the average for the scores for the different categories of public office holder. This score was the same as in 2012 (the first year for which there is a dataset) and compares with an average score of 37 for the 32 countries. The corresponding overall 'comprehensiveness' score for

[12] https://europam.org/?module=overview .
[13] Armenia, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.
[14] 0-100 scale, higher value means more regulation.

the EU Institutions for the financial disclosure field in 2020 was 30 (compared with 8 for 2012). This compared with an average of 53 for the 32 countries covered by the EuroPAM database for 2020.

The basic conclusion that can be drawn from the EuroPAM database is that **while the comprehensiveness of the EU-level financial disclosure rules has increased over the years, there has been no significant change in the case of the rules on conflict of interests**. Moreover, the EU Institutions lag behind the Member States in terms of comprehensiveness for both these factors. We reproduce an extract from the database below, providing full details for the comprehensiveness of EU and national regulations in relation to the five different types of accountability mechanisms. It has to be said that the scoring system is rather basic with a simple 'yes-no' score for the existence or otherwise of rules on different aspects of conflicts of interest and financial disclosure, and this could produce misleading results. However, the analysis is nevertheless interesting.

Figure 2.2: Extract from EuroPAM Database



Source: https://europam.org/?module=overview

European Public Administration Network

Another useful source of information is the EUPAN (European Public Administration Network) 2019 survey on *Ethics, an integral part of the organizational culture in the European public administrations,* which was undertaken under the Romanian Presidency. The survey covered 26 EUPAN representatives, experts from human resource management departments of central public administrations from 25 European countries and from the European Commission.

Whilst not focusing specifically on side earnings, the survey provided **a useful overview of the broader framework governing ethical behaviour**. The research confirmed that all of the countries had codes of ethics for civil servants, some dating back several decades while others were more recent (the most recent regulations and ethics codes were adopted in Slovenia (2015), Netherlands (2016), Latvia (2018), Slovakia (2019) and Romania (2019). Across Europe norms regarding the conduct of public administration employees are promoted through various types of regulations, from constitutions to administrative law, special laws regarding ethical norms for civil servants and other categories of public administration employees (the military, state police, prison police, magistrates), as well as guides, declarations and brochures. The EUPAN survey established that a breach of ethical norms may lead to disciplinary action, while serious offences are tackled in the criminal law. Along with impartiality and objectivity, prevention of conflicts of interest - especially relevant to the regulation of side-earnings – are the most common values underlying the rules.[15]

Transparency International's 'Codes of Conduct Topic Guide'

Last but not least, a further very relevant source of information is Transparency International's 'Codes of Conduct Topic Guide' which was published by its Anti-Corruption Helpdesk in 2015.[16] Although somewhat dated now, the study nevertheless contained information that is relevant to this assignment. According to Transparency International's Global Corruption Barometer data[17], **public officials are perceived to be the third-most corrupt group after political parties and police.** It argued that codes of conduct can help remedy this trust deficit.

The report makes an important distinction between aspirational and rules-based codes of conduct. The first type consists of broad ethical principles for employees but generally do not list certain kinds of prohibited behaviour or specify sanctions for violations of the code. Rule-based codes, on the other hand, are more legalistic, specifying and prohibiting inappropriate behaviour as well as providing enforceable sanctions for contraventions of the code.

Transparency International argues that whereas aspirational, peer-regulated codes are the norm in the private sector, **public sector codes are more likely to be rule-based to help enforce compliance.** It is argued that codes of conduct work in several way. Firstly, they establish a benchmark to assess officials' behaviour against the values of integrity, honesty, impartiality and objectivity. Secondly, given that issues that are technically legal are not necessarily ethical, **codes of conduct** are helpful in providing clarity on ambiguous points. Finally, they serve as an overarching integrity management framework by formalising definitions, procedures (such as conflict of interest resolution and declarations) and enforcement processes.

In the report, Transparency International advocates the inclusion of interest and asset disclosure mechanisms for senior public officials in order to identify potential conflicts of interest which it sees as being at the root of most unethical behaviour in public office. However, it does not suggest detailed guidance on the regulation of side-earnings. The report traces the origins of codes of conduct back to 1996 when the UN General Assembly adopted the International Code of Conduct for Public Officials and recommended that member states use it to develop their own guidelines. It highlights the German civil service's anti-corruption code and the UK's code of conduct for board members of public bodies as good practice examples.

---

15 https://www.eupan.eu/wp-content/uploads/2020/05/Ethics-an-integral-part-of-the-organizational-culture-in-the-European-public-administrations.pdf

16 Matthew Jenkins (2015), Transparency International 'Codes of Conduct Topic Guide'.

17 https://www.transparency.org/en/gcb.

2.4 Conclusions – Background to the Study

The **European Parliament's 2021 Resolution** argues the case for an EU ethics body on the grounds that whilst the existing rules in the EU Institutions are in many respects ahead of those in the Member States, there is a fragmented picture with differences in the rules being applied by different institutions and a lack of satisfactory enforcement with an over-reliance on self-regulation. The complexity of the system and lack of overall transparency makes it difficult for both EU citizens and for those who have to respect the rules to understand them.

This study builds on three **other studies** cited in Section 2.3 that were undertaken before the adoption of the 2021 Resolution and which support the case for an ethics body. Whereas Prof. Alberto Alemanno's study *Legal Study on EU Ethics Body* (2021) focuses on the legal and institutional considerations in setting up an EU ethics body, the present report examines the rules specifically on side earnings. In this respect it also differs from the ECA's special report on *The Ethical Frameworks of the Audited EU Institutions: Scope for Improvement* (2019) and the AFCO Committee's report on *Strengthening Transparency and Integrity via the New Independent Ethics Body* 2020) which are both more wide-ranging. In this section, we have also reviewed other research on ethics frameworks that is relevant to this study.

The existing literature underlines the fact that the regulation of side earnings is one aspect of an individual's conduct in public office. As such, the rules on side earnings usually form part of an **overarching ethics or integrity framework** that regulates all aspects of the behaviour of public office holders. The rules on side earnings have to balance several considerations, allowing some discretion to pursue personal interests but at the same time, ensuring that there is no conflict of interests.

3. EU AND COMPARATOR RULES ON SIDE EARNINGS

In this section we examine the rules on side earnings in the EU Institutions, identifying the similarities and differences. Section 3.6 then considers the approach adopted by a number of international organisations that have been used as comparators to the regulation of side earnings.

3.1 Overall Framework

Before turning to the various EU Institutions, we first examine the relevant aspects of the overall EU framework for side earnings of officials, namely Regulation No 31 EEC[18] (hereinafter the 'EU **Staff Regulation'**). The rules for Members are regulated separately and considered in the subsections relating to the different EU Institutions.

Side earnings for officials of the EU Institutions are regulated by a number of different rules. An overall framework is provided in the EU Staff Regulation. The most relevant articles are shown below. In addition we mention several other articles that are relevant in our view.

Box 3.1: Key Provisions of the EU Staff Regulation

- Article 11: "An official shall carry out his duties and conduct himself solely with the interests of the Union in mind. He shall neither seek nor take instructions from any government, authority, organisation or person outside his institution. He shall carry out the duties assigned to him objectively, impartially and in keeping with his duty of loyalty to the Union."
- Article 11a: "1. An official shall not, in the performance of his duties and save as hereinafter provided, deal with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence, and, in particular, family and financial interests. 2. Any official to whom it falls, in the performance of his duties, to deal with a matter referred to above shall immediately inform the Appointing Authority. The Appointing Authority shall take any appropriate measure and may in particular relieve the official from responsibility in this matter. 3. An official may neither keep nor acquire, directly or indirectly, in undertakings which are subject to the authority of the institution to which he belongs or which have dealings with that institution, any interest of such kind or magnitude as might impair his independence in the performance of his duties."
- Article 12b: "Subject to Article 15, an official wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside the Union shall first obtain the permission of the Appointing Authority. Permission shall be refused only if the activity or assignment in question is such as to interfere with the performance of the official's duties or is incompatible with the interests of the institution."
- Article 13: "If the spouse of an official is in gainful employment, the official shall inform the appointing authority of his institution. Should the nature of the employment prove to be incompatible with that of the official and if the official is unable to give an undertaking that it will cease within a specified period, the appointing authority shall, after consulting the Joint Committee, decide whether the official shall continue in his post or be transferred to another post".
- Article 16: "Officials intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform their institution thereof using a specific form. If that activity is related to the work carried out by the official during the last three years of service and could lead to a conflict with the legitimate interests of the institution, the appointing authority may, having regard to the interests of the service, either forbid him from undertaking it or give its approval subject to any conditions it thinks fit."

[18] Consolidated text: Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community.

The Staff Regulation and all implementing rules provide that activities that create conflicts of interest and have a detrimental effect on the performance of the staff member are forbidden. Permission is usually granted for activities that do not create an actual or potential conflict of interests with the public office holder's official duties, are not detrimental to the interests and reputation of the EU Institutions, do not have a detrimental effect on the staff members' ability to fulfil their duties and do not generate any revenue. Conversely, side activities that are forbidden are: paid professional work outside the official's duties or which involve activities such as consultancy or lobbying vis-à-vis the EU Institutions. Activities where there is an employment contract (an exception being teaching) are usually forbidden.

In addition to the EU Staff Regulation, there are **sets of rules and codes of conduct that are specific to the various EU Institutions** and, within them, to officials and to elected members. We examine these more specific rules below and then assess the extent to which there are similarities and differences. The Staff Regulation does not apply to Members.

3.2 European Parliament

The side earnings rules for European Parliament staff are amongst the strictest, if not the strictest rules that have been adopted by any of the EU Institutions. The default position is that staff are not permitted to receive any type of side earnings unless explicitly given permission. The rules for MEPs are less restrictive.

3.2.1 Rules for Parliament Staff

Based on a combination of Article 12b of the EU Staff Regulation and Chapter I.A.6 (b) of the **Parliament's Code of Conduct**, side activities are permitted, but only under certain precisely defined circumstances and only if there is no personal financial benefit or conflict of interests.[19] In the EP's Code of Conduct, side earnings are not defined as such, but reference is made to outside activities which may be gainful or not.

Officials who wish to pursue side activities must obtain permission and can only do so if there is no prospect of such activities conflicting with their EP duties. They can obtain reimbursement of any expenses, but any other payments must be donated to a charity of their choice, i.e. there is a zero financial threshold. Proof that this has been done is also requested. There are some exceptions to this rule. For instance, contract agents (as well as MEPs' accredited assistants) who are employed on a part-time contract are permitted to undertake other remunerated activities as long as these do not conflict with their EP duties. 'Passive remuneration' (e.g. rental income from property or royalties from a publication) and some other side activities of a voluntary nature are also allowed.[20] EP staff whose outside activities are considered in the interest of the service can receive up to 12 days of special leave p.a.

The EP receives a quite modest **number of side-earnings requests**: there were 321 in 2019, 172 in 2020 and around 200 in 2021. On average therefore some 3% of the EP's 7,000 staff submit applications to undertake side activities each year (this is a similar proportion to the European Commission – see below). The number of applications that are refused is low (10-15 p.a.), examples of such cases including where a staff member applied to take up a part-time position with the local/national government, or to engage in a commercial activity. In common with the other EU Institutions, there are also restrictions on activities that former EP staff can undertake for a period of

[19] European Parliament (2008), Guide to the Obligations of Officials and other Servants of the European Parliament (Code of Conduct). Leisure, charitable, and other activities of the same kind are not subject to authorisation. However, officials and other servants may not engage in such activities unless these are consistent with the principle of independence and the requirement to remain at the disposal of Parliament and entail no adverse consequences for the EU.

[20] Advance permission is not needed to take part in charitable work as a volunteer, provided Articles 12 and 17 of the Staff Regulations are complied with. The same applies to leisure activities in which officials or other staff members are involved as simple participants.

24 months after leaving their jobs to avoid a 'revolving doors' situation. [21]. If there is uncertainty over approving or refusing an application regarding activity after leaving service, for example if it is not clear whether there is likely to be a conflict of interests, the case is referred to an EP advisory committee (COPAR).

In addition to the Code of Conduct, the EP has produced a 30-page brochure *Ethics – I Care: Guide to the Ethical Obligations of Parliament Staff* summarizing the key points.[22] Responsibility for overseeing the side earnings and other ethics rules lies with the EP's DG Personnel, specifically the Career Development and Ethics Unit. Where breaches of the rules occur, a verbal or written warning can be issued. In very serious cases, subject to the disciplinary proceedings, promotion can be blocked or there could even be demotion.

The fact that the EP has strict side earnings rules for staff with a zero financial threshold can be attributed to the high profile of this parliamentary institution and its visibility in the public eye. Linked to this, the potential for a conflict of interests is, it could be argued, especially pronounced.

3.2.2 Rules for MEPs

The EP's rules for MEPs are different to those for staff. They also differ in key aspects from the rules for members of other EU Institutions.

In particular, unlike the European Council President and Members of the Commission (see below), the **EP's Rules of Procedures** do not prohibit MEPs from undertaking paid or unpaid side activities, but they are required to respect the standards of conduct in exercising their duties as parliamentarians. No approval is needed for some activities (e.g. giving lectures, honorary posts) but MEPs are required to include such activities in their declaration of interests.

The EP has rules on gifts received by MEPs in their official capacity which, inter alia, state that 'Members shall refrain from accepting, in the performance of their duties, any gifts other than those with an approximate value of less than EUR 150' and that 'any gifts to Members when they are representing Parliament in an official capacity shall be handed over to the President.'[23]MEPs are required to submit a declaration of interests covering their professional activities up to three years before taking up their positions, outside interests and side-earnings and any other activities that might influence their duties as MEPs. They are checked for general plausibility, i.e. to check that the declaration does not contain any information that is not obviously wrong. However, there is no uniformity among the MEPs declarations of interests as regards the type of information provided, the level of detail that is disclosed or the language used.

If necessary, and in situations where a breach of the rules is suspected, a case can be referred by the EP's President to the **Advisory Committee on the Conduct of Members** to be dealt with. This Advisory Committee consists of five members appointed by the President at the beginning of his or her term of office from amongst the members of the Bureau and the coordinators of the Committee on Constitutional Affairs and the Committee on Legal Affairs, taking due account of the MEPs' experience and of political balance.[24] At the request of the President, the Advisory Committee shall also assess alleged breaches of this Code of Conduct and advise the President on possible action to be taken.[25] There is no other procedure for checking the accuracy of MEPs' declaration or monitoring system to verify changes to the situation described in the declaration or possible breaches of the Code of Conduct.

---

21 The number of requests from EP staff to undertake activities after leaving office within the 12-24 months period when restrictions apply was: 30 in 2020, 50 in 2021 and 7 so far in 2022.

22 European Parliament, Directorate-General for Personnel, Career Development and Ethics Unit, ' Ethics – I Care: Guide to the Ethical Obligations of Parliament Staff', September 2019.

23 Implementing Measures for the Code of Conduct, Article 5, Annex I to the Rules of Procedure (2013).

24 Article 7 Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interest.

25 *Ibid.*

3.3 European Commission

Like the other EU Institutions, the European Commission's rules for staff on outside activities are based on a combination of the Staff Regulations and implementing rules. The rules are comparable to those of the European Parliament, but they allow for paid outside activities up to a financial ceiling of EUR 10,000 (per calendar year for all activities taken together) provided that the Appointing Authority duly authorizes the activity on the basis of the criteria set out in the Staff Regulations and the implementing Decision (and there is no conflict of interest and other requirements are fulfilled).

3.3.1 Rules for Commission staff

The Commission considers that its rules on outside activities are fit for purpose. The Commission's rules on outside activities are comparable to those of the European Parliament but the Commission has a long-standing policy of allowing paid outside activities up to a financial threshold (the administrative notice of 1976 shows that paid outside activities were already allowed.[26] The 2018 review of the Commission Decision on outside activities introduced limited changes in line with the Staff Regulations and notably updated the **financial ceiling to EUR 10,000**. The Commission considers that the Decision on outside activities of 2018 is proportionate and allows staff to have relatively low earnings from outside activities which do not harm the interests of the Commission, notably from teaching and research. This flexibility is important so that the Commission remains attractive as an employer for staff who want to pursue some limited outside activities and not to be too closed to the outside world.

The Commission's rules on side earnings are based on a combination of the **EU Staff Regulations and a 2018 Decision**[27]). The most recent update occurred after the adoption of the 2018 Decision on outside activities and on occupational activities after leaving the Service. This Decision, which replaced an earlier Decision of 2013, introduced limited changes regarding the ceiling for paid outside activities, and **what kind of outside activities can be authorised**. It further clarified what type of activities will not be approved on the basis of the criteria already existing in the Staff Regulations. Approval is refused if the outside activities are, for example, performed during office hours or interfere with the professional duties of staff. Moreover, the rules specify that the external activities must not go against the interests of the Commission, be detrimental to its reputation, or create a conflict of interest. Over the years, the Commission has adjusted its financial ceiling for side earnings upwards given that the ceiling had not been changed since a long time.

The recent revision of the rules on outside activities was also carried out with a view to reducing the administrative burden on staff who engage in 'harmless' activities which are not gainful (e.g. unpaid teaching).

Against this background, permission is deemed to be granted for certain activities, namely if they meet the following list of cumulative criteria:

- They are unpaid or do not generate revenues;
- They are neither pursued in a professional capacity nor performed for a commercial entity;
- They are performed outside the working hours agreed with the line manager of the staff member concerned or are covered by a duly approved leave or recuperation;
- The impartiality and objectivity of the staff member while performing his or her duties are not compromised, or may not appear to be compromised in the eyes of third parties because of interests which diverge from those of the institution;
- The outside activity or assignment does not have a negative impact on the reputation and/or on the trustfulness of the institution.

[26] See Administrative Notice N° 745 – 1992).

[27] COMMISSION DECISION (2018) 4048 of 29.6.2018 on outside activities and assignments and on occupational activities after leaving the Service.

The Decision provides examples of activities that would normally pass the test of the conditions, i.e. charitable and humanitarian activities, activities relating to sport, etc.

The Staff Regulations stipulate that **staff members working part-time** can only engage in unpaid external activities. Within the Commission, some DGs (e.g. DG AGRI) have produced supplementary ethics guidance and codes of conduct that address issues that are specific to their roles. According to the European Court of Auditors, DG COMP has the most detailed guidance for implementing the ethical rules (e.g. in allowing for 'case-specific declarations of conflict of interest' when case handlers are attributed competition cases – this is, however, a different topic than outside activities). Although the patterns are not clear-cut, very few of the more senior Commission staff undertake side activities.

The number of **applications from Commission staff** who want to undertake paid outside activities is quite modest and has remained quite stable over the last few years, averaging an estimated 460 per year. On average around 1% of the Commission's 35,000 staff submit applications to undertake outside activities each year which is a slightly lower proportion compared with the European Parliament (380 per year on average, as some officials introduce multiple requests). It seems that there was a slight increase in the number of requests following the revision to the Decision in 2018 but the increase remains limited. There were 16 cases of an actual or suspected breach of rules on outside activities in 2020, a decrease compared with 2021 (9 cases). The **penalties for breaching the rules** on outside activities are the same as in other EU Institutions and range from a verbal warning to more serious sanctions such as removal from the post. As in other institutions, the Commission has to follow strict procedures when conducting disciplinary inquiries, in order notably to respect the right of defense.

The restrictions on taking part in **commercial and professional activities** have been made more flexible. The 2018 Decision introduced the acknowledgement that commercial or professional activities can be permitted upon approval on a case-by-case basis. These activities were completely forbidden before. Experience has shown that the compatibility with the performance of the staff member's duties and the interest of the service of such activities giving rise to modest revenues should rather be subject to a case-by-case assessment rather than being subject to a blanket ban. However, these activities can only be authorised after careful checks and provided a number of conditions are met (no impact of the performance of duties, not exercised during working hours, not incompatible with the interests of the institution, not exceeding the annual ceiling).

The Commission's rules on outside activities are administered by **DG Human Resources and Security (DG HR),** in particular the Ethics Unit. DG HR is actively involved in raising awareness of the rules. As part of the approval procedure, both the first and second level hierarchical supervisors of the staff requesting authorization for an outside activity must provide an assessment. In addition the Ethical conduct Unit provides a third opinion and oversees a coherent and proportionate approach across the whole Institution. Staff need to submit their requests at least two months in advance electronically. Apart from the details of the rules provided to staff when they join the Commission, DG HR also has an ongoing **awareness-raising programme** that seeks to reach at least 3,000 staff each year. It deals annually with approximately 6,000 ethical requests and also responds to an estimated 1,000 written questions from staff about the rules.

3.3.2 Rules for Commissioners

According to Article 245 of the Treaty on the Functioning of the EU, Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not.

The first code of conduct for the Members of the European Commission was adopted in 1999 and was then reinforced in 2004 and 2011. A strengthened and better structured code was adopted in 2018.[28] The Code of Conduct translates the obligations of Members of the Commission into more

[28] Commission Decision of 31 January 2018 on a Code of Conduct for the Members of the European Commission (C/2018/0700).

detailed rules, notably on transparency of meetings with interest groups, business trips, participation in national elections, and external activities. Side earnings are forbidden.

Members of the Commission are prohibited from undertaking any professional activities or assignments, paid or unpaid, alongside their EU duties during their term of office. Certain limited activities are permitted (e.g. giving unpaid lectures, publications, honorary positions) as long as the President of the Commission is informed. Honorary unpaid positions can be held in not-for-profit organisations, without engaging in managerial or decision-making roles. Such external activities are permitted as long as they do not compromise the independence of the Commissioners and do not involve a conflict of interest (such a risk exists when/if a Commissioner is a member of an organisation receiving EU funding, for example). Side earnings are not allowed (except for royalties in relation to a book which is not related to a Member's function). Payments for articles and speeches should be refused. If this is not possible, they must be paid to a charity of the Commissioners' choice. The same applies to royalties from books which are related to the functions of the Member.

In the event of any **breach of these obligations**, the Court of Justice may, on application by the Council acting by a simple majority or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 247 or deprived of their right to a pension or other benefits instead (Article 245 of the Treaty on the Functioning of the EU). In the case of an infringement which does not warrant a referral to the Court of Justice, the Commission may decide to issue a reprimand and, where appropriate, to make this public, taking into account the opinion of the Independent Ethical Committee and on proposal of the President.[29]

3.4 European Council and Council of the European Union

The European Council and the Council of the European Union are two different institutions. The European Council consists of the heads of state or government of the EU's Member States, together with its President and the President of the European Commission. The Council of the EU (Council) represents the Member States' governments and is where national ministers from each EU Member State meet.

Both institutions are assisted by the General Secretariat of the Council (GSC) that is composed of permanent staff members ensuring the continuity of work of both institutions. The members of the European Council and other representatives of the national governments meeting in the Council are not bound, in relation to the side earnings activities, by the internal rules applicable to the staff of the GSC - but by the rules of the Members States they represent. The staff members of the GSC and the members of the cabinet of the President of the European Council are subject to the **Secretary General Decision No. 61/2015 on outside activities and assignments** (Decision) .

3.4.1 Rules for the Council GSC staff

The officials working for the General Secretariat of the Council must respect specific rules concerning external activities, laid down in the Decision. The Decision specifies that unremunerated external activities such as leisure, charitable and artistic activities are allowed if they do not create conflicts of interest, do not affect in any way the interest of the Council or impair the official's ability to work. Officials must seek prior permission to perform any other activities, whether paid or unpaid. They will usually receive permission for the external educational activities (up to 100 hours p.a.), as well as for participating in conferences and for producing publications. For gainful activities taken together, there is a threshold of EUR 5,000 per year that cannot be exceeded.

Some activities are explicitly forbidden, notably: paid activities within regulated professions; paid activities pursued as an employee of a third entity; activities where the official exercises a managerial

[29] Article 13 of COMMISSION DECISION of 31 January 2018.

or decision-making role in a commercial company; and any advocacy or lobbying vis-à-vis the EU Institutions. Officials must request permission electronically, at the latest two weeks before the start of a planned external activity. Their superiors must express an opinion on whether the activity is compatible with the proper functioning of the service and that there is no conflict of interest. The next step is the recommendation given by the Legal Advisers to the Administration Unit. The final decision lies with the Council's Director of Human Resources.

There is no procedure in the Council that is similar to the EP for the verification of the accuracy of declarations. However, any violation of the provision, of the Decision may lead to the administrative/disciplinary investigation.

3.4.2 Rules for the European Council President

The President of the European Council is subject to the **Code of Conduct**. According to this Code he or she is prohibited from undertaking any professional activity or assignment, paid or unpaid, during his or her term of office. Unpaid courses, seminars, lectures or other official communication activities are permitted as long as they do not interfere with the performance of the President´s duties and are compatible with the interests of the EU. The President may hold honorary unpaid posts in cultural, artistic or charitable foundations or similar bodies. He or she may also hold such posts in educational institutions.

3.5 Other EU Institutions

Although all the EU Institution share the same Staff Regulation, there are some variations in the rules on side earnings.

3.5.1 European Central Bank

Like the European Parliament, the European Central Bank (ECB) rules on side earnings are quite strict with paid side earnings being generally prohibited, except in certain exceptional circumstances.

The **ethics framework** of the ECB clearly outlines the conditions under which its members of staff may engage in external activities. The framework does not define side-earnings but distinguishes between remunerated and unremunerated external activities. It specifies that ECB staff cannot receive external payment for the fulfillment of their duties, if payments are offered from third parties they shall be made to the ECB.[30] Moreover, in order to engage in any remunerated external side-activities it is necessary for staff to obtain specific approval from the ECB's Director-General Human Resources (or Deputy). This authorisation is needed for any external activity that goes beyond what can be considered a 'leisure activity' and is only granted as long as it does not impair the ability of officials to perform their professional duties in the ECB, or constitute a conflict of interest.[31] No authorisation is needed for staff wishing to engage in unremunerated activities, for example in the domains of 'culture, science, education, sport, charity, religion, social or other benevolent work'.

Similarly to the Commission, ECA and ECJ, the ECB has a separate set of rules governing the external activities of its senior officials which apply to the members of its Executive Board as well as to the members of the Governing Council and the members of the Supervisory Board, in addition to the alternate members.[32] The ECB Executive Board are internal members of the ECB, while the Governing Council and Supervisory Board are composed of both ECB members and external members, mainly the governors and representatives of the national central banks and representatives from the national supervisory authorities of countries in the Eurozone, respectively. Article 7 of the Code of Conduct for high-level officials of the ECB specifies that they can engage in external activities as long as the remuneration is commensurate with the work performed and remains within reasonable

[30] Amendment to the ethics framework of the ECB (This text replaces Part 0 of the ECB Staff Rules as regard the ethics framework of the text published in the Official Journal C 204 of 20 June 2015, p. 3) 2020/C 375/02

[31] *Ibid.*

[32] Code of Conduct for high-level European Central Bank Officials.

limits (the code does not specify a threshold). As outlined in Article 11.1 of the Statute of the ECB (Protocol 4), the members of the Executive Board also need the explicit approval of the Governing Council to engage in outside activities, whether gainful or not. All ECB officials must also notify the ECB's Ethics Committee annually in writing about any such private activities. Moreover, the code for officials states that they must not engage in activities that hinder their independence and should resign from any position that compromises their independence.[33]

3.5.2 European Investment Bank Group

The European Investment Bank (EIB) Group does not have a specific definition of 'side-earnings' but has clear rules on the possibility for its staff to conduct secondary remunerated activities. These rules are set out in Article 4 of the **EIB's Code of Conduct** which states that 'Members of staff shall devote their working activities to the service of the Bank and that they shall not, without prior permission: engage in any professional activity outside the Bank, particularly of a commercial nature; hold any post or appointment either permanent, temporary, occasional, paid or unpaid; act in any advisory capacity, paid or unpaid; or hold a seat on any Board of Directors or any Management Committee.' There are no specific restrictions in terms of financial thresholds for side earnings or with regard to the type of outside activities.[34]

3.5.3 European Court of Auditors

According to Article 286 of the Treaty on the Functioning of the European Union, the Members of the Court of Auditors cannot engage in any external activities while in office, whether gainful or not. However, the recently updated Code of Conduct for ECA Members and former Members indicates that there are circumstances under which they may hold honorary functions, as long as they are unremunerated and do not have managerial, advisory or decision-making functions.[35] The code further stipulates that ECA Members may not engage in professional external activities that are incompatible with their duties and that any royalties or payments that a Member may receive must be given to a charity of their choice. The permitted external activities must not undermine the Court's impartiality, create a conflict of interest, take up an excessive amount of time of the Member's time, nor afford the Member any pecuniary gain. Furthermore external activities must be declared, as well as any changes to them through a declaration form provided in the annex of the code, which must be assessed by the ECA Ethics Committee.[36]

Staff at the European Court of Auditors are subject to the same rules as the other EU staff, i.e. the Staff Regulations.[37] In addition, the ECA has also introduced in 2011 a set of **ethical guidelines** for its members of staff.[38] The ethical guidelines have been drafted in response to the requirements of the INTOSAI Code of Ethics (ISSAI 30), which is the set of standards issued by International Organization of Supreme Audit Institutions for audit institutions.[39] The ethical guidelines specify that ECA staff shall only carry out external activities within the framework laid down by the EU staff regulation (Regulation No 31), as well as always bearing in mind their duty of loyalty to the court, refrain from carrying out activities that could harm the Court's reputation, cast doubt on its impartiality or interfere with its work.

---

33 Consolidated version of the Treaty on the Functioning of the European Union Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank.

34 EIB. (2013). Staff Regulations, available at: https://www.eib.org/attachments/general/eib_staff_regulations_ii_2020_09_01_en.pdf

35 ECA (2020). Code of Conduct for the Members and former Members of the Court

36 Ibid.

37 ECA. (n.d.) Staff recruitment and salaries, available at: https://www.eca.europa.eu/en/Pages/Transparency-staff.aspx

38 ECA. (2021). Ethical guidelines for the European Court of Auditors, available at: https://www.eca.europa.eu/other%20publications/ethicalguide/ethicalguide_en.pdf

39 INTOSAI. (2019). Code of Ethics, available at: https://www.intosai.org/fileadmin/downloads/documents/open_access/ISSAI_100_to_400/issai_130/ISSAI_130_en.pdf

3.5.4 European Court of Justice

As regards the rules governing the outside activities for **officials,** the Staff Regulations are fully applicable to the European Court of Justice's staff. The ECJ has not enacted any additional rules applicable to the side-earnings of its officials and other agents. Thus, outside activities which are exercised in a professional or similar capacity (e.g. architect, lawyer, economist, accountant, IT expert, engineer, interpreter, doctor, translator, consultant, etc.) are not permitted, nor are any activities performed for a commercial entity even if they are unpaid.

The rules adopted by the ECJ concerning the external activities of its Members are described in Protocol No.3 of the Treaty on the Functioning of the European Union[40] and the **Code of Conduct for Members** and former Members of the Court of Justice of the European Union.[41] Protocol No.3 states that Members of the Court may not engage in any external occupation without permission from the Council of the European Union. The code further states that Members can only seek authorisation to engage in external activities that are closely related to the performance of their duties, such as representing the Court at official events or participating to activities in the European interest such as the dissemination of EU law or its teaching (e.g., in conferences, seminars). Remuneration for external activities is only allowed in the case of teaching. They can engage in unremunerated activities in NGOs or other establishments as long as they are not involved in managerial activities that may lead to conflicts of interest. The Code of Conduct also states that Members of the ECJ may not engage in external activities if they are incompatible with their professional duties.

3.5.5 Decentralised Agencies

The EU agencies' permanent staff members, as EU officials or other civil servants, are subject to the rules on side-earnings set out in the Staff Regulations. They all apply Commission Decision C(2018)4048 on outside activities, by analogy. Within this overall framework, each EU agency is able to draft its own code of conduct and rules for Management Board (MB) members and staff and these generally address the issue of external activities and reiterate or complement the rules presented in Regulation No 31 (EEC). [42]

In relation to **EU agencies' staff**, for example, the **European Banking Authority** (EBA)'s staff ethics guidelines[43] state that outside activities cannot be performed either at the EBA premises or during normal working hours, and staff must request authorisation to perform outside activities through a specific 'Application for outside activity and assignments' form. Similarly, the **European Union Aviation Safety Agency** (EASA) in its Code of Conduct for staff [44] specifies that officials must obtain prior authorisation to engage in external professional activities, whether paid or unpaid. Likewise, the code of conduct of the **European Medicines Agency** (EMA)[45] issues similar guidance, stating that: **'**Staff members must seek permission for external activities, whether gainful or not. The issue

---

40 Consolidated version of the Treaty on the Functioning of the European Union - Protocol (No 3) on the statute of the Court of Justice of the European Union.

41 Code of conduct for Members and former Members of the Court of Justice of the European Union.

42 Under Article 110(2) of the Staff Regulations, agencies apply Commission's implementing rules by analogy. To derogate to that rule and to adopt different implementing rules and they need prior agreement of the Commission. Without Commission's agreement, agencies can only adopt internal administrative instructions that do not crate new rights and obligations for the agency or staff. In application of Article 110(2)of the Staff Regulation, all decentralised agencies apply Commission Decision C(2018)4048 on outside activities, by analogy. Agencies' own guidelines or code of conducts cannot contradict Commission Decision C(2018)4048 on outside activities. The Staff Regulations only apply to agencies' staff. Management Board members fall outside the scope of the Staff Regulations. The agencies are responsible for adopting rules applicable to them.

43 EBA (2019). Decision of the Executive Director of the EBA on the Ethics Guidelines for EBA Staff, available at: https://www.eba.europa.eu/sites/default/documents/files/document_library/EBA%20DC%20271%20%28Decision%20on%20the%20Revised%20Ethics%20Guidelines%20for%20Staff%29.pdf

44 EASA (2020). Code of Conduct for the staff of EASA, available at: https://www.easa.europa.eu/sites/default/files/dfu/Code%20of%20Conduct%20for%20the%20staff%20of%20EASA.pdf

45 EMA (2016). The European Medicines Agency Code of Conduct. Available at: https://www.ema.europa.eu/en/documents/other/european-medicines-agency-code-conduct_en.pdf

is whether the activity would impair the staff member's independence or be detrimental to the work of the EMA.' Some market regulation EU agencies such as the **European Securities and Markets Authority** (ESMA) go further in their codes of conduct or equivalent documents and explicitly prohibit staff from engaging in any external employment or consultancy service for a financial market participant directly supervised by ESMA, whether this is on a paid or unpaid basis, part-time or full-time.[46]

With regard to the **EU agencies' Management Boards (MBs),** the rules applying to members are provided by the EU agencies' founding regulations, financial regulations, rules of procedure and, where applicable, rules and policies on conflict of interests. Some EU agencies have also adopted codes of conduct specifically for MB Members. MB members are nominated by Member States and are usually senior officials in the national authority with competence in the respective agencies' policy fields.[47] As such they are, in the first place, subject to national rules on side earnings. Most EU agencies do not therefore have rules on side earnings for their MB Members. The MB members must in addition respect their own national or institutional rules on side-earnings.

However, they do have rules on avoiding a conflict on interests. All EU agencies also have specific rules on MB conflicts of interest. In most agencies, MB Members are required to submit a declaration of interests upon nomination and to update it periodically if there is a change of circumstances. These declarations typically include information on all relevant interests that are (or could be perceived as) related to the agency's activities. In some agencies, MB Members are expected to declare all direct and indirect interests including not only their own financial interests, but also relatives' interests, current employment or previous professional experience, and any business affiliations that could create a conflict of interests in the performance of their duties. [48]

In case of breach of the rules, the **MB Chair and the Director** of the agency concerned are usually empowered to decide on the necessary action. At the European Medicines Agency (EMA), for instance, the Executive Director after informing the MB Chair will contact the MB Member asking him or her to clarify the situation within 14 days. In case the requested clarification is not provided within this timeframe, the MB Chair in consultation with the Executive Director may decide to restrict the Member's involvement in the MB activities.[49] At the European Food Safety Authority (EFSA), if a MB Member is not fulfilling his obligations in relation to independence in such a manner that this is substantially affecting the work of the Board or EFSA's reputation, the MB, acting on a two-thirds majority, can ask for his or her replacement.[50]

If the MB Chair or Director were to be themselves involved in a suspected or actual breach of trust, procedures across the agencies vary. The MB is responsible for appointing and removing the Director. In case of breach, upon a proposal from the European Commission, the MB may remove the Director. It is likely that ultimately the European Commission would be involved in the case and may decide on the action to be taken. The Chair is elected by the MB, so the MB is responsible for assessing his or her eligibility in the first place before the election and also considers appropriate action in cases of suspected conflict of interest.

---

46 ESMA (2019). Conflict of interests and ethics. Available at: https://www.esma.europa.eu/sites/default/files/library/esma40-134-2458_conflict_of_interest_policy_esma_staff.pdf

47 In all or most of the agencies the Commission also has one or more representatives in the Management Bord. The Staff Regulations and Commission's implementing rules (Commission Decision C(2018)4048 on outside activities) are applicable to them as officials of the Commission.

48 European Parliament study 'The Management Boards of the Decentralised Agencies', prepared by the Centre for Strategy & Evaluation Services, October 2021.

49 European Medicines Agency breach of trust procedure for competing interests of and disclosure of confidential information by Management Board members. EMA/MB/309079/2012, Rev. 2.

50 Article 15 Revised Rules of Procedure of the Management Board of the European Food Safety Authority.

3.6 Comparator International Organisations

A number of international organisations were selected as comparators: the Council of Europe, Organisation for Economic Co-operation and Development, United Nations and the World Bank. Below we summarise their rules on side earnings.

3.6.1 Council of Europe

Article 32 of the **Staff Regulations for Council of Europe personnel** states that outside activities, whether paid or unpaid, can be undertaken with the permission of the Secretary General. However, permission will only be granted if the activity in question does not interfere with the performance of the staff member's professional obligations and is not incompatible with the interests of the Council of Europe. The Secretary General is required to answer the request within thirty days, failing which permission is deemed to have been given. There are no financial thresholds. [51]

In addition to the rules for its own staff, the Council of Europe has produced research on side earnings for its member states. The **Council of Europe's GRECO Group** (Groupe d'Etats contre la corruption or Group of States against Corruption) has published a number of country reports that include details on the rules for the side earnings of civil servants. For example, the country report for Poland includes several paragraphs (54-56) summarizing the rules on "Incompatibilities, outside activities and financial interests", notably that "according to the Constitution, (i.e. the *Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions* of 21 August 1997), a member of the Council of Ministers may not perform any activity inconsistent with his/her public duty." The report concludes that "there is a clear need for additional rules and guidance on how to deal with ancillary activities in certain situations, even when there is not necessarily a visible remuneration or economic activity involved."[52]

3.6.2 Organisation for Economic Co-operation and Development

Amongst the other international institutions, the OECD has published a number of guidelines for its staff to help prevent a conflict of interests including *Post-Public Employment: Good practices for Preventing Conflict of Interest* (2010) and *Code of Conduct for OECD Officials* (2017). The latter is a 16-page document that includes a section on 'external activities' which states that "In principle, employment with the Organisation is not compatible with other gainful employment or professional activities." However, with very few exceptions, whilst royalties for public appearances or publications is permissible, such payments must be made to the OECD or a recognized charity rather than to the individual. Otherwise, an OECD official "may not use information obtained in the course of your official duties to obtain undue benefits for themselves or third parties, or for any other inappropriate purpose."[53]

Side activities of OECD officials are regulated by the **Code of Conduct of OECD officials** and the Staff Regulations and Instructions Applicable to Officials of the OECD.[54] According to the Code of Conduct, employees performing full-time role at the organisation should not perform external gainful employment. There is, however, an authorisation process for officials to request permission to perform outside gainful activities. The request has to be made to the OECD's Human Resource Management Director. The request is then passed onto the Secretary General who either grants or denies the request. According to the code of conduct, OECD officials are allowed to perform external activities outside working hours for non-remunerated activities (e.g. research, culture, sports, charitable or social work-related activities) as long as the activities are consistent with the principles mentioned in the OECD regulations.

---

51 Council of Europe, Staff Regulation https://rm.coe.int/0900001680790b3f
52 https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168092005c
53 https://www.oecd.org/legal/Code_of_Conduct_OECD_2017.pdf
54 OECD (2022) Staff Regulations, Rules and Instructions Applicable to Officials of The Organisation

In 2017, the OECD adopted a more comprehensive **'Integrity Management Framework'**. The rationale for the framework was that it was seen as being a 'fragmented mosaic vision of integrity management' in the OECD. The framework is intended for use by both the OECD itself but also for member states. It is maintained by the OECD's Integrity Unit.

The OECD argues that the framework, which it describes as the cornerstone of good governance, should focus on three elements – developing a comprehensive and coherent public integrity system, cultivating a culture of public integrity, and ensuring effective accountability. To operationalize the framework, the OECD's document sets out a number of instruments, processes, and structures for fostering integrity and preventing corruption in public organisations. The four main functions of its framework are seen as being: (i) Determining and defining integrity (risk analysis, and defining codes of conduct, conflict of interests); (ii) Guiding (training, advisory support, declaration); (iii) monitoring (compliance policies, whistleblowing, lobbyist registration); and (iv) enforcement (investigation, sanctions).[55]

3.6.3 United Nations

The United Nations has established an Ethics Office which, amongst other things, regulates side-earnings. The UN Ethics Office promotes an ethical organizational culture based on UN's core values of integrity, professionalism, respect for diversity, the values of independence, loyalty, impartiality, integrity, accountability and respect for human rights. The UN first published an ethics framework for its staff in 2012. The **code of conduct**, entitled *Putting Ethics to work – A Guide for UN Staff* was subsequently updated in 2017.[56] The 50-page document provides a detailed guide on the professional conduct that is expected of UN staff (e.g. with respect to maintaining impartiality and independence, respecting national laws), avoiding conflicts of interest, protecting UN resources, creating a harmonious workplace, protecting information and preventing fraud and corruption.

In the section on avoiding conflicts of interest, there is a two-page subsection on outside employment and external activities which states that "some external activities are incompatible with our status as international civil servants, or conflict with the best interests of the organisation". The guide states that any outside employment or external activities if forbidden unless approved in advance by the UN. The UN guide states that "Private, unpaid social or charitable activities which have no relation to official functions or to the Organization and take place outside working hours or while on leave, do not require approval." Examples include participating in local community activities and civic or charitable activities. Likewise, outside activities which are beneficial to the UN and to the staff member, such as the development of professional and technical skills, are encouraged as long as there is no conflict of interests. Speaking engagements, however, need to be approved. In addition to the UN's guide, individual agencies such as the UNDP and UNESCO have also produced their own codes of conduct.

In 2020, the Ethics Office published **additional guidance on side earnings**, namely the *Factsheet on Outside Activities*. This states that "Staff members do not require prior authorization from the Secretary-General to engage in an outside activity provided that it is a private, unpaid social or charitable activity with no relation to official responsibilities or the Organisation." However, for almost all other outside activities, prior permission is required and in general the guidance starts from the premise that "Outside employment and external activities, paid or unpaid, may be incompatible with our status as international civil servants."[57]

[55] *OECD Integrity Framework* https://www.oecd.org/gov/44462729.pdf

[56] UN Office of Human Resources Management, Ethics Office, entitled *Putting Ethics to work – A Guide for UN Staff,* 2017, www.un.org/en/ethics/assets/pdfs/Attachment_2_EN_Putting%20Ethics%20to%20Work.pdf

[57] https://www.un.org/en/ethics/assets/pdfs/OUTSIDE%20ACTIVITIES%20FACTSHEET%202020_03_24.pdf

3.6.4 World Bank Group

Last but not least, the World Bank's **Code of Ethics** is based on the values of impact, integrity, respect, teamwork and innovation. The Code is complementary to the **World Bank's Staff Rules,** which provide more detail on many of the topics and are the basis for determining misconduct and disciplinary sanctions.

Under the heading of integrity, the Code says that is expects staff to "prioritize the interests of the World Bank Group (WBG) and our clients above our own personal gain". As in the codes that have been adopted by other organisations, the rules are designed to avoid conflicts of interest relating to certain situations (examples that are highlighted are asset ownership, business relationships, outside activities, political interests, personal and family relationships). A conflict of interests is defined as "a situation where personal interests may interfere with the ability to perform official duties in an impartial manner."

The principles set out in the Code are supported by more detailed rules contained in the **World Bank's Staff Manual**.[58] Section 6 on 'Instructions and remuneration from outside sources' states that: "Except as otherwise required to perform Bank Group assignments involving service to other entities, staff members owe their duty entirely to the Bank Group and to no other authority. Accordingly, staff members may not accept instructions relating to the performance of their duties with the Bank Group from any governments or other external entities or persons … Except when holding Special Assignment Appointments, staff members may not accept any remuneration from governments or other external entities or persons in connection with their appointment to or service with the Bank Group."

The Bank's Ethics and Business Conduct Department (EBC) is responsible for providing guidance to staff on the side earnings rules and other ethical issues.[59]

3.7 Conclusions – EU Institutions and Comparator Organisations

To summarise, there are some significant differences in the rules on side earnings between different EU Institutions.

Firstly, the EU Institutions have a common basic **definition of side-earnings** as the legislator has regulated the matter from the angle of outside activities performed in addition to the employment by the EU Institutions and from the angle of independence and conflicts of interest. Consequently, all the EU Institutions refer to external or outside activities which may or may not be remunerated. However, beyond this the definitions of side earnings and outside activities vary and in one case (the ECB) no definition is used at all. The other EU Institutions refer to external or outside activities or income rather than specifically using the term 'side-earnings' which would not capture the specific risks for the independent performance of the duties.

Second, there are differences in **how external activities are regulated**. While certain outside activities are permitted for the staff of all EU Institutions, this is not the case for **remunerated external activities**. With the exception of the European Parliament's staff, paid outside activities are permitted for staff if authorised in advance. There are tighter restrictions on elected office holders in most of the EU Institutions. Thus, while it is possible for the staff of the European Commission, the Council of the European Union and the European Court of Auditors to engage in external remunerated activities, the same does not apply to the Commissioners and President of the Commission, the President of the European Council or the Members of the ECA.

Related to this, there are differences regarding which **types of remunerated external activities** are permitted. Some EU Institutions that allow side-earning place restrictions on the type of gainful

[58] https://thedocs.worldbank.org/en/doc/827331374675391404-0220012004/render/03.01STANDARDSOFPROFESSIONALCONDUCTDecember12004.pdf

[59] World Bank Code of Ethics https://documents1.worldbank.org/curated/en/147281468337279671/pdf/WBG-Code-of-Ethics.pdf

activities that can be performed (e.g. members of the ECJ are limited to teaching). Other institutions put limits on the type of unremunerated activities that can be performed by Members (e.g. Members of the Commission, ECJ and ECA can only have honorary positions in foundations or similar bodies in the political, legal, cultural, artistic, social, sporting or charitable field or in educational or research establishments, with no management, supervisory or decision-making functions).

There are also varying **financial limits for side earnings** for staff ranging from zero in the case of the Parliament, EUR 5,000 p.a. for the Council and EUR 10,000 p.a. for the Commission. In some EU Institutions it is not specified whether a threshold of any type applies to external income (e.g. ECB). The **authorisation process** that staff must go through to engage in external activities is, however, similar. In all EU Institutions that allow remunerated external activities, staff are expected to request permission to engage in such activities. This also applies to unpaid activities where none of the EU Institutions have a system of blanket authorisation. At the Commission the principle is that staff members must request an authorisation for paid and unpaid activities. However there are a number of limited cases where no request is needed provided all conditions are met. On the other hand, officials working for the Council of the European Union and the European Parliament staff must obtain permission to engage in any unremunerated outside activity.

More generally, there are **differences between the rules for officials, on the one hand and elected members** of the Council, Commission, Parliament, the ECA and ECJ, and the European agencies, on the other. The ECB also has different rules for its members of staff at different levels of seniority. In relation to **elected members**, there are differences in the rules between the different EU Institutions. Thus, with a few exceptions, the President of the European Council, and the President and Members of the Commission are prohibited from undertaking any professional activities or assignments, paid or unpaid, alongside their EU duties during their term of office. In contrast, MEPs are allowed to have other jobs and side earnings as long as these are declared and do not conflict with their duties as MEPs.

For officials, the legal framework for disciplinary **sanctions** is set out in Annex IX to the Staff Regulations and more precisely Article 9). There is no tariff for sanctions, based on the nature of the breach or other criteria, i.e. there are no sanctions specifically for breaching the rules on outside activities/side-earnings. Article 11a of the Staff Regulation is about reporting conflict of interest to the Appointing Authority so that it can act. Articles 11 and 11a do not address outside activities but conflict of interest upon recruitment and return from unpaid leave, gifts and hospitality and any ad hoc situation. Outside activities are regulated by Article 12b

There are some differences in the sanctions that apply to public office holders who fall foul of the provisions concerning external financial interests. The sanctions for Members of the Commission are left open in the Commission Decision of 31 January 2018 on a Code of Conduct for the Members of the European Commission. However, the President of the Commission may remove a Member of the European Commission from a given portfolio in consultation of the Independent Ethical Committee if they identify potential issues with their declaration of interests.

Although it is debatable whether constituting side-earnings, **post-employment rules** also vary. Article 16 of the Staff Regulation applies to officials across all EU Institutions and establishes a 24-month period. There are differences for Members. Former Commissioners must inform the Commission of any activities during the 24 months after leaving office and if necessary, the independent Ethics Committee gives an opinion on whether the activity can be permitted if it relates to the former portfolio of the person concerned. In the case of MEPs, there are no restrictions on activities after they leave the EP although they should notify the Parliament about any professional activity after leaving the EP, at least as long as they receive transitional allowances. In the case of the Council of the European Union staff there is an obligation to notify the Secretary-General of the intention to pursue any professional activity for 24 months after leaving office. This is the same as for the European Commission and Parliament staff where such activities must be declared in the period of two years after leaving in accordance with Article 16 of the staff Regulation.

There are also some **differences between the rules on side earnings in EU Institutions and in the international organisations** for staff that we have used as comparators. In several cases (Council of Europe, OECD), outside activities are forbidden altogether unless permission is granted first. The UN, which identifies certain permitted outside activities which do not require authorization, appears to have the most flexible rules while the World Bank has the strictest. Compared to the EU Institutions, there are no financial thresholds but otherwise the principles are similar.

The **variations in the rules in different EU Institutions on side-earnings can be justified on the grounds that they reflect the specificities and traditions of the various EU Institutions**, in particular the extent to which officials and elected members are likely to face an actual or potential conflict of interests and the nature of their status. Against this, it is difficult to see why this might justify some of the difference that currently exist (e.g. on the financial thresholds for side earnings or list of permitted outside activities). Moreover, it can be reasonably argued that the **principle of equity should apply and that all EU officials should be treated equally** irrespective of which EU entity they work for, even though such discrepancies are inherent to the legal framework set by the legislator in the EU Staff Regulations and the principle of administrative autonomy of each EU institution. There are also practical considerations related to maximising transparency and simplifying the rules so that they can be more easily understood and implemented. This is more likely to be achieved if common or at least similar side earnings rules are adopted by the different EU Institutions.

For these and other reasons, the Parliament's 2021 Resolution argued in favour of establishing a single **EU ethics body**. The earlier studies that we reviewed in Section 2 of this report also broadly support this idea. In particular, and as noted earlier, the ECA's 2021 report concluded that "the [EU] ethical frameworks would benefit from cross-institutional harmonisation", particularly with regard to the outside activities of staff, and declarations of Members' spouses and partners' outside activities.

Below we highlight some of the key differences between the EU Institutions on the rules on side earnings. In the Appendices C and D we present a more comprehensive comparison that includes other EU Institutions and international agencies.

Table 3.1(a): Summary – Differences Between EU Institutions on Side Earnings Rules (Officials)

Rules	Parliament	Commission	Council	ECA	ECJ	ECB
External activities allowed	Yes	Yes	Yes	Yes	Yes	Yes
Remunerated outside activities allowed	No	Yes, with approval	Yes, with approval	Yes, with approval	Yes, with approval	Yes, with approval
Financial threshold	EUR 0	EUR 10,000	EUR 5,000	No threshold**	EUR 10,000	No threshold**
Unremunerated activities	Yes, with approval	Yes, if declared***	Yes, approval needed in some cases	Yes, with approval*	Yes, with approval*	Yes, approval needed in some cases
Rules on conflict of interest	Yes	Yes	Yes	Yes	Yes	Yes

* Based on the absence of additional rules on side-earnings beyond Reg. No. 31.

** No information on threshold was found in the documentation available to the research team.

*** The principle is that all activities paid or unpaid need to be declared. There are some exceptions for unpaid activities provided certain criteria are met.

Table 3.1 (b): Summary – Differences Between EU Institutions on Side Earnings Rules (Members)

Rules	Parliament	Commission	Council (President)	ECA	ECJ	ECB*
External activities allowed	Yes	Only some honorary and unpaid	Yes, but not professional	Yes	Yes	Yes
Remunerated outside activities allowed	Yes, if declared	No	No	No	Yes, teaching only	Yes, if declared
Financial threshold	No threshold	EUR 0	N/A	N/A	No threshold**	No threshold**
Unremunerated activities	Yes, if declared	Only some honorary and unpaid	Yes	Yes, honorary only	Yes, honorary only	Yes, if declared
Rules on conflict of interest	Yes	Yes	Yes	Yes	Yes	Yes

* ECB senior officials.

** No information on threshold was found in the documentation available to the research team

In the next section we compare the side earnings rules in EU Institutions with those used by the EU Member States and other countries that have been used as comparators.

4. ASSESSMENT OF KEY ISSUES IN THE REGULATION OF SIDE EARNINGS

This section contains an assessment of the rules on side earnings in the sample of EU Member States and other countries that have been used as comparators. The assessment is structured around the key issues set out in the Parliament's terms of reference:

Box 4.1: Overview - Assessment of Key Issues in the Regulation of Side Earnings

- The definition of side-earnings, conflicts of interests and other key concepts;
- Restrictions on side earnings, financial thresholds and other controls;
- Procedures for obtaining permission to obtain side earnings;
- Sanctions and penalties;
- Differences in the rules for different types of public office holders;
- Regulatory and institutional frameworks.

In each case we examine what can be learnt from wider experience in the sample of EU Member States and compare this with the rules adopted by EU Institutions. The analysis of rules focuses on the sample of 10 EU Member States (BE, BG, CZ, DE, ES, FR, IT, PL, RO and SE) and several comparators (UK and USA). The assessment is supported by country factsheets in Annex C. At the end of each subsection, we provide a comparison with the rules in the EU Institutions.

The final subsections identify, classify and assess different types of regulations (including situations where there is no regulation, internal notification, the requirement for a request for authorisation, public disclosure, financial and/or timely limitation, or a complete ban). In Section 5, we then consider the key lessons to be learnt from experience in the Member States and comparators for the proposed EU Ethics Body.

4.1 Definition of Side Earnings

The definitions of side-earnings are similar in different EU Member States covered by this research. However, varying degrees of emphasis are placed on underlying principles such as avoiding a conflict of interests or being subject to undue influence as opposed to simply using a 'neutral' definition based on a monetary and/or time threshold.

4.1.1 Member States

There are similar definitions of side-earnings across the EU Member States. In some cases, the definitions rely on prescribing certain specified occupations and/or activities (see Section 4.2) while other definitions are all-encompassing.

The notion that side earnings are derived from private activities - rather than specified occupations - underpins the rules in most countries. To take some examples, while there is no clear definition or nomenclature regarding side-earnings for public office holders in **Belgium,** side-earnings are understood to be earnings received as part of activities undertaken that do not fall within the remit of the mandate and foreseen activities of public office holders. Interestingly, side-earnings can also be derived from prior business activities, including income derived from ownership of companies. Likewise, in the **Czech Republic**, the concept of side-earnings is linked to 'private gainful activities'. There is also a similar definition in **France** where the concept of side-earnings is defined in the law ("Loi le Pors" n. 83-364 and the Decret n. 2020-69) as secondary employment involving a private activity that is 'lucrative' ('Activité privée lucrative'). This includes any activities (commercial or wage

earning, part time or full time, etc) performed for remuneration. Interestingly, in the French definition, an activity can be considered as 'lucrative' even if it does not produce profits and is loss-making.

Elsewhere, the emphasis is more on defining side earnings in terms of secondary employment rather than private activities. In **Germany** the Federal Civil Service Act (BBG) defines a secondary activity ('Nebentätigkeit') as the 'performance of a secondary office ('Nebenamt') or the exercise of a 'side-line' job ('Nebenbeschäftigung')'. The term 'secondary activity' is understood as 'a group of tasks that does not belong to the main job and is performed on the basis of a public service or official relationship'. Secondary employment or activity does not include the performance of public honorary posts nor free guardianship or supervision (BBG Section 97). There is a similar definition in **Italy** where, according to Article 53 of Legislative Decree no. 165 of 2001, side-earnings are "assignments, even occasional, not included in the tasks and duties of the [public] office, for which a fee is provided, in any form."

Whilst most EU Member States have definitions of side earnings, albeit with varying degrees of emphasis being derived from private activities, there is no legal definition of side-earnings or side-activities in either **Bulgaria** or **Romania**. Public regulations for incidental employment are not exhaustive in **Sweden.** Swedish public employment conditions are based on sectoral agreements which complement legislation in other aspects than specified by law.

4.1.2 Conflict of Interests

The key concept underlying the definitions and legislation applying to side earnings is the possibility of a conflict of interests or 'incompatibility' with the responsibilities of a public office. Related to the notion of private financial gain is the possibility, acknowledged in most codes and rules, that side-earnings may lead to the public office holder being influenced in their decisions (rather than just making a personal financial gain) in a way that is not in the public interest because of a financial consideration.

This is central to the definition used in **Spain** where Law 53/1984 of 1984 on 'Incompatibilities of Personnel at the Service of Public Administrations' regulates side-earnings. In this case, side-earnings are defined as a second job or activity that may prevent or impair the strict fulfilment of the officials' duties or compromise their impartiality or independence. In **Bulgaria** and **Romania,** there is (as noted above) no legal definition of side-earnings or side-activities, but in practice, the most important legal concept used in connection with side-earnings and side-activities is the concept of 'incompatibility'. Here, civil servants can exercise side-activities, paid or unpaid, in the private sector and civil society but only if the activities have no direct or indirect link with their duties as civil servants.

In **Poland**, the notion of the conflict of interest for public officials as regards side earnings has been implicitly outlined in the 'Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions from 2019'[60], commonly referred to in Polish as 'the anti-corruption act'[61]. Similar regulations have also been introduced in the relevant legislation governing particular public functions, for example, in the law regulating performing of MP's functions[62] or in the law from 1990 on municipalities[63]. The notion is operationalised through a set of articles identifying forbidden

[60] Marshal of the Sejm of the Republic of Poland (2019). Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions. https://europam.eu/data/mechanisms/COI/COI%20Laws/Poland/2.%20Act%20on%20Restrictions%20on%20Conduct%20of%20Business%20Activities%20by%20Persons%20Performing%20Public%20Functions%20of%202019_POL.pdf

[61] Rzetecka-Gil, A. (2021). Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions. Commentary. The 2nd Edition, Lex/el. 2021, Available at: https://sip.lex.pl/#/commentary/587247898.

[62] Marshal of the Sejm of the Republic of Poland (2021). Ustawa z dnia 9 maja 1996 r. O wykonywaniu mandatu posła i senatora., Art 35.2., Available at: https://www.sejm.gov.pl/prawo/mandat/kon6.htm, e.g art. 30.

[63] Chancellary of Sejm (1990). Ustawa z dnia 8 marca 1990 r. o samorządzie gminnym, Available at: https://sip.lex.pl/#/act/16793509, e.g. art. 24 & 25.

activities, which are implied to potentially pose a threat of bias if performed by a person holding a public position.

4.1.3 Comparator countries

There is no formal or over-arching definition of side-earnings in the **United Kingdom**. The Civil Service Code refers to activities where there is the "prospect of personal gain" while the Ministerial Code stipulates the need to avoid a situation where a "conflict arises, or could reasonably be perceived to arise, between their public duties and private interests, financial or otherwise." But unlike the rules in several other countries, there are no fixed side-earnings definitions or thresholds involving the amount of time spent on other activities or the amount of money gained from them.

Side-earnings in the **United States** are well-defined, but with some differences between employees of the executive and the legislative parts of government (Congress). A financial interest is defined as "any current or contingent ownership, equity, or security interest in real or personal property or a business and may include an indebtedness or compensated employment relationship". It is important to bear in mind that due to the decentralised nature of the United States, the rules and codes of ethics for public officials vary between municipalities, states, and levels of government.

4.1.4 Conclusion – Definition of side earnings

Overall, it can be concluded that there is a lot of common ground in the definitions that are used by EU Member States and these are similar to those in the EU Institutions.

4.2 Restrictions on Side Earnings and Financial Thresholds

There are quite different rules on the type of outside activities that can be undertaken by a public office holder alongside their job. Most EU Member States have all-embracing restrictions but provide some specific exemptions whereas in other cases the emphasis is on a list specific permitted or forbidden side-activities. In a few cases there is no ex-ante definition of prohibited outside activities and all cases are assessed on a case-by-case basis. Only a minority of EU Member States have financial thresholds (this contrasts with the EU Institutions which in almost all cases have thresholds) or place limits on the time that can be devoted to side activities.

4.2.1 Member States

In line with the way in which side-earnings are defined (see Section 4.1), some EU Member States have all-embracing restrictions but provide some specific exemptions whereas in other cases, the emphasis is on a list specific permitted or forbidden side-activities.

Amongst the countries with less regulation, in **Belgium**, there are no defined circumstances under which public officials are not allowed to engage in side-activities. Likewise, other than the requirement to disclose paid and non-paid positions, income and assets, there are no explicit requirements limiting the scope of the types of side-activities that can be undertaken.

In other EU Member States the scope of the rules of side-earnings is defined primarily in terms of particular occupations and activities that are prohibited. There is a difference here between rules in certain countries that define occupations that are permitted and other countries where the reverse approach is adopted of defining occupations that are not permitted.

An example of the first approach is provided by **France** which has a list of 10 occupations (cultural or sports activity, teaching, home help, 'public interest activity') that are explicitly mentioned as being permitted (subject to a request and approval). In the case where ethics principles are respected, volunteering activities for non-profit private or public entities is not subject to any procedures. The same applies to officials who work on a part-time basis. In **Spain**, a similar approach

is adopted and there is quite a long list of exemptions which are explicitly mentioned in the legislation as not being subject to rules on side-earnings.

A different approach is taken in **Italy** where the rules are defined not so much in terms of different types of side-activities but rather in terms of the potential effect on an office holder's responsibilities, (e.g. any side-activities must not interfere with the ordinary activity) in relation to the time, duration, commitment required of him. Likewise, such activities should not take place during office hours or involve using 'means, goods and equipment of ownership of the administration'). Under the Italian legislation, officials cannot engage in any "commercial, industrial, or any profession or take up employment private individuals or accept positions in companies incorporated for profit"(Art. 60 of Decree of the President of the Republic of 10 January 1957, n. 3). The rules apply to all employees of the public administration with the exclusion of employees with a part-time job (i.e. not exceeding 50% of the time of the full-time one). The Supreme Court has ruled that for public employees the rules apply even if the employee is on leave.

Another approach is adopted in some countries by placing limits on the time that can be spent on side-activities and/or the level of side-earnings than can be derived from such activities.

An example is **France** where, as noted earlier, there is considerable flexibility with regard to side-activities and earnings. Officials who do not work full-time are defined as having a contract of 24h and 30 minutes' work per week or below. The side activity must be compatible with the obligations of the official job and must not lead to a conflict of interest or impede the normal functioning, independence or neutrality of the office holder or the ethics principles laid out in the decrees. In **Germany**, office holders are likely to be refused permission for the side activity if this exceeds 20% of the regular weekly working hours, as it is assumed that this would impede the exercise of their public duties. In addition, approval is refused if the total amount of remuneration for one or more secondary jobs exceeds 40% of their annual final salary.

In some EU Member States there are financial thresholds determining whether or not permission is needed to engage in side-activities that are remunerated, or disclosure of in the case of existing interests.

This is the case in **Germany**, there is a financial threshold determining whether or not approval is required, or disclosure in the case of interests before taking up a job. This threshold is, however, very low: a civil servant must submit a statement about their secondary employment remuneration to their superior if the remuneration exceeds EUR 500 in the calendar year. This applies also to retirees and former civil servants insofar as the remuneration is granted for secondary activities carried out before the termination of the civil servant duties. Certain activities are exempt such as teaching, lectures and scientific research activities. In some other countries, the financial thresholds determining disclosure obligations vary accounting to the nature of the side earnings. The **Czech Republic** is interesting in this respect. Here, the threshold for property is CZK 500,000 (details of property worth more than this must be disclosed) while the threshold for investments is lower (CZK 100,000) and for any other business interests or investments, lower still (CZK 50,000).

In **Romania**, declarations for the disclosure of assets, earnings and other financial interests have to be completed on a yearly basis and they are made publicly available by the Romanian Parliament and the National Integrity Agency (ANI). Based on the declarations, ANI can start investigations, undertaken by public servants known as 'integrity inspectors'. They can ask for additional information, besides the content of declarations, in order to determine if a public official has breached the 'incompatibility' rules.

There is also a question of whether restrictions on side-earnings should be extended to officials and members of parliament after they leave office.

The argument here is that although an official or member of parliament may not receive side-earnings while in office, such remuneration could in effect simply be deferred and/or the office holder could use privileged contacts and information to help influence policymaking.

We found few references to this type of situation in the rules for civil servants the EU Member States in our sample. In **Germany,** retired civil servants and former civil servants with pensions who want to take up remunerated employment outside of the public service related to their official line of work which may constitute a conflict of interests need to notify this in writing or electronically prior to doing so. For former members of government, a 'cooling off period' or *Karenzzeit* in German was introduced at federal level in 2015. The *Karenzzeit-Gremium* is in charge of examining every notification of intended private sector employment for potential conflict of interest and may impose a waiting period of up to 18 months.

Another exception is **Romania** where 'revolving doors' regulations are only provided for civil servants that had management and supervisory duties in the public roles. They cannot be employed by the entities they controlled for three years after leaving the public office (Law no. 161/2003 art. 94, alin. (3)). There are, however, more constraints on members of parliament. In **Poland**, the relevant regulations are quite extensive. For example, Polish MPs are not only legally obliged to take unpaid leave from where they are employed for a period of the mandate, but also for the three months that follow afterwards. The fixed-term employment of an MP might terminate prior to when the unpaid leave comes to an end and can be extended for the three months following the termination of validity of the parliamentarian's mandate.

4.2.2 Comparator countries

In the **United Kingdom,** under the heading of 'integrity', the Civil Service Code (a three-page document) sets out the values and standards of behaviour that civil servants are expected to follow. The Civil Service Code is underpinned by the 2010 Constitutional Reform and Governance Act. The core values are defined as integrity, honesty, objectivity, and impartiality. The code has been updated on several occasions (2006, 2015), albeit it with relatively minor amendments.

There are relatively few explicit and specific restrictions in the UK's Civil Service Code on side earnings. Instead, a 'principles-based' approach is adopted. Thus, the Civil Service Code stipulates that an official should not "accept gifts or hospitality or receive other benefits from anyone which might reasonably be seen to compromise personal judgement or integrity." A further reference is provided in relation to 'honesty' where the Code says that an official must "not be influenced by improper pressures from others or the prospect of personal gain." Beyond this, there is no specific guidance or rules on side-earnings for officials in the UK. The Civil Service Code forms part of the terms and conditions of an official's contract which in turn stipulates the number of hours an official is expected to work per week and their remuneration. Side-earnings are not forbidden but must either relate to activities outside office hours and/or be approved in advance to ensure compliance with the rules on a conflict of interests. In addition to civil servants, special advisers are also covered by the Code. The UK rules for MPs' side earnings are explained in Section 4.5.2.

Side-earnings in the **United States**, according to the Office of Government Ethics, "the basic criminal conflict of interest statue, 18 U.S.C §208, prohibits government employees from participating personally and substantially in side-activities where they have a financial interest. In addition to their own interests, those of their spouse, minor child, general partner, and certain other persons and organizations are attributed to them. Assets and other interests, such as employment interests, may also present potential conflicts under other criminal and civil statutes, as well as the Standards of Ethical Conduct for Employees of the Executive Branch. To assist ethics officials in preventing conflicts of interest, the U.S. Office of Government Ethics has developed a series of guides on identifying potential conflicts of interest that can arise from various types of employment interests, investment interests and liabilities."

A financial interest, in general, is defined in the US as "any current or contingent ownership, equity, or security interest in real or personal property or a business and may include an indebtedness or compensated employment relationship." It thus includes, for example, interests in the nature of stocks, bonds, partnership interests, fee and leasehold interests, mineral and other property rights, deeds of trust, and liens, and extends to any right to purchase or acquire any such interest, such as a stock option or commodity future. The US rules for members of Congress are explained in Section 4.5.2.

4.2.3 Conclusions – Restrictions on side earnings and financial thresholds

As noted earlier, only a minority of EU Member States have financial thresholds on permitted side earnings for officials - this contrasts with the EU Institutions which in almost all cases have such thresholds. In general, the financial and other restrictions in force in the EU Institutions are stricter than those applying in the EU Member States. The rules for elected office holders are broadly similar.

4.3 Procedures for Obtaining Permission for Side Earnings

In most Member States, the procedure for obtaining approval for side-activities is similar and involves a written application to a line manager explaining the extent and nature of the proposed activity and other details. However, the information that should be disclosed varies.

4.3.1 Member States

There is very little difference between national administrations in the procedure for requesting permission to engage in side-activities or disclosing an existing interest.

The usual procedure is for an official to submit an application in writing to their line manager who then has a set period of time to either approve or refuse the request. There are, however, some differences in the types of information that has to be provided in an application.

Thus, in **Belgium**, officials are required by law to provide the names and addresses of the public and private organisations where they hold positions. They are also required to disclose the amount of money they have received as a result of holding these positions. The information submitted by public office holders is made public by the Court of Auditors and the public can access this information on various websites[64].

Similarly, in **France**, the information that must be provided includes the identity of the employer, the nature, duration, and conditions of the activity and the remuneration as well as any other relevant information. Authorisation may or may not be limited in time. For example, it can be provided for a year. At the end of this time span, the official must request a new authorisation to undertake side-activities, providing further information if relevant and required. To take another example, in **Italy**, authorization to engage in outside activities must be requested from the competent administration which must then make a decision within 30 days (or 45 days if several administrations are involved). A broadly similar procedure is adopted on most countries.

4.3.2 Comparator countries

In the **United Kingdom**, if an official is in any doubt about the situation with respect to side-earnings, civil servants are expected to discuss the situation with their line manager or someone else in the line management chain. If for any reason this is difficult, the official should go to their department's nominated officers who is appointed to advise staff on the code. Ultimately, the Code includes an independent line of appeal to the Civil Service Commissioners on alleged breaches of the Code.

64 See for example https://www.cumuleo.be/

In the **United States,** civil servants fill out a financial declaration form and present it to the person responsible for appointing them. This applies to both civil servants, department heads, and Members of Congress. For employees of federal Government agencies, Subpart H of the Standards of Ethical Conduct for Employees of the Executive Branch states that an employee who wishes to engage in outside employment must comply with "any agency-specific requirement for prior approval of outside employment or activities."[65] Because there is often variation in the supplemental requirements among the agencies, each agency's Designated Agency Ethics Official (DAEO) can advise employees on the specific procedures for submitting a request for prior approval.[66]

4.4 Sanctions and Penalties

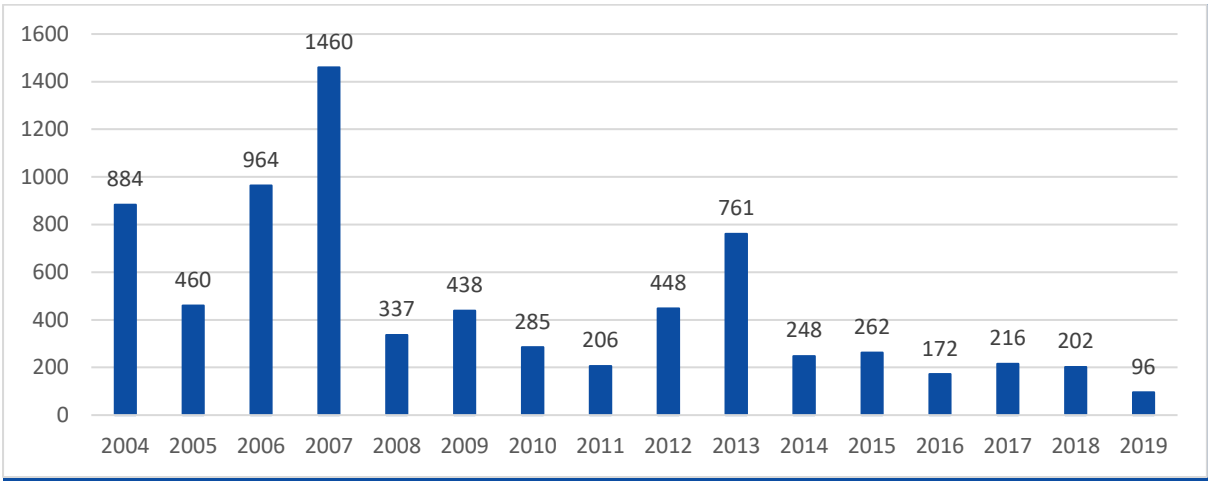
The sanctions and penalties that can be applied if the rules on side-earnings are broken are not always defined in the legislation and rules. In other cases, they are made explicit and range from an official warning to fines and/or dismissal from a job.

4.4.1 Member States

The scale of breaches of the side earnings rules in different countries is difficult to gauge as information is not publicly available in all countries and/or the definitions and methods relating to such breaches vary. However, there is some limited data.

In the case of **Belgium**, the number of breaches of the disclosure rules has been recorded since 2004 for senior public office holders (members of the government, parliament, senior officials in central and regional administrations, mayors, etc). Over the period 2004-19, there have been an average just under 500 detected failures to (fully) disclose information, i.e. some 1.7% of the estimated 30,000 senior public office holders. As can be seen from the chart, there has been an overall downwards trend in the number of cases over the years.

Figure 4.1: Number of senior Belgian public office holders failing to disclose side earnings, side activities and assets



Source: https://www.cumuleo.be/statistiques.php

To take another country, in **France**, the HATVP recorded just under 150 cases in 2020 involving senior officials suspected of breaching the rules and/or situations where declarations of interest where suspected of being inaccurate relating. It is not clear what percentage of these related

[65] Code of Federal Regulations. (2022). *Title V: Chapter XVI, Subchapter B, Part 2635: Subpart H* – Outside Activities. Code of Federal Regulations. Available at: https://www.ecfr.gov/current/title-5/chapter-XVI/subchapter-B/part-2635#subpart-H

[66] Glynn, M. L. (2006). *Letter to a Federal Employee dated December 22, 2006.* Available at: https://www.oge.gov/Web/oge.nsf/Legal%20Docs/E6138482AAD54437852585BA005BECFE/$FILE/6ab37b0d570a447a8038ec690d6c1ab33.pdf?open

specifically to side earnings but it is likely that the vast majority did so. This represents a relatively low 0.6% of the estimated 25,000 officials concerned. More generally, the HATVP reported that just over half (53%) the declarations of interest that were filled in 2020 met all the requirements with regard to completeness, 22% led to corrections being requested and in the remaining 25% of cases, a reminder had to be issued to ensure that a declaration was submitted. In **Romania,** from 2007 until the end of 2020, ANI identified 2,047 cases of incompatibilities, but after appeals, only 1,342 cases have been sanctioned. There has been a downward trend in sanctions over the years.

In most countries there are no particular sanctions that are defined in case of a breach of the side-earnings rules. In other cases, a range of sanctions are available and listed in the rules. The sanction typically available to public administrations include warnings, financial penalties and ultimately the possibility of dismissal.

Many countries have **financial penalties** for breaching the rules on side earnings. Thus in **Belgium,** the 1995 law has provisions which set out sanctions for public office holders who fail to comply with the law. This includes fines of up to EUR 1,000 and if the same offence is repeated within three years of the issuing of a sanction, the fine can be increased to EUR 3,000 and a ban on public office can be issued by a court. Legal sanctions are reserved for public office holders who do not complete their annual disclosure. Fines for public office holders who omit to mention positions or earnings and/or who are late in submitting their disclosure can be up to EUR 3,000.[67]

Financial **penalties** can be severe. Thus, in the **Czech Republic**, officials can face a fine of up to CZK 500,000 (approximately EUR 20,500) if they use their position to obtain side earnings that have not been approved. Likewise, in **France**, if a civil servant or a person with a public role, engages in a side-activity that could compromise his/her impartiality, independence or objectivity, this could, in very serious cases, be punishable with up to five years of imprisonment and a EUR 500,000 fine. In **Italy**, a different approach is adopted and the amount of the possible fine is not fixed as an absolute amount but in relation to the individual's earnings. Thus, in a situation where the public office holder did not ask for authorization, and there is a serious conflict of interest with their responsibilities (ex. art. 55-56-57 of Legislative Decree 165/01), the employee can face a large fine, up to the amount of the income received from side activities, and possibly dismissal.

In **Germany**, the sanctions are defined and range from an official notification, a fine, a salary reduction, to a demotion in office or in being expelled from the civil service. The severity of the sanctions is not linked to particular types of breaches of the side-earnings rules but rather left at the discretion of the authorities. For members of the Bundestag, the Presidium can impose a fine reflecting the severity of the offence but up to half of the annual parliamentary allowance.

In many countries, the severity of the sanctions for breaches of the side earnings rules is linked to the seniority of the public official. Thus, in **Poland**, breaching of the rules on side earnings can result in various repercussions, depending on the public position the official holds and, hence, the law that applies to their employment. Article 5 of the Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions states that public officials, depending on their place and status of employment, might be dismissed.[68] Possible sanctions are also set out in the Act Regulating Employment in the Polish Civil Service and these include being prevented from being promoted within the institution, remuneration being reduced by up to 25% for up to six months, or in certain circumstances being dismissed from the post.[69]

---

[67] Court of Audit (Cour de comptes). Vade-mecum relatif au dépôt des listes de mandats et déclarations de patrimoine.

[68] Marshal of the Sejm of the Republic of Poland. (2019). Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions, art. 5. https://europam.eu/data/mechanisms/COI/COI%20Laws/Poland/2.%20Act%20on%20Restrictions%20on%20Conduct%20of%20Business%20Activities%20by%20Persons%20Performing%20Public%20Functions%20of%202019_POL.pdf.

[69] Chancellary of Sejm (2008). Ustawa z dnia 21 listopada 2008 o służbie cywilnej, art. 114, Available at: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20082271505/U/D20081505Lj.pdf.

There is a similar system in **Romania**. Here, the National Integrity Agency (ANI) is the public institution responsible for checking the declarations for the disclosure of assets and interest and to ascertain a situation of incompatibility in the case of public officials. Here, there are differences in the procedure applicable for each category of public officials if it comes to the possibility of removal from office. If the ANI 'integrity inspectors' find that a public official is in a situation of 'incompatibility' the Agency issues a report. The report can be challenged in court. The court can uphold ANI's report and this decision remains definitive or the court can cancel ANI's report. If not challenged in court a report that concludes that an official has breached the 'incompatibility' rules remains definitive and should generate the sanctions, possibly removal from office.

4.4.1 Comparator countries

In the **United Kingdom**, civil servants who breach the rules on side-earnings are disciplined by their line managers and ultimately by the Cabinet Secretary (the most senior civil servant). Penalties range from an official warning to dismissal. Fines are generally not used. For MPs, breaches of the code are investigated by the Parliamentary Commissioner for Standards. The Commissioner gives the MP concerned the opportunity to address any errors of fact in her report before it goes to the Standards Committee. Then, once the committee has received the report, if the MP disagrees with the Commissioner's conclusions, they can challenge them either in writing or in person.

Sanctions range from 'rectification' – simply updating declarations as appropriate, through making apologies in writing or in public, and withdrawal of services or access to facilities, to suspension or even expulsion. Any suspension of 10 days or more triggers the Recall of MPs Act, which provides that if 10% of an MP's constituents sign a petition opened in their constituency, a by-election shall be held. The 30-day suspension proposed for Owen Paterson would have triggered a recall petition had he not pre-empted the House's decision by resigning as an MP. It is open to the MP concerned to stand in any by-election triggered by a recall petition.

In the **United States,** the Attorney General is responsible for bringing civil action "in the appropriate United States district court" against anyone who violates Article 208 and "upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than US$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater." The Attorney General can also issue an order prohibiting the person for engaging in side-activities.[70]

An employee who wilfully engages in such offences can be imprisoned for up to five years, fined, or both. Government Agencies will inform the employee they have the chance to divest or terminate their financial interests. The employee has a reasonable period of time, "considering the nature of his particular duties and the nature and marketability of the interest, within which to comply with the agency's direction." Such "reasonable period" shall not exceed 90 days from the date divestiture is first requested.[71] These sanctions also apply to Members of Congress. However, the extent to which sanctions are enforced is minimal, as identified by interviewees. There is "no statute of Government-wide applicability prohibiting employees from holding or acquiring any financial interest. Statutory restrictions, if any, are contained in agency statues which, in some cases, may be implemented by agency regulations issued independent of this part."[72]

---

[70] U.S. Code, Title XVIII § 216 – Penalties and injunctions. Legal Information Institute. [online] Available at: https://www.law.cornell.edu/uscode/text/18/216

[71] Office of Government Ethics. (2020). *Standards of Ethical Conduct for Employees of the Executive Branch.* Office of Government Ethics. Available at: https://www.oge.gov/web/OGE.nsf/0/A8ECD9020E3E384C8525873C0046575D/$FILE/SOC%20as%20of%2085%20FR%2036715%20FINAL.pdf

[72] Office of Government Ethics. (2020). *Standards of Ethical Conduct for Employees of the Executive Branch.* Office of Government Ethics. Available at: https://www.oge.gov/web/OGE.nsf/0/A8ECD9020E3E384C8525873C0046575D/$FILE/SOC%20as%20of%2085%20FR%2036715%20FINAL.pdf

4.4.2 Conclusions – Procedures, Sections and Penalties

Overall, there is considerable discretion in EU Member States with regard to the penalties for breaching the side earnings rules for officials. In this respect, there is no significant difference between the EU Member States and the EU Institutions. Some countries have defined financial penalties (again with discretion in their application). The EU Institutions can take disciplinary sanctions which can lead to a downgrading of an official with a loss of remuneration, a dismissal or a dismissal with a loss of acquired pension rights as the most severe financial sanction. The procedures involved in applying sanctions in all countries are similar.

4.5 Differences in the Rules for Different Types of Public Office Holders

In some countries, there are differences in the rules on side earnings for different types of officials, and between officials and elected public office holders.

4.5.1 Rules for different categories of officials

While some EU Member States have separate rules on side-earnings for different types of officials, in most cases there is no distinction. In most EU Member States the rules on side-earnings apply to all officials, irrespective of their seniority or the nature of their job. For example, in **Belgium** the legislation on side-earnings does not distinguish between different types of public office holders. Instead, all public office holders must disclose their earnings, including side earnings, under the same law passed in 1995 and this seems to be the only hard law requirement. That said, there are other ethical requirements found in the different codes of ethics.

In some other countries, there is a clear distinction between different types of public office holders and separate sets of rules on side-earnings for them. For example, in **Bulgaria**, whilst most officials can have side-earnings as long they do not become financially dependent on them, high-ranking civil servants and members of the judiciary, like members of parliament, are subject to the law on conflicts of interests and are therefore required to disclose any side-earnings, and their ties to private sector actors, both past and present.

Likewise, in **Poland** the rules on side-earnings only cover central government officials rather than the public sector as a whole (e.g. teachers, health sector workers), as in most other countries. In **Germany**, the rules regarding secondary or side activities for staff employed at public institutions are less strict than those for civil servants. For example, no limits on time or earnings are explicitly stated.

In one of the countries in our sample, **Romania**, there is a distinction in the rules between public office holders performing policymaking functions and those who undertake administrative activities. According to the Romanian Administrative Code, a civil servant who has been appointed to a public office as a result of a professional competitive process and is involved in exercising a 'public power' (for example, drafting legislation, drafting or implementing public policies, providing public services) is subject to the rules on side earnings. However, employees of public institutions who perform administrative work (i.e. not directly involved in drafting legislation, implementing public policies or providing public services) are allowed to have any side-activity and side earnings. We have not found other countries (in our sample at least) that make this distinction.

4.5.2 Differences in the Rules for Officials and Elected Members

There are also different rules and procedures for elected and non-elected public office holders. With the former, there is a greater reliance on the self-policing of side earnings than with officials.

However, in most countries, transparency requirements for elected public office holders are higher than for their non-elected counterparts. There are also other differences: in some countries, prior authorisation to engage in side-activities, whether paid or unpaid, is usually not required and

instead the person concerned is expected to use their own discretion in deciding what is or is not appropriate bearing in mind the code of ethics and rules. They are nevertheless required to declare side-activities and earnings.

The extent to which members of parliament are restricted in their ability to undertake side-activities that generate side-earnings varies across the EU Member States. Some countries have quite relaxed rules. Thus in **Belgium,** elected officials are not required to request permission prior to engaging in activities that might generate side-earnings. However, elected officials, like officials, are nevertheless required by law to complete a self-declaration of outside interests.

Likewise, in **Bulgaria**, where the rules applying to senior officials also apply to member of parliament, the relevant law states that 'the Member of the National Assembly shall not allow himself/herself to be placed in financial dependence or other involvement with natural or legal persons, which could affect the fulfilment of his/her powers.' However, members of the National Assembly are also subject to a law on conflicts of interests which requires them to disclose any side-earnings, their ties to private firms, etc. Members of parliament are required to disclose their income, assets and expenses both from sources in Bulgaria but also overseas exceeding BGN 5,000 (around EUR 2,500).

Elsewhere the rules on side earnings for elected public office holders are much stricter. For example, in **Romania,** MPs cannot engage in any other public office alongside their parliamentary duties. There is only one exception to this rule, i.e. MPs can be members of the Government (ministers). There is also quite a long list of specifically banned side-activities (e.g. being a member of the board of a company, holding office in a trade union). Due to the fact that many MPs are also lawyers, in 2004 the law was amended including a specific regulation on how MPs can act as barristers in court. MPs can be barristers, but they cannot take on cases in lower courts, cases against the Romanian state and specific public institutions and they cannot act as a defence attorney in some criminal cases (according to Law no. 161/2003, art. 82.1).

Likewise, **Germany** has extensive reporting obligations for members of the Bundestag - they have to notify the President of the Bundestag of the last professional activity, any paid activities in addition to the mandate and functions in companies and other public institutions. However, many notifiable activities are voluntary. With the legislative reform in 2021, significantly expanded disclosure obligations have been included as part of the code of conduct for members. Now, the earnings from each individual secondary activity or employment must be declared if it is more than EUR 1,000 per month or more than EUR 3,000 per calendar year. If the amount cannot be quantified, the legal position granted to the MP is described and published.

Turning to the comparators, in the **United Kingdom** there is a Ministerial Code and Code for MPs that regulates side earnings. The two codes of conducts are intended to complement each other. Chapter 7 of the Ministerial Code (2019) on 'Ministers' Private Interests' regulates side-earning. It states, as a general principle, that "Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise." In relation to MPs, the Code for MPs stipulates that "any outside activity, whether remunerated or unremunerated, should be within reasonable limits and should not prevent them from fully carrying out their range of duties." As noted above, certain occupations are excluded.

The Committee on Standards in Public Life last examined the question of MPs outside interests in a 2018 report (this updated an earlier 2009 report). The report noted that "Some people's perception that MPs are in office for their personal gain is shaped by a small number of high-profile cases. In these cases, the current Code of Conduct for MPs is insufficient to address the standards issues raised by outside interests." The report reiterated the "principle-based approach to regulating outside interests in the Code of Conduct for MPs. It made the point that "Any strengthening of the regulation of MPs' outside interests needs to consider the potential for unintended consequences on the diversity of careers and background of MPs. A financial limit on outside earnings could have the

impact of limiting some outside interests … which do not bring undue influence to bear on the political system, nor distract MPs from their primary role, and are acceptable to the public."

Its main recommendation was to reduce the range of outside interests MPs can undertake, eliminating roles as parliamentary strategist, adviser and consultant, as these could lead to MPs having a privileged relationship with one organisation and therefore bringing undue influence to bear on Parliament. It also recommended that the Register of Members' Financial Interests should be more accessible, searchable and usable.

In the **United States**, the Congressional Research Service set out statutes and laws for outside earnings of members of Congress. Laws pertaining to this issue include The Ethics Reform Act (1989, effective 1991).[73] Representatives and Senators are prohibited from accepting honoraria, i.e. "payment of money or a thing of value for an appearance, speech, or article (including a series of appearances, speeches or articles … excluding any actual or necessary travel expenses."[74] House Rule XXV also states that a Member of Congress may not "receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity that provides professional services involving a fiduciary relationship except for the practice of medicine" or "serve for compensation as an officer or member of the board of an association, corporation or other entity."

Senate Rule XXXVI establishes similar provisions.[75] Both Senators and Representatives can only earn up to 15% in excess of their annual congressional salary. According to the Senate and House Ethics Committees, the 2021 limit is US$ 29,595. They may earn income from personal investments, as the law considers them "unearned" income.[76] Personal investments may include rent, interest or stock dividends, and are not included in the 15% rule because the members are collecting income on assets they already own. The 2012 STOCK Act prohibited members of Congress, the President, Vice President and other high-level staff from engaging in insider trading or otherwise using non-public information for their own benefit. It also attempted to establish publicly accessible disclosure requirements of financial transactions. However, it has reportedly not been as effective as desired.

For this purpose, Congresswoman Katie Porter (CA) and Senator Kirsten Gillibrand (NY) reintroduced the bicameral STOCK Act 2.0 to Congress in February 2022. This Act would require reporting of federal benefits; increase penalties for failure to file STOCK Act Transaction Reports from $200 to $500; expands the list of offices covered by the STOCK Act to members of federal judiciary and Federal Reserve Bank presidents, vice presidents, and members of the Federal Reserve board of directors; bans stock trading; and restates requirements pertaining to transparency of financial disclosure reports, which should be provided by the supervising ethics agencies for those under the STOCK Act.[77]

4.5.3 Conclusions - Differences in the Rules for Different Types of Public Office Holders

Overall, there are some quite significant differences in the rules on side earnings for different types of officials, and between officials and elected public office holders. The system for elected office holders relies in most countries much more on self-policing than is the case with officials.

---

[73] https://oge.gov/web/OGE.nsf/0/3942A940906D39B0852585B6005A15AE/$FILE/PL101-194.pdf

[74] House Rule XXV: Limitations on Outside Earned Income and Acceptance of Gifts. (2017). https://budgetcounsel.files.wordpress.com/2017/09/house-rule-xxv-limitations-on-outside-earned-income-and-acceptance-of-gifts.pdf

[75] House Rule XXV: Limitations on Outside Earned Income and Acceptance of Gifts. (2017). https://budgetcounsel.files.wordpress.com/2017/09/house-rule-xxv-limitations-on-outside-earned-income-and-acceptance-of-gifts.pdf

[76] Congressional Research Service. (2021). *Congressional Salaries and Allowances: In Brief.* https://crsreports.congress.gov/product/pdf/RL/RL30064

[77] Katie Porter. (2022). *Press Releases: Rep Katie Porter, Sen. Kirsten Gillibrand Reintroduce Stock Act 2.0.* Katie Porter. Available at: https://porter.house.gov/news/documentsingle.aspx?DocumentID=435

4.6 Regulatory and Institutional Frameworks

Some EU Member States have very precisely defined rules indicating the situation in which side-activities are permitted. In other cases, there a greater reliance on a 'principle-based' approach with a higher degree of discretion allowed for the official and their superiors. The institutional structures being used to oversee and enforce the rules on side earnings range from highly centralised, single agency set-ups to fragmented systems.

4.6.1 EU Member States

Whilst almost all EU Member States in our sample have rules that place constraints on side-earnings, there is a difference between the highly regulated approach adopted by some Member States and the less formalised rules and greater emphasis on ethical behaviour in other countries.

In the sample of 10 EU Member States used for this study, all of them with the exception of **Bulgaria** have rules that place constraints on side-earnings. As noted earlier, Bulgarian law does not prohibit most civil servants – all apart from the most senior - from engaging in activities generating side-earnings as long as they do not become 'financially dependent' on them. However, in the case of elected public office holders, they are subject to laws on conflicts of interests which requires them to disclose any side earnings, ties to private firms, etc.

Other examples of countries that have tended to adopt a less formalised approach to regulating side-earnings include **Belgium.** However, whilst historically there has generally been less regulation of side-earnings, the rules have been tightened up in recent years. The rules were first introduced in a 1995 law on the 'obligation to disclose the mandates, functions and professions and assets' for public officials.[78] This law originally only applied to officials. Since 2005, however, senior officials (ministers, state secretaries, heads and deputy heads of departments) have also been required to disclose their assets and side-earnings, and in 2019, this obligation was extended to federal government advisers and others such as public employees who have positions on the boards of companies.[79]

In Belgium, elected public office holders are also required to disclose their side-earnings in line with the 1995 law. Their rights and obligation are set out in Codes of Ethics for the National Assembly and for the Senate. In line with the approach of limiting regulation to broad principles, the code simply says that 'during the exercise of their functions, the Members of the Chamber must be extremely cautious regarding concerns arising from the exercise of secondary activities.' The Court of Auditors is responsible for monitoring the compliance with the provisions of the 1995 law.

However, in most EU Member States, there is a more highly regulated approach to the side earnings of public office holders.

Thus, in **Germany**, there are three key pieces of legislation. The Federal Civil Service Act was introduced in 1953 and was last revised in 2009 by the Service Law Reform Act. The Federal Secondary Employment Ordinance was issued in 1964 and was last amended in 2017. The Members of Parliament Act (*Abgeordnetengesetz, AbgG*) came into force in 1977 with the last revision taking place in 2021. Taken together, this legislation sets out quite precisely defined rules on side earnings. In addition to the federal level, some regions ('Laender') also have their own regulations on side-earnings, which are contained in their respective State Civil Service Act (*Landesbeamtengesetzen*).

Some EU Member States – albeit a minority – have centralised institutional set-ups with a single agency enforcing the ethics rules for public office holders. An example is in **France** where the Haute

[78] https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/belgium_disclosure_law_1995_amended_2009_fr.pdf

[79] http://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680998a40

Autorité pour la transparence de la vie publique (HATVP) is an independent ethics body created in 2013 which is responsible for overseeing the regulation of side earnings and other aspects of the behaviour of public office holders. In relation to non-elected office holders, its role is limited to around 25,000 senior officials. In the case of more junior officials, responsibility for regulating side earnings lies with the public authority they work for.[80]

The HATVP is headed by its President, who is appointed by the French President, and a College which is composed of twelve members nominated for a period of six years.[81] To ensure its independence, the members of the College of the HATVP are nominated/elected by different branches of French national institutions.[82] The members' mandates are neither renewable nor revocable and they cannot receive or solicit orders, instructions from any other public authority. Moreover, the members cannot take part in any deliberations, verifications or controls concerning a member of an organisation in which they hold or held and interest over the last three years. The work and decisions of the HATVP are overseen by the French Parliament and the French Court of Auditors.

In addition to overseeing the regulation of side earnings, the HATVP also reviews the declarations of interests of officials, arbitrating in situations where there could be conflict of interests, and provides ethical advice to public office holders. The HATVP has very limited powers to impose sanctions when the rules are breached but refers more serious cases to the judicial authorities. It can intervene before, during and after the term of office of an elected or non-elected public office holder. The failure of a person to file a declaration of interests or to omit to declare a significant part of their interests is punishable by a sentence of up to three years in prison and/or a fine of up to EUR 45,000.

If a public official is suspected of having a conflict of interests, the HATVP is empowered to investigate the matter. If the investigations confirm a conflict of interests, the HAPTV can take several actions. Firstly, it can suggest that the official concerned puts an end to a conflict of interests (e.g. not taking part in deliberations where the official in question has an interest or abandoning the interest altogether). In more serious cases, the HATVP can obtain an injunction ordering the official to put an end to a conflict of interest. This injunction may be made public and failure to comply with it is a criminal offence punishable by up to one year's imprisonment and a fine of €15,000.[83]

The HATVP has specific procedures to deal with situation of conflict of interests involving Members of Parliament. At the end of an investigation, if a (potential) conflict of interest is identified, the HATVP will place the matter on its College's agenda so it can decide whether to take action and possibly to obtain an injunction. At the end of a period of one month, the HATVP's College may decide to make the injunction public. Concerning cases involving members of the government, who are obliged to submit a declaration of interests within two months of taking their posts, if the HATVP identifies a conflict of interests, a similar procedure is adopted which can ultimately lead to the transmission of a special report to the public prosecutor.[84]

There are similar, albeit less powerful agencies in several other countries. This includes **Belgium** where a Federal Ethics Commission (FEC) was established in 2011 as part of a wider institutional reform and this has the key role in overseeing the implementation of side-earnings rules. Another

[80] The HATVP's remit extended to members of the government (except the Prime Minister), elected officials (e.g. deputies and senators), presidential candidates and to senior officials.

[81] Two members elected by the Conseil d'Etat (High Court for administrative matters), two members elected by the Cour de cassation (High Court for civil and criminal matters), two members elected by the Cour des comptes (Court of Auditors), each court electing one woman and one man; two further members are appointed by the President of the Assemblée nationale (National Assembly), two members appointed by the President of the Sénat (Senate), each committee electing one woman and one man, and finally, two members are appointed by the Government (again, one woman and one man).

[82] Two members are elected by the Conseil d'État, two by the Court of Cassation , two by the Court of Auditors , the president of the National Assembly appoints two members of the court, two are appointed by the president of the Senate, and two members are appointed by the Government. See HATVP. (n.d.) Indépendance, available at: https://www.hatvp.fr/la-haute-autorite/linstitution/independance/#organisation

[83] https://www.hatvp.fr/la-haute-autorite/la-deontologie-des-responsables-publics/prevention-des-conflits-dinterets/

[84] LOI n° 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique (1)

example is the National Integrity Agency (ANI) in **Romania** which has a similar function. This has quite powerful investigative powers and employs a team of 'integrity inspectors' to investigate cases where there the rules on side earnings may have been breached. In **Spain**, it is the Minister of Territorial Policy and Public Function (Office of Conflicts of Interest) that is responsible for enforcing the law on side earnings. Elsewhere, the institutional frameworks are more fragmented.

In the countries where single agencies on the regulation of side earnings exist, these generally have a combination of both investigative and some sanctioning power but where there is a serious breach of the rules, these cases will be referred to the public prosecutor or similar judicial authority. This means that there is a separation of powers in serious cases despite a single agency being responsible for the enforcement of the rules on side earnings. In less centralised set-ups, a separation of powers generally exists by virtue of the fact that different entities have differing roles and powers in the regulation of side earnings.

The legal basis for the regulation of side earnings is also quite fragmented in EU Member States and spread across a quite large number of pieces of legislation. Whilst this is not in itself necessarily problematical from a regulatory point of view, it can make the rules less transparent and more difficult to understand. Examples of a quite fragmented legal basis include **Italy** where the rules on side-earnings are spread across seven different pieces of legislation rather than being contained in one particular law. Another example is **Romania**.

In **Poland**, whereas the 2019 Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions provides a regulatory framework for the conduct of public officials, the regulations on side earnings are spread across many other pieces of legislation. Thus, in addition to the above-mentioned law that applies to the Polish civil servants, other laws that also apply include the Law on Civil Service, and the Law on Employees of Civil Service, each of which establishes explicitly or implicitly rules for particular groups of persons working in the civil service. At the other extreme, and as noted above, there are only three key pieces of legislation regulating the side-earnings of public office holders in **Germany**, at least at the federal level.

4.6.2 Comparator countries

In the **United States**, the system is quite centralised, at least at the federal level. Here, it is the Office of Government Ethics and the Attorney General that are responsible for enforcing the rules on side earnings and other aspects of the conduct of public office holders. The Office of Government Ethics adopted a code of Good Administrative Behaviour in 2017 to apply to all employees of the executive branch. The Attorney General is responsible for bringing civil action "in the appropriate United States district court" against anyone who violates the code. In the case of Congress, the Congressional Research Service has defined statutes and laws on the outside earnings of Members of Congress. A relevant law is The Ethics Reform Act (1989, effective 1991). The Senate and House Ethics Committees is responsible for upholding the rules.

Otherwise, the United States is highly decentralised in its rules and practices regarding side-earnings. At the state, county and municipal levels, the rules vary widely. Individual states can set their own criminal or ethics codes (and hence the rules that apply to a member of Congress do not necessarily apply to a governor, sheriff, or other elected official and their staff). Moreover, there is less scrutiny at lower levels of the system compared with the Executive and Congress in part due to the greater visibility in media and public perception the higher offices receive. The rules at the state and lower levels can be set by the elected officials themselves. There has been some discussion in the US over establishing an ethics body to hold officials accountable, and to prevent candidates in elections for state or federal office who refuse to comply with reporting and transparency rules from being on the ballot for any level of office.

Canada provides a good example of a centralised approach to regulating side earnings and other aspects of the behaviour of public office holders. Here, the (Office of the) Conflict of Interest and

Ethics Commissioner, who is appointed by the Governor in Council[85], is responsible for upholding the 'Code of Values for Employees' which seeks to promote a "culture of integrity, to achieve a high degree of public confidence" by providing "independent, rigorous and consistent direction and advice". There is also a supporting set of more detailed and practical rules set out in the 'Standards of Conduct'. The (Office of the) Conflict of Interest and Ethics Commissioner is linked to a Senate Ethics Officer for elected public office holders. The Ethics Commissioner has quite wide-ranging powers, including the power to summon witnesses and require them to give (oral or written) evidence under oath and to produce documents and things "that the Commissioner considers necessary." It can also impose penalties where an investigation concludes that the ethics rules have been breached.

The **United Kingdom** has a more fragmented regulatory and institutional set up than most countries. Here, there were no rules at all on side-earnings until the mid-1990s. An overall framework was put in place following the 'sleaze' scandals that came to light in the mid-1990s with an independent Committee on Standards in Public Life (CSPL) being established in 1994. This advises the Prime Minister on arrangements for upholding ethical standards of conduct across public life in the UK. Its terms of reference define its role as being to "examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life." In 1997, its remit was extended to review issues in relation to the funding of political parties.

The Committee promotes the "Principles of Public Life" (or Nolan Principles, named after the CSPL's first chairman) which outline the ethical standards those working in the public sector are expected to adhere to. The Nolan principles apply to all public office holders (elected and non-elected) and private and voluntary organisations delivering services paid for by public funds. The most relevant of the principles from the point of view of side-earnings is the second one, namely the obligation to uphold Integrity, i.e. "holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships."

The Nolan principles are enshrined in several more specific codes of conduct across the UK public sector, including the Ministerial Code and a similar Code for MPs (updated in 2018), the Civil Service Code, the Civil Service Management Code, and the House of Lords Code of Conduct. As noted earlier, these adopt what is referred to as a 'principle-based' approach is adopted to side-earnings. Thus, the Civil Service Code outlines the values and standards of behaviour that civil servants are expected to follow. It forms part of the terms and conditions of an official's contract, which in turn stipulates the number of hours an official is expected to work per week and their remuneration. Side-earnings are not forbidden but must either relate to activities outside office hours and/or be approved in advance to ensure compliance with the rules on a conflict of interests.

4.6.3 Conclusions - Regulatory and institutional frameworks

With relatively few exceptions, EU Member States covered by this study have quite fragmented regulatory and institutional frameworks for side earnings and related ethical issues. Taken together, this is also true of the EU Institutions where – within an overarching institutional framework set by the EU Treaties and the EU Staff Regulations - there is a fragmented system with a number of significant differences in the rules on side earnings and with each institution having its own system of enforcement.

[85] The Governor General, acting on the advice of Cabinet, as the formal executive body that gives legal effect to those decisions of Cabinet that are to have the force of law.

4.7 Summary - Regulation of Side Earnings

To summarise, the **definitions of side earnings** that are used by different EU Member States and the EU Institutions are similar. There are, however, some differences with Belgium, for example, including business investments in the definition whereas in other cases, the definition of side earnings is limited to income that is generated from outside activities during the time when somebody is employed by an organisation. In several cases (Bulgaria and Romania, the UK amongst the comparators and the ECB) the notion of a conflict of interests rather than a formal definition of side earnings forms the basis of the rules.

There are quite different rules on the **type of outside activities** that can be undertaken by a public office holder alongside their job. Some EU Member States have all-embracing restrictions but provide some specific exemptions whereas in other cases (e.g. France, Spain), the emphasis is on a list specific permitted or forbidden side-activities. In a few cases (e.g. Belgium) there is no ex-ante definition of prohibited outside activities and all cases are assessed on a case-by-case basis. Only a minority of EU Member States have financial thresholds (this contrasts with the EU Institutions which in almost all cases have thresholds) or place limits on the time that can be devoted to side activities.

In the EU Institutions and most Member States, the **procedure for obtaining approval for side-activities** is similar and involves a written application to a line manager explaining the nature and extent of the proposed activity and other details. However, the information that should be disclosed varies. The **sanctions and penalties** that can be applied if the rules on side-earnings are broken are not always defined in the legislation and rules. In other cases, they are made explicit and range from an official warning to fines and/or dismissal from a job.

In some EU Member States there are differences in the rules on side earnings for different types of officials and also between officials and elected public office holders. In particular, the rules **for officials and elected public office holders** differ with the rules applying to the latter placing much more emphasis on the self-policing of side earnings than with officials. However, in most countries, transparency requirements for elected public office holders are higher than for their non-elected counterparts. There are also other differences: in some countries, prior authorisation to engage in side-activities, whether paid or unpaid, is usually not required and instead the person concerned is expected to use their own discretion in deciding what is or is not appropriate bearing in mind the code of ethics and rules. They are nevertheless required to declare side-activities and earnings. In the countries, the rules are much stricter with financial thresholds for side earnings above which a declaration is obligatory.

Turning to the **regulatory and institutional frameworks**, whilst almost all EU Member States covered by this study have rules that place constraints on side-earnings, there is a difference between the highly regulated approach adopted by some Member States and the less formalised rules and greater emphasis on ethical behaviour in other countries. Likewise, while a few countries have highly centralised institutional set-ups (e.g. France, Romania) in most countries the system of enforcement is much more fragmented. Taken together, the ethics framework for the EU Institutions is also fragmented with a number of significant differences in the rules on side earnings and with each institution having its own system of enforcement.

Tables 4.1(a) and 4.1(b) below provide a summary of the specific rules on side-earnings in the sample of Member States and the comparators.

Table 4.1: Summary Matrices – Rules on Side Earnings for Public Office Holders

Key: ● = Yes/fully regulated; ◑ = Partially; ○ = No rules

Table 4.1(a): Summary Matrix – Officials

Side Earnings Questions	Member States										Comparators	
	BE	BG	CZ	DE	ES	FR	IT	PL	RO	SE	UK	US
1) Are side earnings regulated?	◑	◑	●	●	●	●	●	●	●	●	◑	●
2) Is disclosure required?	●	○	●	●	●	●	●	●	●	●	●	●
3) Is there a financial limit on (disclosure of) side earnings?	◑	○	○	●	◑	○	○	●	○	○	○	◑
4) Is there a time limit (e.g. hours p.w.) on side activities?	○	○	○	◑	●	●	●	●	○	○	○	●
5) Are any particular specific outside interests forbidden?	○	○	○	○	◑	○	●	●	●	○	○	●
6) Is there an independent regulator?	◑	○	○	○	●	●	◑	◑	●	◑	◑	●
7) Are sanctions defined in cases of a breach of the rules?	●	◑	●	●	◑	●	●	◑	●	●	○	●
8) Do separate rules exist for different public office holders?	◑	●	●	●	◑	●	●	●	●	●	●	◑

Table 4.1(b): Summary Matrix – Elected officials and MPs

Side Earnings Questions	Member States										Comparators	
	BE	BG	CZ	DE	ES	FR	IT	PL	RO	SE	UK	US
1) Are side earnings regulated?	◑	●	●	●	●	●	●	●	●	●	◑	●
2) Is disclosure required?	●	●	●	●	●	●	●	●	●	●	●	●
3) Is there a financial limit on side earnings?	◑	○	○	●	◑	●	○	●	○	○	○	●
4) Is there a time limit on side earnings?	○	○	○	○	●	○	○	○	○	○	○	○
5) Are any particular specific outside interests forbidden?	○	○	○	○	◑	○	●	●	●	○	◑	●
6) Is there an independent regulator?	●	●	○	◑	●	○	◑	○	◑	◑	◑	●
7) Are sanctions defined in cases of a breach of the rules?	◑	◑	●	●	◑	●	●	◑	◑	◑	◑	◑

5. CONCLUSIONS & POSSIBLE IMPLICATIONS FOR THE EU ETHICS BODY

In this final section we summarise the main conclusions of the study and then examine the implications of the research findings for the proposed EU ethics body.

5.1 Overall Conclusions

The European Parliament's terms of reference defined three main objectives for this study (see Section 1). Below we summarise the study findings in relation to these aims.

5.1.1 Different practices regarding side earnings regulation

The first study aim was to provide information about different practices with regard to the regulation on side earnings in the main EU Institutions and in a sample of EU Member States, third countries and international organisations. In the study report we have examined the rules on side earnings at the EU level (EP, EC , EUCO as well as the ECB, EIB, ECA and ECJ) as well as for a sample of EU Member States (BE, BG, CZ, DE, ES, FR, IT, PL, RO and SE) and several comparators (the UK and USA).

Overall, it is clear from the research that there are some significant differences in the rules on side earnings between different EU Institutions and between the institutions and EU Member States.

5.1.2 Member States

The definitions of side earnings are similar in terms of rationale and ultimate purpose in different EU Member States covered by this research. However, these definitions place varying degrees of emphasis on underlying principles such as avoiding conflict of interests, 'external' influence on the public office and preserving good conduct, transparency and ethics as opposed to simply using a 'neutral' definition based on a monetary and/or time threshold. Also, in some cases, the definitions rely on prescribing certain permitted occupations and/or activities while other definitions are all-encompassing. The key concept underlying the definitions and legislation applying to side earnings is the risk of a conflict of interests or 'incompatibility' with the responsibilities, duties and functions of the public office. In addition to the effects of personal financial gain, most codes and rules acknowledge that side earnings may lead to the public office holders being influenced in their decisions in a way that is not in the public interest because of a financial consideration.

There are quite different rules across EU Member States on the type of outside activities that can be undertaken by a public office holder alongside his or her job. Some EU Member States have all-embracing restrictions but provide some specific exemptions whereas in other cases the emphasis is on a list of specific permitted or forbidden outside activities. In a few cases there is no prior definition of prohibited outside activities and all cases are assessed on a case-by-case basis. Only a minority of EU Member States have financial thresholds on side earnings, contrasting with the EU Institutions which usually have thresholds and/or place limits on the time that can be devoted to side activities.

In the EU Institutions and most Member States, the procedure for obtaining approval to engage in outside activities is similar. The procedure involves a written application to a line manager or competent department explaining the extent and nature of the proposed outside activity and other details. However, the information that should be disclosed varies. Furthermore, the sanctions and penalties that can be applied if the rules on side earnings (the third study aim) are breached are not always defined in the legislation and rules. In some cases, possible sanctions are made explicit and range from an official warning to fines, suspension and/or dismissal from a job.

There are also similar requirements with regard to declarations of interests and the penalties and sanctions for non-disclosure or inaccurate disclosure of interests.

There are different rules and procedures in EU Member States for the side earnings of elected and non-elected public office holders. In general, there is a much greater emphasis on the principle of self-regulation in the case of elected public office holders than is the case of officials but equally the rules on transparency and public accountability are stricter in the first category. The extent to which members of national parliaments are restricted in their ability to have outside activities that generate side-earnings varies across the EU Member States. Some EU Member States have separate rules on side earnings for different types of officials (e.g. temporary or permanent, senior or junior) but in a majority of cases there is no significant distinction.

5.1.3 EU Institutions

The EU Institutions have relatively strict rules on side earnings compared with the Member States, international organisations and the comparator third countries covered by this study. This applies particularly to the rules for officials and the Members of the Commission, the Court of Justice and the Court of Auditors as well as the President of the European Council. There is a considerable diversity of approaches to regulating side earnings in the EU Member States but in general, the EU Institutions seem to have stricter rules. In relation to the rules in the international organisations, in some cases (Council of Europe, OECD and especially the World Bank), all outside activities being forbidden unless permission is granted first which is similar to the EU Institutions. On the other hand, the EU Institutions' rules are more onerous than those applied by the UN which identifies quite a large number of permitted outside activities that do not require authorization. Compared to the EU Institutions, there are no financial thresholds but otherwise the principles underlying the side-earnings rules (independence, discretion, etc.) are similar.

There are significant differences in the rules on side earnings between different EU Institutions. These differences (highlighted in Section 3.7) relate to: definitions, whether or not outside activities and earnings are permitted at all, the financial thresholds relating to side earnings where no declaration is needed, the requirements with regard to declarations of interest, rules on gift and hospitality. To highlight one example, the financial thresholds range from zero for officials and other civil servants in the European Parliament, to EUR 5,000 p.a. in the Council and EUR 10,000 p.a. in the Commission. There is no inherent justification for such differences that we have come across. Similarly, there are significant differences in the type of outside activities and earnings that are permitted.

The variations in the rules in different EU Institutions on side earnings - which often result from the founding Treaties themselves - can be justified on the grounds that they reflect the specificities of the various EU Institutions, in particular the extent to which officials and elected members are likely to face an actual or potential conflict of interests. Against this, it is difficult to see why this might justify some of the differences that actually exist (e.g. on the financial thresholds for side earnings or list of permitted activities). Moreover, it could be argued that the principle of equity applies and that EU officials should be treated equally irrespective of the EU entity they work for, even though discrepancies are inherent to the legal framework set by the legislator in the EU Staff Regulations and the principle of administrative autonomy of each EU institution.

There are also differences in the rules on side earnings that apply to different types of officials, elected members and other public office holders. As in the Member States, the rules for elected public office holders tend to be different from those for officials and rely more on self-policing. Again, there are differences in these rules between the different EU Institutions. For instance, the President of the European Council and Members of the Commission, the Court of Auditors and the Court of Justice are prohibited from undertaking any professional activities or assignments, paid or unpaid, alongside their EU duties during their term of office. In contrast, MEPs are allowed to have other jobs and side earnings as long as these are declared and do not conflict

with their duties as MEPs. Arguably, the principle of equity should apply between categories of public office holders, even though the nature of the status of Members of different institutions differs.

5.1.4 Classifying the different side earnings rules

In relation to the second study aim – to identify, classify and assess different types of regulation including situations where there is no regulation, etc. – the report highlights a number of findings.

Some EU Member States have very precisely defined rules indicating the situation in which outside activities are permitted. In other cases, there a greater reliance on a 'principle-based' approach with a higher degree of discretion allowed for the official and their superiors. Whilst almost all EU Member States covered by this study have rules on side earnings, there is a difference between the highly regulated approaches adopted by some Member States and the less formalised rules in other countries. In the sample of 10 EU Member States covered by this study, almost all of them have rules that place constraints on side-earnings. However, the degree of prescription varies. Previous studies and experience from the EU Member States suggests, however, that clearly defined rules are needed to promote transparency and to help those covered by the rules to understand them.

The study underlines the fact that the rules on side earnings should balance several considerations – allowing some discretion to pursue personal interests but at the same time ensuring that there is no conflict of interests. In general terms it is clear that it is desirable to strike a balance between two basic considerations: first, allowing public office holders to pursue 'side' interests as a way of keeping in touch with the 'real world' and enabling useful knowledge and expertise to be deployed in official duties and enabling the know-how of public office holders to benefit other institutions; and, second, avoiding a situation where a public office holder's duties are neglected and/or undue influence is brought to bear on policymaking and the political system. Striking an appropriate balance is difficult and the research highlights differing approach adopted by different EU Institutions, Member States and international organisations.

The legal basis for the regulation of side earnings is quite fragmented in several countries and spread across a quite large number of pieces of legislation and codes. Whilst this is not in itself necessarily problematical from a regulatory point of view, it can make the rules less transparent and more difficult to understand. The rules on side earnings form part of an overarching ethics or integrity framework that regulates all aspects of the behaviour of public office holders. The ethics frameworks usually consist of a combination of staff regulations that set out basic principles and rules, codes of conduct containing more specific requirements, and other supporting forms of guidance and materials.

Likewise, the institutional structures being used to oversee and enforce the rules on side earnings range from highly centralised, single agency set-ups to more fragmented systems. Relatively few EU Member States and comparators have single agencies or departments with overall responsibility for ensuring compliance with the rules on side earnings. However, the study suggests that this approach has a number of advantages. Taken together, the ethics framework for the EU Institutions, which results from the Treaties and the EU Staff Regulations, is also somewhat fragmented with a number of significant differences in the rules on side earnings (see Section 3.7) and with each institution having its own system of enforcement.

Assessing the effectiveness of different approaches to regulating side earnings is not straightforward. Different approaches also reflect different cultures and traditions. The key issue, however, is the extent to which different approaches help ensure that public office holders behave in a way that avoids any conflict of interests or other risks to ethical behaviour in fulfilling their duties. Although difficult to assess, the most appropriate measure is the extent to which the rules help promote trust in the legitimacy of democratic institutions. Possible 'proxy' indicators include

the number and severity of intentional breaches of the rules that are detected, and how the rules and supporting measures (for example, awareness raising) can help minimise such breaches. It can reasonably be assumed that a high volume of breaches will contribute to undermining trust in the legitimacy of democratic institutions.

Overall, and notwithstanding, difficulties in measuring the effectiveness of different approaches to the regulation of side earnings rules, and a paucity of hard evidence, this study suggests that regulations are needed and these should go beyond a statement of principles and include specific rules on specific issues. Both elements are needed to make up an effective ethics framework.

5.2 Possible Implications for the Proposed EU Ethics Body

This study supports the case put forward in the European Parliament's 2021 Resolution for setting up an independent EU ethics body to strengthen trust in the EU Institutions and their democratic legitimacy. The Resolution argues that whereas the ethical standards applicable to the EU Institutions are in many respects ahead of those applicable to their national equivalents, these standards have not been enforced in a satisfactory manner with an over-reliance on self-regulation in the case of elected office holders. In addition, this study highlights differences in the rules being applied by different institutions. It can be argued that these differences are to some extent justified given the different roles of the various EU Institutions. However, the complexity of the system reduces transparency and makes it more difficult for both EU citizens and those who are subject to the rules to understand and apply them. Variations in the rules on side earnings are also at odds with the principle of equity and the notion that all EU officials should be subject to the same regulations.

The proposed EU ethics body could have a useful role in promoting harmonisation of the rules on side earnings across the various EU Institutions. As pointed out above, there are significant differences in the side earnings rules across the different EU Institutions. Regarding Members of the EU Institutions, this is due to different rules in the Treaties reflecting the different nature of the status of the Members of different institutions. Despite the different roles of the various EU Institutions, there is no straightforward explanation for the significant differences in the rules in the case of officials. Whilst it might be to some extent appropriate for each institution to decide for itself which outside activities and side earnings should be permitted or not permitted for staff (although even here there is likely to be a lot of common ground), the rules on financial thresholds, procedures for obtaining authorisation, disclosure requirements, rules of gifts and hospitality could be brought closer together if not harmonised entirely.

The proposed EU ethics body could also have a useful role in encouraging the sharing of information and good practices. The competent services of the European Parliament, Commission and the Council Secretariat already regularly exchange information and good practices. Although the internal provisions are not identical, this exchange has nevertheless been useful for the alignment of procedures and rules, and to share ideas on the most effective awareness raising measures. In effect, the proposed EU ethics body would take over the hosting of this networking activity and could help to develop it further, both in terms of content and scope since several EU bodies do not participate in existing exchanges.

Because the way in which side earnings are regulated is influenced by the political culture and traditions in different countries and institutions, it is debatable whether it is appropriate or indeed possible to define 'best practices'. That said, it is possible to summarise some basic pointers that the proposed EU ethics body might consider as a guide:

Box 5.1: Pointers to Best Practices in the Regulation of Side Earnings

- The rules on side earnings should form part of an **overarching ethics or integrity framework** that governs all aspects of the behaviour of public office holders.
- In general terms it is desirable to allow public office holders within the applicable framework set by the EU treaties to pursue certain **outside interests** as a way of keeping in touch with the 'real world' and enabling knowledge and expertise to be deployed – but only as long as this does not lead to duties being neglected and/or undue influence being brought to bear on policymaking.
- As such, the rules on side earning should strike a balance between allowing some discretion to pursue paid and unpaid outside interests but at the same time ensuring that there is no **conflict of interests**. This is the case now albeit with some variation in the rules across the EU Institutions.
- In accordance with the **principle of equity**, civil servants of all types and seniority should be subject to the same basic rules on side earnings / outside activities – there is no obvious justification for significant differences. While a degree of self-regulation is appropriate for elected members, the same basic rules as for officials should also apply to them.
- Clearly defined **rules on side earnings** are needed to promote transparency and to help those covered by the rules to understand them. This applies particularly to: ((a) the types of side activities are not permitted; (b) financial limits on permitted side earnings; (c) the requirements with regard to declarations of interest; (d) procedures for obtaining permission to engage in outside activities; (e) the penalties and sanctions if rules are breached.
- From an **institutional and regulatory perspective**, there is a case for a degree of centralisation as long as this is not taken too far and leads to excessive bureaucracy and disregards the independence and specificities of different entities. An ethics body must be able to fulfil its mandate independently and have sufficient resources to exercise an effective role.

Overall, this study suggests that the proposed EU ethics body should have a relatively loose coordinating role in relation to the regulation of side earnings rather than taking over and centralising the functions that are currently exercised by individual EU Institutions. The competent services within the different EU Institutions already have well-established systems and these seem to work well. Over centralising the enforcement of side earnings rules would almost certainly lead to more bureaucratic procedures and possibly less effective enforcement of the rules.

Furthermore, there is a case for the proposed EU ethics body having varying degrees of involvement in the regulation of side earnings (and possibly other ethical issues) for elected and non-elected office holders in the EU Institutions, respectively. Feedback from the research suggests that there would be advantages in terms of transparency and independence in giving the proposed EU ethics body overall responsibility for helping to enforce the side earnings rules that apply to senior officials and elected public office holders, including MEPs. The role of the proposed EU ethics body in relation to officials would be limited to the points highlighted earlier – harmonisation of rules, sharing information and good practices, etc. It could also have a role in reviewing certain cases where the outcome of an investigation is disputed. In the case of Members, the self-policing approach could be retained but with the proposed EU ethics body monitoring the concrete application of the rules, bringing suspected cases of a breach to the competent bodies and advising on disputed cases.

ANNEX A: LIST OF SECONDARY SOURCES

European Commission

- European Commission. (2021). DECISION OF THE EUROPEAN COMMISSION on Former Commissioner Karmenu Vella's post term of office professional activity as advisor for the 'Malta Enterprise' corporation.
- European Commission. (2021). ANNUAL REPORT ON THE APPLICATION OF THE CODE OF CONDUCT FOR THE MEMBERS OF THE EUROPEAN COMMISSION IN 2020.
- European Commission. (2020). DECISION OF THE PRESIDENT OF THE EUROPEAN COMMISSION Relating to the implementation of the commitments of Commissioner Breton to withdraw from files relating to his previous employer and to prevent and address potential conflicts of interest.
- European Commission. (2020). CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION.
- European Commission. (2020). COMMUNICATION TO THE COMMISSION ON THE PUBLICATION OF INFORMATION CONCERNING OCCUPATIONAL ACTIVITIES OF SENIOR OFFICIALS AFTER LEAVING THE SERVICE (ARTICLE 16, FOURTH PARAGRAPH OF THE STAFF REGULATIONS) Annual Report 2020.
- Independent Ethical Committee. (2018). Opinion of the Independent Ethical Committee established by the European Commission - 26 October 2018. European Commission.
- European Commission. (2018). Financial regulation applicable to the general budget of the Union.
- European Commission. (2018). Commission Decision of 31 January 2018 on a Code of Conduct for the Members of the European Commission.
- European Commission. (2015). EEC/EAEC Council: Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community.
- European Commission. (2012). EU Charter of Fundamental Rights.
- European Commission. (2012). COMMUNICATION TO THE COMMISSION Communication from Vice-President Šefčovič to the Commission on Guidelines on Gifts and Hospitality for the staff members.
- European Commission. (2011). RULES OF PROCEDURE OF THE COMMISSION (C(2000) 3614).

European Parliament

- European Parliament. (2021). European Parliament resolution of 16 September 2021 on strengthening transparency and integrity in the EU Institutions by setting up an independent EU ethics body (2020/2133(INI)).
- European Parliament. (2020). EU Agencies and Conflicts of Interest.
- European Parliament. (2013). Bureau Decision implementing measures for the code of conduct for MEPs with respect for financial interests and CoI.

European Court of Auditors

- European Court of Auditors. (2019). The ethical frameworks of the audited EU Institutions: scope for improvement
- European Court of Auditors. (2012). Management of Conflict of Interest in Selected EU Agencies.
- European Court of Auditors. (2011). Ethical guidelines for the European Court of Auditors.

European Central Bank

- European Central Bank. (2021). European Central Bank Staff Rules.
- European Union. (2019). Code of Conduct for high-level European Central Bank Officials. *Official Journal of the European Union*
- European Union. (2015). THE ETHICS FRAMEWORK OF THE ECB (2015/C 204/04). *Official Journal of the European Union*
- European Central Bank. (2014). DECISION OF THE EUROPEAN CENTRAL BANK of 3 December 2014 amending the European Central Bank Staff Rules as regards the ethics framework (ECB/2014/NP26)

European Council

- European Council. Code of Conduct for the President of the European Council

European Economic and Social Committee

- European Economic and Social Committee. (2021). Respect and dignity at the EESC: A practical guide to proper conduct for members of the EESC

European Union Committee of the Regions

- Committee of the Regions. (2016). INFORMATION REGARDING OCCUPATIONAL ACTIVITIES OF FORMER SENIOR OFFICIALS OF THE COMMITTEE OF THE REGIONS AFTER LEAVING THE SERVICE (ARTICLE 16(3) AND (4) OF THE STAFF REGULATION) Annual Information 2015
- European Union. (2019). Conduct for Members of the European Committee of the Regions. *Official Journal of the European Union*

OECD

- OECD. (2017). Code of Conduct for OECD Officials.
- OECD. (2010). Post-Public Employment: Good practices for Preventing Conflict of Interest
- OECD. (2005). Managing Conflict of Interest in the Public Sector: A Toolkit.
- OECD. (2003). Recommendation of the Council on Guidelines for Managing Conflict of Interest in the Public Service.

United Nations

- United Nations. (2018). Staff Regulations and Rules of the United Nations: Secretary-General's bulletin.
- WHO (2016). Staff Regulations and Rules. World Health Organization Secretariat.

NATIONAL LEVEL (EXAMPLES OF RELEVANT DOCUMENTS)

Belgium

- Belgium. Law of 2 May 1995 relating to the obligation to submit a list of mandates, functions and professions and a declaration of assets.
- Belgium's National Assembly. Regulations. (2020). Available at: https://www.lachambre.be/kvvcr/pdf_sections/publications/reglement/reglementFR.pdf
- Belgium's National Assembly. Code de déontologie des membres de la Chambre des représentants. (Adopted in 2013). Available at : https://www.dekamer.be/kvvcr/pdf_sections/publications/reglement/D%C3%A9ontologie%20-%20x%20code%20des%20membres%20NTC.pdf

- Belgium's Senate. (2021). Regulations. Available at: https://www.senate.be/doc/Reglement_2021_F.pdf
- Commission de déontologie. Code de déontologies des mandataires publics. (2018). Available at: https://www.fed-deontologie.be/wp-content/uploads/2020/06/Code_de_deontologie_des_mandataires_publics.pdf
- Council of Europe (GRECO). Prévention de la corruption et promotion de l'intégrité au sein des gouvernements centraux (hautes fonctions de l'exécutif) et des services répressifs. 5e cycle d'évaluation. (2019). Available at : https://justitie.belgium.be/sites/default/files/downloads/2020-01_grecoeval5rep3-fr-belgique.pdf
- Court of Audit (2021). Vade-mecum relatif au dépôt des listes de mandats et déclarations de patrimoine.
- European Commission (Eurostat). Reporting the remuneration of national civil servants for Art65 purposes. (2015) Availabe at: https://ec.europa.eu/eurostat/documents/6939681/9010625/Belgium+-+Civil+Service+Remuneration_1.pdf/7b13c8e7-9d57-45f4-aaa2-0a8c5d26a96b

Bulgaria

- Bulgarian Council of Ministers. Code of Conduct of Civil Servants in the State Administration. (2020). Available at: https://europam.eu/data/mechanisms/COI/COI%20Laws/Bulgaria/4.%20Code%20of%20Conduct%20of%20Civil%20Servants%20of%202020_BUL,%20consolidated,%20last%20amended%202020.pdf
- Bulgaria. Law on the Prevention of Conflict of Interest and Ascertainment Act. (2010). Available at :https://www.mi.government.bg/en/library/conflict-of-interest-prevention-and-ascertainment-act-447-c25-m258-2.html
- National Assembly of Bulgaria. Rules of Procedures. (Adopted in 2017. Amended in 2018). Available at: https://www.parliament.bg/en/rulesoftheorganisations

Czechia

- Czechia Ministry of Labour and Social Affairs. (2006). *Labour Code act No. 262/2006 Coll.,* Available at: https://www.mpsv.cz/documents/625317/625915/Labour_Code_2012.pdf/a66525f7-0ddf-5af7-4bba-33c7d7a8bfdf
- Czechia Ministry of Labour and Social Affairs. (2006). *Act of Law No. 159/2006 on Conflict of Interests*, Available at: https://www.psp.cz/en/docs/laws/2006/159.html
- Czechia Ministry of Labour and Social Affairs. (1965). Labour Code act No. 65/1965 Coll., Available at: https://www.legislationline.org/download/id/1152/file/57e59b5f06d4e5d2827e57b900e1772e.pdf

France

- Dixte, C., & et al. (2020). L'évolution des rémunérations dans la fonction publique en 2018.
- Daniaud, J., & et al. (2020). Les rémunérations dans la fonction publique en 2018.
- France Ministry of Transformation and of the Civil Service. (2020). Annual report on the state of the public service.
- France Ministry of Work and Employment. (2020) Act of Law No. 2020-69 from the 30th of January available at: https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000041506165

- France Ministry of Health and Solidarity. (2018). Act of Law No. L133-6-8, available at: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000025013770
- France Ministry of Work and Employment. (2017). Act of Law No. 2017-105 from the 27th of January Available at: https://www.legifrance.gouv.fr/loda/id/JORFTEXT000033936795/
- France Senate and National Assembly. (2016). Act of Law No. 2016-483 from the 20th of April 2016 available at: https://www.legifrance.gouv.fr/loda/id/JORFTEXT000032433852/
- France Ministry of Work and Employment. (1986). Act of Law No. 83-634 from the 13th of July available at: https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000504704/

Germany

- Bundesministerium für Justiz. *Federal Civil Service Act* (*Bundesbeamtengesetz*, BBG), available at http://www.gesetze-im-internet.de/bbg_2009/index.html
- Bundesministerium für Justiz. *Federal Secondary Employment Ordinance* (*Verordnung über die Nebentätigkeit der Bundesbeamten, Berufssoldaten und Soldaten auf Zeit,* Bundesnebentätigkeitsverordnung, BNV), available at http://www.gesetze-im-internet.de/bnv/
- Bundesministerium für Justiz. *Members of Parliament Act* (*Gesetz über die Rechtsverhältnisse der Mitglieder des Deutschen Bundestages*, AbgG), available at https://www.gesetze-im-internet.de/abgg/
- Deutscher Bundestag. *Tätigkeiten und Einkünfte neben dem Mandat*, available on https://www.bundestag.de/abgeordnete/nebentaetigkeit#url=L2FiZ2VvcmRuZXRlL25lYmVudGFldGlna2VpdC9uZWJlbnRhZXRpZ2tlaXQtMjEzODI2&mod=mod454218
- Deutscher Bundestag. *Gewählte Abgeordnete,* available on: https://www.bundestag.de/abgeordnete
- Eucrim. GRECO: *Fifth Round Evaluation Report on Germany*, available on https://eucrim.eu/news/greco-fifth-round-evaluation-report-on-germany/
- Gesetz über die Rechtsverhältnisse der Mitglieder der Bundesregierung (*Bundesministergesetz - BMinG*) law (§ 6a -6c), see https://www.gesetze-im-internet.de/bming/BMinG.pdf. See also: https://lobbypedia.de/wiki/Karenzzeit

Italy

- Italy. (2013) *Legislative decree no. 39 Article 16.* Provisions on the non-transferability and incompatibility of assignments in public administrations and in private entities under public control, pursuant to Article 1, paragraphs 49 and 50, of Law no. 190 of 6 November 2012. Available at: http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2013-04-08;39~art16!vig=
- Italy. (2012). Law of 6 November 2012 no. 190 Article 1, paragraphs 49 and 50. Available at: http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2012-11-06;190~art1!vig=
- Italy. (2001). *Legislative Decree no. 165 2001 Article 53* providing "General rules on the organization of work employed by public administrations". Available at: http://www.funzionepubblica.gov.it/lavoro-pubblico-e-organizzazione-pa/rapporto-di-lavoro-pubblico/incompatibilita-cumulo-di-impieghi-e
- Legislative Decree no. 33 of 2013 Reorganization of the regulations concerning the right of civic access and the obligations of advertising, transparency and dissemination of information by public administrations
- Law no. 140 of 28 May 1997, and subsequent amendments - "Conversion into law, with amendments, of decree-law no. 79 of 28 March 1997 containing urgent measures for the rebalancing of public finances"

- Law no. 662 of 23 December 1996 "Measures for the rationalization of public finance"
- Decree of the President of the Republic no.3 of 10 January 1957, single provisions (testo unico) concerning the status of civil servants of the State.
- Document *"General criteria regarding assignments prohibited to public employees"* to support the administrations in the application of the legislation

Poland

- Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions (1997). https://europam.eu/data/mechanisms/FD/FD%20Laws/Poland/3.%20Act%20on%20Restrictions%20on%20Conduct%20of%20Business%20Activities%20by%20Persons%20Performing%20Public%20Functions%20of%201997_POL,%20consolidated%202019.pdf
- Rycak, A., et al. (2016) Art. 30, Zakaz wykonywania niektórych zajęć przez pracowników na stanowiskach urzędniczych [in:] Rycak et. al. (eds.) *Ustawa o pracownikach samorządowych. Komentarz, wyd. II.*, Wolters Kluwer, Available at: https://sip.lex.pl/#/commentary/587356321/503976/rycak-artur-i-in-ustawa-o-pracownikach-samorzadowych-komentarz-wyd-ii?cm=URELATIONS.
- Rzetecka-Gil, A. (2021) Ustawa o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne. Komentarz, Art. 1, LEX/el., Available at: https://sip.lex.pl/#/commentary/587247898.
- Chancellary of Sejm (1990). Ustawa z dnia 8 marca 1990 r. o samorządzie gminnym, Available at: https://sip.lex.pl/#/act/16793509.
- Chancellary of Sejm (1998) Ustawa z dnia 5 czerwca 1998 r. o samorządzie powiatowym, Available at: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19980910578/U/D19980578Lj.pdf.
- Chancellary of Sejm (2008). Ustawa z dnia 21 listopada 2008 o służbie cywilnej, Available at: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20082271505/U/D20081505Lj.pdf.
- Chancellery of Sejm (2022). Ustawa z dnia 21 listopada 2008 o pracownikach samorządowych, Art. 30, Available at: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20082231458/U/D20081458Lj.pdf.
- Dobrosz-Oracz J., Czuchnowski W. (2020). Kancelaria Sejmu do posłów: dorabiajcie! Pełne uposażenie i tak się należy, Available at: https://wyborcza.pl/7,75398,26136341,kancelaria-sejmu-do-poslow-dorabiajcie-pelne-uposazenie-i.html?token=dST4OYCAYzPsAJEsA1-u7huEwcRQh7mnrChtY-cxX4X0UWBo5FO-2_-7c97cBcUX.
- Dziennik Gazeta Prawna (2017). Włodarz gminy może dorabiać. Ale nie zawsze, Available at: https://praca.gazetaprawna.pl/artykuly/1052185,wlodarz-gminy-moze-dorabiac-ale-nie-zawsze.html.
- Gałczyńska, M. (2020) Zarobki posłów poza kontrolą? Sędzia: to szokujące, nie do wytłumaczenia. Available at: https://wiadomosci.onet.pl/kraj/poslowie-nie-musza-zglaszac-dodatkowych-zarobkow-sedzia-to-szokujace-nie-do/ebg04j4.
- Gov.pl (2022). Serwis Służby Cywilnej, Dodatkowe zarobkowanie i zatrudnienie, Available at: https://www.gov.pl/web/sluzbacywilna/dodatkowe-zarobkowanie-i-zatrudnienie.
- GRECO Fifth Evaluation Report on Poland (2017). https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168092005c
- Horne, C. M. (2009). International Legal Rulings on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context. *Law & Social Inquiry*. 34(3). pp 713-744. Available at: https://www.jstor.org/stable/40539376

- Jankowska, M. (2018). Jak może dorabiać urzędnik pracujący w samorządzie, Available at: https://www.rp.pl/urzednicy/art2109001-jak-moze-dorabiac-urzednik-pracujacy-w-samorzadzie.
- Jankowska, M. (2018 a). Dorabianie do pensji przez osoby zatrudnione w administracji publicznej, Available at: https://www.rp.pl/praca-w-samorzadzie/art2108971-dorabianie-do-pensji-przez-osoby-zatrudnione-w-administracji-publicznej.
- Jaworski, B. (2020). Pozycja ustrojowoprawna samorządu gminnego w systemie administracji publicznej., Studia Iuridica, vol. 85, pp. 140-156, DOI: https://doi.org/10.31338/2544-3135.si.2020-85.10.
- Marshal of the Sejm of the Republic of Poland. (2019). Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions. https://europam.eu/data/mechanisms/COI/COI%20Laws/Poland/2.%20Act%20on%20Restrictions%20on%20Conduct%20of%20Business%20Activities%20by%20Persons%20Performing%20Public%20Functions%20of%202019_POL.pdf
- Marshal of the Sejm of the Republic of Poland. (2021). Ustawa z dnia 9 maja 1996 r. O WYKONYWANIU MANDATU POSŁA I SENATORA. Available at: https://www.sejm.gov.pl/prawo/mandat/kon6.htm.
- Money.pl (2020) Sejm. Posłowie nie muszą już zgłaszać dodatkowych zarobków. Available at: https://www.money.pl/gospodarka/sejm-poslowie-nie-musza-juz-zglaszac-dodatkowych-zarobkow-6533053062063745a.html.
- Płażek S. (2021) Art. 80, Dodatkowe zatrudnienie i zajęcia zarobkowe członka korpusu służby cywilnej [in:] Baran, K. W., eds. *Ustawa o służbie cywilnej. Komentarz*, Available at: https://sip.lex.pl/#/commentary/587868930/666370/baran-krzysztof-w-red-ustawa-o-sluzbie-cywilnej-komentarz?cm=URELATIONS.
- Sekuła, A. (2016). Gmina w systemie zarządzania państwem. [in:] Sekuła A. (eds.) *Meandry zarządzania*, Gdańsk: Wydawnictwo Politechniki Gdańskiej, pp. 57-80, ISBN: 978-83-7348-686-7.
- TVN24 (2020). Dodatkowe zarobki posłów. Szczerba o „odejściu od standardów", CIS o formularzu „zgodnym z ustawą". Available at: https://tvn24.pl/polska/zarobki-poslow-2020-zmiany-we-wnioskach-o-uposazenie-poslowie-nie-musza-informowac-o-dodatkowych-dochodach-4640454.

Romania

- Law no. 161/2003 on certain measures for public office transparency, with subsequent amendments.
- Law no. 176/2010 on integrity in the exercise of public functions and dignities, with subsequent amendments.
- Law no. 95/2006 concerning the reform in the health care system
- European Commission (2021), Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism
- European Commission (2019), Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism and the Technical Report
- European Commission (2018), Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism and the Technical Report

- European Commission (2017, November), Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism and the Technical Report
- European Commission (2017, January), Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism and the Technical Report
- European Commission (2016), Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism and the Technical Report
- GRECO (2016), Forth evaluation round. Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation Report. Romania
- GRECO (2017), Forth evaluation round. Corruption prevention in respect of members of parliament, judges and prosecutors. Compliance Report. Romania
- GRECO (2019), Forth evaluation round. Corruption prevention in respect of members of parliament, judges and prosecutors. Interim Compliance Report. Romania
- GRECO (2021), Forth evaluation round. Corruption prevention in respect of members of parliament, judges and prosecutors. Second Interim Compliance Report. Romania
- National Integrity Agency (2017) Report on 10 years of activity
- National Integrity Agency (2018) Annual Report
- National Integrity Agency (2020) Annual Report
- National Integrity Agency (2021) Annual Report
- Ministry of Justice (2021) The national report on the state of implementation of the National Anticorruption Strategy in 2020.
- Bouman Johan (2021), *Preventing Corruption of Civil Servants in France, Romania and the Netherlands. A comparative study of low and policy*, Wolters Kluwer, Bucharest.

Spain

- Spain. (1984) Law 53 / 1984, of 26 of December, related to incompatibilities of workers serving in public administrations. Available at: https://www.boe.es/buscar/pdf/1985/BOE-A-1985-151-consolidado.pdf
- Spain. (2015) Royal Legislative Decree 5/2015, of October 30th, which approves the consolidated text of law for the Basic Statute of Public Employees (Arts. 52-54) Available at: https://www.boe.es/buscar/act.php?id=BOE-A-2015-11719
- Spain. (2013) Law 19/2013, of December 9, on transparency, access to public information and good governance (Arts 25-32) Available at: https://www.boe.es/buscar/act.php?id=BOE-A-2013-12887
- Spain. (1985) Royal Decree 598 / 1985, dated 30 April, related to incompatibilities of State administration, social security workers and entities like, bodies and dependent companies. Available at: https://www.boe.es/buscar/pdf/1985/BOE-A-1985-7820-consolidado.pdf
- Spain. (1994) First additional provision of Royal Decree 1777 / 1994 of 5 August, adequacy of rules governing the procedures of personnel management to the law 30 / 1992, of 26 November. Available at: https://www.mptfp.gob.es/dam/es/portal/funcionpublica/etica/Personal_normal/DISPOSICION-ADICIONAL1--RD1777.pdf.pdf

- Spain. (2011) Resolution 20 December 2011, the Secretariat of State for the civil service, that published the Council of Ministers dated 16 December 2011, which approves the procedure for the reduction, on request, the SPECIFC allowance of officials of the General Administration of the State belonging to the subgrupos C1, C2 and and authorises the exceedance, stop the workers at the service of the General State Administration, the limit laid down in Article 7.1 of the Act 53 / 1984, of 26 of December, related to incompatibilities of workers serving in public administrations. Available at: https://www.boe.es/boe/dias/2011/12/23/pdfs/BOE-A-2011-20032.pdf
- Spain (2011) Law 14 / 2011, 1 June, science, technology and innovation (article 18 first and final). Avaliable at: https://www.boe.es/boe/dias/2011/06/02/pdfs/BOE-A-2011-9617.pdf
- Spain Public Function. (n.d.). Values of the Public Servant: Code of Integrity. Retrieved from https://www.funcionpublica.gov.co/web/eva/codigo-integridad
- Jornadalaboral. (2008). Trabajo de funcionario público en España.

Sweden

- Ministry of Justice. 1994. The Public Employment Act (1994:260). Available at: https://www.government.se/4ac877/contentassets/686c614c5f4e4acb9170fb18bdac5c68/sfs-1994260-public-employment-act
- Ministry of Justice. 2002. Lag om ändring I lagen (1994:260) om offentlig anställning
- Ministry of Justice. 2022. Law amending the Public Employment Act (1994:260). Available at: https://www.lagboken.se/Lagboken/start/arbetsratt-och-arbetsmiljoratt/lag-1994260-om-offentlig-anstallning/d_47976-sfs-2001_1016-lag-om-andring-i-lagen-1994_260-om-offentlig-anstallning
- Law (1996:810) on Registration of Members of Parliament's Commitments and Economical Interests. https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Sweden_Disclosure%20Law_2008_en.pdf
- Riksdag Act (2014:801). https://www.riksdagen.se/globalassets/07.-dokument--lagar/riksdagsordning-eng-2021.pdf

Other sources

- Arnold, Martin. (2021). Federal Reserve Clampdown on staff trading turns spotlight on other central banks. *Financial Times*
- Canepa, Francesco. (2021) ECB urged to tighten trading rules for policymakers. *Reuters*
- Demmke, Christoph et al. (2008). Regulating Conflicts of Interest for Holders of Public Office in the European Union. *European Institute of Public Administration*

ANNEX B: FACTSHEET FOR EU INSTITUTIONS

Part A: Definition of Side Earnings

How are side earnings defined?

European Commission

Like the other EU Institutions, the European Commission rules for staff on outside activities are based on a combination of the Staff Regulations and implementing rules. The rules permit paid outside activities up to a financial ceiling of EUR 10,000 (per calendar year for all activities taken together) provided that the Appointing Authority duly authorizes the activity on the basis of the criteria set out in the Staff Regulations and the implementing Decision (and there is no conflict of interest and other requirements are fulfilled).

European Parliament

In the EP's Code of Conduct, side earnings are not defined as such, but reference is made to outside activities which may be gainful or not. There is a zero limit on outside earnings for officials.

Council of the European Union

The Council of the European Union has for staff on outside activities are based on a combination of the Staff Regulations and implementing rules. There is a limit of EUR 5,000 on side earnings from permitted outside activities.

Part B: Rules for Officials

B.1. What rules, guidelines and provisions exist to regulate side-earnings?

European Commission

The Commission's rules on side earnings for officials are based on a combination of the EU Staff Regulations and a 2018 Decision.[86] The most recent update occurred after the adoption of the 2018 Decision on outside activities and on occupational activities after leaving the Service. This Decision, which replaced an earlier Decision of 2013, introduced limited changes regarding the ceiling for paid outside activities, and what kind of outside activities can be authorised. It further clarified what type of activities will not be approved on the basis of the criteria already existing in the Staff Regulations.

European Parliament

Based on Article 12b of the EU Staff Regulation and Chapter I.A.6 (b) of the Parliament's Code of Conduct, side activities are permitted, but only under certain precisely defined circumstances and only if there is no personal financial benefit or conflict of interests.[87] In addition to the Code of Conduct, the EP has produced a 30-page brochure *Ethics – I Care: Guide to the Ethical Obligations of Parliament Staff* summarizing the key points.

Council of the European Union

The staff members of the GSC and the members of the cabinet of the President of the European Council are subject to the Secretary General Decision No. 61/2015 on outside activities and assignments (Decision).

[86] COMMISSION DECISION of 29.6.2018 on outside activities and assignments and on occupational activities after leaving the Service.

[87] European Parliament (2008), Guide to the Obligations of Officials and other Servants of the European Parliament (Code of Conduct). Leisure, charitable, and other activities of the same kind are not subject to authorisation. However, officials and other servants may not engage in such activities unless these are consistent with the principle of independence and the requirement to remain at the disposal of Parliament and entail no adverse consequences for the EU.

B.2. Under what circumstances is it permitted to engage in side-activities?

European Commission

For European Commission staff it is possible to engage in a range of side-earning activities. Permission is deemed to be granted for certain activities, namely if they meet the following list of cumulative criteria: they are unpaid or do not generate revenues; they are neither pursued in a professional capacity nor performed for a commercial entity; they are performed outside the working hours agreed with the line manager of the staff member concerned or are covered by a duly approved leave or recuperation; the impartiality and objectivity of the staff member while performing his or her duties are not compromised, or may not appear to be compromised in the eyes of third parties because of interests which diverge from those of the institution; the outside activity or assignment does not have a negative impact on the reputation and/or on the trustfulness of the institution.

Approval is refused if the outside activities are, for example, performed during office hours or interfere with the professional duties of staff. Moreover, the rules specify that the external activities must not go against the interests of the Commission, be detrimental to its reputation, or create a conflict of interest.

European Parliament

The side earnings rules for European Parliament staff are amongst the strictest, if not the strictest rules that have been adopted by any of the EU Institutions. The default position is that staff are not permitted to receive any type of side earnings unless explicitly given permission.

Parliament officials who wish to pursue side activities must obtain permission and can only do so if there is no prospect of such activities conflicting with their EP duties. They can obtain reimbursement of any expenses but any other payments must be donated to a charity of their choice, i.e. there is a zero financial threshold. Proof that this has been done is also requested. There are some exceptions to this rule. For instance, contract agents (as well as MEPs' accredited assistants) who are employed on a part-time contract are permitted to undertake other remunerated activities as long as these do not conflict with their EP duties. 'Passive remuneration' (e.g. rental income from property or royalties from a publication) and some other side activities of a voluntary nature are also allowed.[88] EP staff whose outside activities are considered in the interest of the service can receive up to 12 days of special leave p.a.

Council of the European Union

The officials working for the General Secretariat of the Council must respect specific rules concerning external activities, laid down in the Decision. The Decision specifies that unremunerated external activities such as leisure, charitable and artistic activities are allowed if they do not create conflicts of interest, do not affect in any way the interest of the Council or impair the official's ability to work. Officials must seek prior permission to perform any other activities, whether paid or unpaid. They will usually receive permission for the external educational activities (up to 100 hours p.a.), as well as for participating in conferences and for producing publications. For gainful activities taken together, there is a threshold of EUR 5,000 per year that cannot be exceeded.

Some activities are explicitly forbidden, notably: paid activities within regulated professions; paid activities pursued as an employee of a third entity; activities where the official exercises a managerial or decision-making role in a commercial company; and any advocacy or lobbying vis-à-vis the EU Institutions.

B.3. Procedure to request permission to engage in side-activities and who is responsible for granting, denying and removing this permission

European Commission

Staff who wish to undertake outside activities must obtain authorisation. The Commission's rules on

[88] Advance permission is not needed to take part in charitable work as a volunteer, provided Articles 12 and 17 of the Staff Regulations are complied with. The same applies to leisure activities in which officials or other staff members are involved as simple participants.

outside activities are administered by DG Human Resources and Security (DG HR), in particular the Ethics Unit. DG HR is actively involved in raising awareness of the rules.

European Parliament

For Parliament officials, responsibility for overseeing the side earnings and other ethics rules lies with the EP's DG Personnel, specifically the Career Development and Ethics Unit.

Council of the European Union

Officials must request permission electronically, at the latest two weeks before the start of a planned external activity. Their superiors must express an opinion on whether the activity is compatible with the proper functioning of the service and that there is no conflict of interest. The next step is the recommendation given by the Legal Advisers to the Administration Unit. The final decision lies with the Council's Director of Human Resources.

B.5. Sanctions and penalties for breach of side earnings rules

European Commission

For Commission officials, the penalties for breaching the rules on outside activities are the same as in other EU Institutions and range from a verbal warning to more serious sanctions such as removal from the post. As in other institutions, the Commission has to follow strict procedures when conducting disciplinary inquiries, in order notably to respect the right of defense. Therefore termination of employment (if linked to ethical breach) may be lengthy process.

European Parliament

Where breaches of the rules occur, a verbal or written warning can be issued. In very serious cases, subject to the disciplinary proceedings, promotion can be blocked or there could even be demotion.

Council of the European Union

Any violation of the provision, of the Decision may lead to the administrative/disciplinary investigation.

Part C: European Commissioners, Members of the European Parliament

C.1. What rules, guidelines and provisions exist to regulate side-earnings?

European Commission

According to Article 245 of the Treaty on the Functioning of the EU, Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. Certain limited activities are permitted (e.g. giving lectures, publications, honorary positions in foundations or similar bodies) as long as the President of the Commission is informed.

The first code of conduct for the Members of the European Commission was adopted in 1999 and was then reinforced in 2004 and 2011. A strengthened and better structured code was adopted in 2018. The Code of Conduct translates the obligations of Members of the Commission into more detailed rules, notably on transparency of meetings with interest groups, business trips, participation in national elections, and external activities. Side earnings are in principle forbidden.

Members of the European Parliament

The European Parliament's code of conduct does not forbid MEPs from engaging in external activities, even if remunerated. What it does require, however, is that any external activities need to be declared in a self-declaration form, within 30 days of their election to the European Parliament. MEPs are required to respect the standards of conduct in exercising their duties as parliamentarians. No approval is needed for some activities (e.g. giving lectures, honorary posts) but MEPs are required to include such activities in their declaration of interests.

MEPs are subject to EP rules concerning additional sources of income and conflict of interest.[89] The current code of conduct relies on self-regulation and MEPs taking measures to redress potential conflicts of interest, while also having to notify the President of the Parliament of any changes during the term of the Parliament through a self-declaration.

There is no need to for MEPs to request permission to conduct external activities, including remunerated work, however there are significant reporting obligations:

- The MEP's occupation(s) during the three-year period before they took up office with the EP, and membership during that period of any boards or committees.
- Any salary which the MEP receives for the exercise of a mandate in another parliament.
- Any regular remunerated activity which the MEP undertakes alongside the exercise of their office, whether as an employee or as a self-employed person.
- Membership of any boards or committees of any companies, NGOs or any other relevant outside activity that the MEP undertakes, whether remunerated or unremunerated.
- Any occasional remunerated outside activity (including writing, lecturing or the provision of expert advice), if the total remuneration for all outside activities exceeds EUR 5,000 per year.
- Any holding in any company or partnership, where there are potential public policy implications or where that holding gives the MEP significant influence over the affairs of the body in question.
- Any support, whether financial or in terms of staff or material, additional to that provided by Parliament and granted to the MEP in connection with their political activities by third parties.
- Any other financial interests which might influence the performance of the MEP's duties.

The EP has rules on gifts received by MEPs in their official capacity which, inter alia, state that 'Members shall refrain from accepting, in the performance of their duties, any gifts other than those with an approximate value of less than EUR 150' and that 'any gifts to Members when they are representing Parliament in an official capacity shall be handed over to the President.

European Council

The President of the European Council is subject to the Code of Conduct. According to this Code he or she is prohibited from undertaking any professional activity or assignment, paid or unpaid, during his term of office. Unpaid courses, seminars, lectures or other official communication activities are permitted as long as they do not interfere with the performance of the President´s duties and are compatible with the interests of the EU. The President may hold honorary unpaid posts in cultural, artistic or charitable foundations or similar bodies. He may also hold such posts in educational institutions.

C.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

European Commissioners

Members of the European Commission must declare all their current external activities in their public declaration of interests (except for one-off events like a lecture or a publication). The same applies to the activities of the spouse or registered partner. This declaration needs to be submitted annually and whenever there is a change (Article 3 of the Code of Conduct for the Members of the Commission). The declaration is scrutinised by the Commission administration under the authority of the President (Article 4(2) of the Code). The President needs to be informed in advance about any envisaged external activity. Moreover, any situation of a real or perceived conflict of interest needs to be notified to the President. Moreover, every new staff member of the European Union institutions (e.g. European Commission, EU agencies) has to check whether any personal interest may impair their independence by completing a form. Staff also are subject to disclosure requirements if they face a situation where a personal interest could impair their independence, regarding the activity of a spouse and when they want to engage in an outside activity.

[89] Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interest

Members of the European Parliament

MEPs are required to submit a declaration of interests covering their professional activities up to three years before taking up their positions, outside interests and side-earnings and any other activities that might influence their duties as MEPs. They are checked for general plausibility, i.e. to check that the declaration does not contain any information that is not obviously wrong. However, there is no uniformity among the MEPs declarations of interests as regards the type of information provided, the level of detail that is disclosed or the language used.

The declaration of financial interests should inform on the MEP's occupation during the three-year period they entered the Parliament, any memberships to the boards of companies/NGOs, any salary received from another parliament, or remuneration received for activities exercised outside the scope of their office, if they are in excess of EUR 5,000 within a calendar year. Secondary sources of income are made public online by the Parliament. This information needs to be updated by the end of the following month whenever there is a change to any of the above activities.

C.5. Sanctions and penalties for breach of side earnings rules

European Commissioners

For European Commissioners, in the event of any breach of the obligations, the Court of Justice may, on application by the Council acting by a simple majority or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 247 or deprived of their right to a pension or other benefits instead (Article 245 of the Treaty on the Functioning of the EU). In the case of an infringement which does not warrant a referral to the Court of Justice, the Commission may decide to issue a reprimand and, where appropriate, to make this public, taking into account the opinion of the Independent Ethical Committee and on proposal of the President

Members of the European Parliament

In situations where a breach of the rules is suspected, a case can be referred by the EP's President to the Advisory Committee on the Conduct of Members to be dealt with. This Advisory Committee consists of five members appointed by the President at the beginning of his or her term of office from amongst the members of the Bureau and the coordinators of the Committee on Constitutional Affairs and the Committee on Legal Affairs, taking due account of the MEPs' experience and of political balance. At the request of the President, the Advisory Committee shall also assess alleged breaches of this Code of Conduct and advise the President on possible action to be taken. There is no other procedure for checking the accuracy of MEPs' declaration or monitoring system to verify changes to the situation described in the declaration or possible breaches of the Code of Conduct.

The European Parliament's code of conduct refers to potential penalties MEPs may incur if they breach the code. The range of penalties may theoretically include the following: a reprimand; forfeiture of entitlement to the daily subsistence allowance for a period of between 2 and 10 days; temporary suspension from participation in all or some of the activities of Parliament for a period of between 2 and 10 consecutive days in Parliament, or any of its bodies and committees; submission to the EP's Conference of Presidents of a proposal for the Member's suspension or removal from one or more of the offices held by the Member in Parliament.

Part D: Other EU Bodies

European Court of Auditors

Staff at the European Court of Auditors are subject to the same rules as the other EU staff, i.e. the Staff Regulations.[90] In addition, the ECA has also introduced in 2011 a set of ethical guidelines for its

[90] ECA. (n.d.) Staff recruitment and salaries, available at: https://www.eca.europa.eu/en/Pages/Transparency-staff.aspx

members of staff.[91] The ethical guidelines have been drafted in response to the requirements of the INTOSAI Code of Ethics (ISSAI 30), which is the set of standards issued by International Organization of Supreme Audit Institutions for audit institutions.[92] The ethical guidelines specify that ECA staff shall only carry out external activities within the framework laid down by the EU staff regulation (Regulation No 31), as well as always bearing in mind their duty of loyalty to the court, refrain from carrying out activities that could harm the Court's reputation, cast doubt on its impartiality or interfere with its work.

The ECA has its own rules for the external activities of its Members, which are described in its recently updated Code of Conduct for Members and Former Members.[93] The code stipulates that ECA Members may not engage in professional external activities that are incompatible with their duties.

European Court of Justice

Staff of the ECJ are subject to the Staff Regulations. The rules laid out by the ECJ concerning the external activities of its members are described in the Code of conduct for Members and former Members of the Court of Justice of the European Union.

The code states that Members of the ECJ may not engage in external activities if they are incompatible with their professional duties.

European Investment Bank

The EIB group lays out clear rules on the possibility for its staff to conduct secondary remunerated activities. These are laid out in Art.4 of the EU Institutions' code of conduct[94], clearly stating that 'Members of staff shall devote their working activities to the service of the Bank' and that they shall not, without prior permission: engage in any professional activity outside the Bank, particularly of a commercial nature; hold any post or appointment either permanent, temporary, occasional, paid or unpaid; act in any advisory capacity, paid or unpaid; or hold a seat on any Board of Directors or any Management Committee.

European Central Bank

The European Central Bank does not have an official definition of side-earnings, referring instead to 'external activities' or 'private activities', which may be remunerated. This includes activities in public or international organisations or non-profit organisations and scholarly activities. The ECB also refers to 'official mandates' as external activities performed by a member, which have official duties and responsibilities. The ECJ and ECA's rules also refer to 'external activities', which can be gainful or not.

The ECB provides its members of staff its own ethics framework, which specifies that its members of staff may not accept any payments from third parties for the performance of their professional duties. It is up to the responsible line manager to assess whether the activity concerned falls under the member of staff's professional ECB duty.

Concerning external activities, these are permitted only with the explicit prior authorisation of the ECB, if the external activity goes beyond what may be considered a 'leisure activity'. An authorisation needs to be provided for any external activity, by either the Director-General Human Resources, Budget and Organisation or their Deputy, after consultation with the Compliance and Governance Office and the member of staff's relevant line manager(s). The authorisation is granted for a period of 5 years if the external activity does not 'impair the performance of the member of staff's professional duties towards the ECB and does not constitute a likely source of conflict of interest'. No authorisation is needed for unremunerated work in the domains of culture, sports and educations, among a list of other

[91] ECA. (2021). Ethical guidelines for the European Court of Auditors, available at: https://www.eca.europa.eu/other%20publications/ethicalguide/ethicalguide_en.pdf

[92] INTOSAI. (2019). Code of Ethics, available at: https://www.intosai.org/fileadmin/downloads/documents/open_access/ISSAI_100_to_400/issai_130/ISSAI_130_en.pdf

[93] ECA (2020). Code of Conduct for the Members and former Members of the Court

[94] EIB. (2013). Staff Regulations, available at: https://www.eib.org/attachments/general/eib_staff_regulations_ii_2020_09_01_en.pdf

activities.[95] In 2019, the ECB shared specific rules concerning external activities for high-ranking officials[96]. These do not preclude the possibility to engage in remunerated external activities:

- Officials undertake private activities in public or international organisations or non-profit organisations, provided that they do not raise conflict of interest concerns.
- The activities do not have a negative impact on the official's obligations and will not damage the reputation of the ECB.
- Members and alternates may accept remuneration and the reimbursement of expenses for private activities, provided they are commensurate with the work performed.
- Members shall abstain from official mandates which may hinder their independence and shall resign from any such official mandate they hold.
- Members must notify the ECB's Ethics Committee of any private activities they intend to perform and provide an annual update on their private activities and official mandates.

High-level ECB officials must self-declare their side-earning activities and update their declaration each time there is a change. The ECB outlines potential penalties for high-level officials who are in opposition to the code of conduct. These include the possibility of the ECB's Ethics Committee raising an officials' non-compliance with the Governing Council, which in turn may issue a reprimand.

Decentralised Agencies

The working and contractual conditions of EU agencies' staff are based on the Staff Regulations and the Conditions of Employment of other Servants of the European Communities.[97] Therefore, they are subject to the same rules on side-activities and external remuneration that apply to other European Union staff.

[95] The ethics framework of the ECB (This text replaces the text published in the Official Journal C 40 of 9 February 2011, p. 13)

[96] ECB. (2019). Code of Conduct for high-level European Central Bank Officials, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019XB0308(01)

[97] Consolidated text: Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community

ANNEX C: FACTSHEETS FOR SAMPLE OF EU MEMBER STATES AND COMPARATORS

C.1 Country Factsheet: Belgium

Part A: Definition of Side Earnings

How are side-earnings defined?

While there is no clear definition or nomenclature regarding side-earnings for public office holders, a general definition can be inferred from the documents reviewed and the feedback gathered for this country factsheet.

In the Belgian context, side-earnings are earnings received as part of activities undertaken that do not fall within the remit of the mandate and foreseen activities of public office holders. Side-earnings can also be derived from prior business involvement, including ownership in companies etc. The absence of explicit definition reflects the approach taken by Belgium to the issue of side-earnings, which appears to be non-prescriptive in nature in contrast to other Member States (e.g. Germany).[98]

Part B: Rules for Officials

B.1. What rules, guidelines and provisions exist to regulate side-earnings?

From a hard law perspective, the **1995 law on the 'obligation to disclose the mandates**, functions and professions and assets' for public officials constitute the legal basis[99]. Under this law, officials including federal civil servants, governors, mayors and public administrators are required to disclose on an annual basis the mandates they have the responsibility of and the other roles (both paid and non-paid) they also are engaged in.

Subsequently, since 1 January 2005, other public officials, including ministers, state secretaries, heads and deputy heads of strategy units are also required to disclose their occupations, assets and side-earnings. In 2019, this obligation was extended to federal government staff responsible for advising on policy, political strategy and communication (*collaborateurs de fond*) and government representatives on the boards of companies and other legal persons[100]. The rationale underpinning the expansion of the 1995 law was the need to make government at all levels more transparent and accountable. As for many other MS, high-profile and periodic scandals were a key driver for the need to legislate in this area and for the subsequent amendments to the regulatory framework. This was confirmed by local stakeholders interviewed as part of the research.

In addition, from a soft law perspective, the Belgian **Code of Ethics for civil servants** sets out general rules and principles for the conduct of public officials, including the obligation to disclose any ties to private companies (e.g. company shares owned etc.), as well as the names of organisations to which they have an allegiance. Notably, the Code of Ethics for civil servants lists the following principles to be adhered to and followed by members of the civil service[101]:

- Officials must disclose, throughout their mandate, to the relevant authorities the involvements and obligations likely to interfere with the exercise of their mandate or to influence the exercise of their mandate and make public any potential interference;
- Officials must also make public, before and throughout their term of office, their affiliation, association, link or membership in companies, states or organisations towards which they are bound by an obligation of loyalty, which could hinder the exercise of their functions;

98 Several public debates have emerged in recent years following scandals

99 https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/belgium_disclosure_law_1995_amended_2009_fr.pdf

100 http://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680998a40

101 https://www.fed-deontologie.be/wp-content/uploads/2020/06/Code_de_deontologie_des_mandataires_publics.pdf

- Officials may in no way carry out activities which are directed against the legitimate interests of the institution in which they exercise their mandate.

B. 2. Under what circumstances is it permitted to engage in side-activities?

There are no defined circumstances under which public officials are not allowed to engage in side-activities in the legislation and regulations reviewed. The principles listed above provide the ethical scope within which side-activities and earnings can be undertaken.

B.3. Procedure to request permission to engage in side-activities and who is responsible for granting, denying and removing this permission

As mentioned above, officials are required to disclose the side-activities and earnings they engage in and benefit from. Other broad principles linked to ethical requirements are also specified in the Code of Ethics for civil servants (see B.2.).

In the case of ethical issues that may arise for officials receiving side-earnings, concerns are addressed, when appropriate, by the Federal Ethics Commission (FEC)[102], which was established in 2011 as part of a wider institutional reform[103].

B.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

High-ranking civil servants are required to provide the names and addresses of the public and private organisations where they hold positions. They are also required to disclose the amount of money they have received as a result of holding these positions.

B.5. Sanctions and penalties for breach of side earnings rules

For high-ranking civil servants, the Belgian Court of Auditors is responsible for monitoring the compliance with the provisions of the 1995 law. The 1995 law has provisions which set out sanctions for public office holders who fail to comply with the law. In the event that public office holders fail to (i) disclose their mandates and other positions held, or (ii) to disclose their interests in time or (iii) fail to include all the positions and earnings they have benefitted from, legal action and fines can be imposed. Legal sanctions can result in fines of up to EUR 1,000 and if the same offence is repeated within three years of the issuing of a sanction, the fine can be up to EUR 3,000 and a ban on public office can be issued by a court. Legal sanctions are reserved for public office holders who do not complete their annual disclosure. Fines for public office holders who omit positions or earnings and/or who are late in submitting their disclosure can be up to EUR 3,000

However, while 1995 law grants the Court of Auditors as depository body responsible for verifying submissions and enforcing disclosure legislation, no institution is charged with verifying the accuracy of the declarations.

Part C: Members of Parliament

C.1. What rules, guidelines and provisions exist to regulate side-earnings?

Elected officials are also required to disclose their side-earnings in line with the 1995 law discussed in Part B. Furthermore, the rights and obligation of the members of the National Assembly and of the Senate are listed in Codes of Ethics of the National Assembly and of the Senate.

C.2. Under what circumstances is it permitted to engage in side-activities?

While there are no explicit restrictions embedded in hard law, the Codes of Ethics of the Members of the National Assembly and of the Senate set out broad principles that must be respected by elected

[102] Article 5 the law of 6 January 2014 has provisions which include the requirement for the FEC to draft a Code of ethics, applicable to civil servants

[103] The FEC was established as a permanent body reporting to the National Assembly and is responsible for delivering confidential opinions, at the request of public office holders. The FEC can also issue opinions and recommendations of a general nature at their own initiative or at the request of the National Assembly, the Senate or the federal government.

officials receiving side-earnings. Indeed, the Code of the Ethics of the National Assembly states that 'during the exercise of their functions, the Members of the Chamber must be extremely cautious regarding concerns arising from the exercise of secondary activities'[104]. In addition, the following principles are also listed to provide guidance on the circumstances in which side-activities are not to be undertaken:

- If they lead to a situation where the duties of elected officials cannot be performed;
- If they lead to a situation where public confidence is undermined as a result of undertaking a given side-activity;
- If the independence of elected officials is called into question;
- If a conflict of interest arise.

C.3. Procedure to request permission to engage in side-activities and who is responsible for granting, denying and removing this permission

Elected officials are not required to request permission prior to engaging in activities that might generate side-earnings. Elected officials, like the majority of civil servants, are required by law to disclose to the Belgian Court of Auditors (Cour des Comptes) their earnings, including side-earnings, and any positions held during the duration of their term, including paid and non-paid positions. Elected officials are required to disclose their earnings and affiliations annually before the 15 of November and must do so online via a platform provided by the Court of Auditors[105].

C.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

Elected officials are required by law to provide the names and addresses of the public and private organisations where they hold positions. They are also required to disclose the amount of money they have received as a result of holding these positions. The information submitted by public office holders is made public by the Court of Auditors and the public can access this information on various websites[106].

C.5. Sanctions and penalties for breach of side earnings rules

At the federal level, as for high-ranking civil servants, the Court of Auditors is responsible for monitoring the compliance with the provisions of the 1995 law. The 1995 law has provisions which set out sanctions for public office holders who fail to comply with the law. In the event that public office holders fail to (i) disclose their mandates and other positions held, or (ii) to disclose their interests in time or (iii) fail to include all the positions and earnings they have benefitted from, legal action and fines can be imposed. Legal sanctions can result in fines of up to EUR 1,000 and if the same offence is repeated within three years of the issuing of a sanction, the fine can be up to EUR 3,000 and a ban on public office can be issued by a court. Legal sanctions are reserved for public office holders who do not complete their annual disclosure. Fines for public office holders who omit positions or earnings and/or who are late in submitting their disclosure can be up to EUR 3,000.[107]

Part D: Other Public Sector Staff

Different rules apply at the regional level for elected and appointed officials. In the Brussels-Capital Region, a threshold on the income that can be received by elected officials and high-ranking civil servants is in force. Elected officials sitting on the Brussels-Capital Region parliament cannot earn more than 150% of their parliamentary allowance. In 2018 this ceiling of 150% amounted to €187,189.83 per year.

[104] https://www.dekamer.be/kvvcr/pdf_sections/publications/reglement/D%C3%A9ontologie%20-%20x%20code%20des%20membres%20NTC.pdf
[105] This requirement was introduced in 2018 by the law known as 'lois ordinaire et spéciale du 14 octobre 2018'
[106] See for example https://www.cumuleo.be/
[107] Court of Audit (Cour de comptes). Vade-mecum relatif au dépôt des listes de mandats et déclarations de patrimoine.

Similarly, in Wallonia, members of the regional parliament cannot exceed 150% of their parliamentary allowance in side-earnings, which amounts to around €80,266.5 per annum.

In addition, regional elected officials are required to disclose similar information to elected officials at the federal level. Indeed, they are required to provide their declaration statement on a yearly basis on a platform hosted in their respective government's website.

References

- Council of Europe (GRECO). Prévention de la corruption et promotion de l'intégrité au sein des gouvernements centraux (hautes fonctions de l'exécutif) et des services répressifs. 5e cycle d'évaluation. (2019). Available at : https://justitie.belgium.be/sites/default/files/downloads/2020-01_grecoeval5rep3-fr-belgique.pdf
- Commission de déontologie. Code de déontologies des mandataires publics. (2018).
- Belgium's National Assembly. Regulations.
- European Commission (Eurostat). Reporting the remuneration of national civil servants for Art65 purposes. (2015) Availabe at: https://ec.europa.eu/eurostat/documents/6939681/9010625/Belgium+-+Civil+Service+Remuneration_1.pdf/7b13c8e7-9d57-45f4-aaa2-0a8c5d26a96b
- Court of Audit (2021). Vade-mecum relatif au dépôt des listes de mandats et déclarations de patrimoine.
- Belgium's Senate. (2021). Regulations. Available at: https://www.senate.be/doc/Reglement_2021_F.pdf

C.2 Country Factsheet: Bulgaria

Part A: Definition of Side Earnings

How are side-earnings defined?

In the Bulgarian context, side-earnings are earnings that are earned outside of the mandates of public officials, and which exceeds EUR 1000. The Bulgarian regulatory framework regarding side-earnings is fairly unregulated as a whole given that limited restrictions are foreseen either in Bulgarian law or in the relevant legislation, rules of procedures or code of conduct reviewed. This is similar to MS such as the Czech Republic. By contrast, other MS such as France have more codified frameworks.

Part B: Rules for Officials[108]

B.1. What rules, guidelines and provisions exist to regulate side-earnings?

High-ranking civil servants, such as state ministers, are required, under the **Public Disclosure of Senior Public Official's Financial Interests Act** (2000, last amended 2016) to disclose their real estate assets, movable assets, cash, debts, side-earnings, gifts received during their mandate, and shares in private or public companies. In addition, they also need to disclose the same items on behalf of their spouses and children under 18 years of age.

In addition, other civil servants are subject to the **Code of Conduct of Civil Servants in the State Administration** developed by the Bulgarian Council of Ministers and adopted in 2020[109]. The information regarding side-earnings is limited and no specific provision regarding their outright ban could be identified. In fact, it seems from our review of the relevant provisions that activities undertaken outside of normal functions may be allowed so long as doing so does not lead civil servants to become 'economically dependent' on their non-primary activities as per Article 11.2, which states: *'The employees shall not allow to be placed in economic or other dependence, as well as to seek and accept gifts, services, money, benefits or other benefits, which may affect the performance of their official duties.'*[110]

In addition, as can be inferred from the above quote, civil servants also seem to be able to engage in activities generating side-earnings if these activities do not negatively affect their performance in relation to their primary occupation. Much like the requirement on economic dependency, the Code of Conduct only defines broad principles without providing details as to the circumstances under which these principles might be violated.

B. 2. Under what circumstances is it permitted to engage in side-activities?

There are no defined circumstances under which public officials are not allowed to engage in side-activities in the legislation and regulations reviewed. The principle listed in the Article above sets out two major considerations public officials should bear in mind when undertaking side-activities, namely, (i) not finding themselves in a position where they become financially dependent on their side-earnings and (ii) not engage in side-activities if doing so would negatively affect their performance at their primary occupation[111].

B.3. Procedure to request permission to engage in side-activities and who is responsible for granting, denying and removing this permission

Civil servants are required to report to the relevant authority any information they may know about potential corruption or conflict of interest in the administration for which they work. No other

[108] This section looks at the rules for members of the civil service as set out in the Code of Conduct of Civil Servants in the State Administration. Higher-ranking civil servants, such as minister etc., are also subject to hard law requirements. These requirements are discussed in Part D.

[109] https://europam.eu/data/mechanisms/COI/COI%20Laws/Bulgaria/4.%20Code%20of%20Conduct%20of%20Civil%20Servants%20of%202020_BUL,%20consolidated,%20last%20amended%202020.pdf

[110] Ibid.

[111] Code of Conduct of civil servants in the National Administration.

requirement regarding the need to request permission could be identified.

B.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

The Civil Servants Act requires civil servants to disclose their income from outside employment and real estate assets. In addition, the Conflict-of-Interest Prevention and Ascertainment Act requires civil servants to make statements on circumstances which may lead to conflicts of interests.

B.5. Sanctions and penalties for breach of side earnings rules

Sanctions can be issued for all public officials in cases of late filling, non-filling or making false disclosures in line with the requirements discussed previously. These sanctions range from fines to prison sentences, which can be up to 3 years.

Part C: Members of Parliament

C.1. What rules, guidelines and provisions exist to regulate side-earnings?

As for high-ranking civil servants (see B.1.), elected officials are subject to the **Public Disclosure of Senior Public Official's Financial Interests Act.** Under this piece of legislation, they are required to disclose their real estate assets, movable assets, cash, debts, side-earnings, gifts received during their mandate, and shares in private or public companies. In addition, they also need to disclose the same items on behalf of their spouses and children under 18 years of age

In addition, members of the National Assembly are subject to the **Rules of Procedures of the Bulgarian National Assembly**. They are also within the scope of the law on **Conflict-of-Interest Prevention and Ascertainment Act voted in 2010**, which contains provisions relevant for this study. Below we discuss these two documents as they relate to the issue of side-earnings for elected officials.

C.2. Under what circumstances is it permitted to engage in side-activities?

The Rules of Procedures of the Bulgarian National Assembly clearly states that its members are not allowed to receive side-earnings resulting from a 'employment relationship' (Article 133 (1)). However, Article 133 (2) further states that MPs may be able to receive remuneration under what is referred to as 'civil relationships'. The rules of procedures of the National Assembly also contain ethical standards members of the National Assembly are required to abide by[112] . Similar to the Code of Conduct of Civil Servants, members of the National Assembly must not find themselves in positions where they become financially dependent on an outside organisation as per the following Article: *'the Member of the National Assembly shall not allow himself/herself to be placed in financial dependence or other involvement with natural or legal persons, which could affect the fulfilment of his/her powers.'*[113]

C.3. Procedure to request permission to engage in-side activities and who is responsible for granting, denying and removing this permission.

There is no formal procedure in place regarding potential requests to engage in side-activities. The law on Conflict-of-Interest Prevention and Ascertainment Act also has provisions towards the establishment of a Commission in charge of the prevention of conflicts of interests. However, it is unclear if requests have to be submitted to this Commission. No explicit requirement regarding this issue could be identified in the documents reviewed.

C.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

Under the law on Conflict-of-Interest Prevention and Ascertainment Act, members of the National Assembly are required to disclose any sources of potential conflicts of interests seven days upon their election or nomination. In practical terms, this means members of the National Assembly are also required to disclose a full list of commercial involvement (i.e. the names of the private institutions they

[112] See section II of the rule of procedures of the National Assembly.
[113] Ibid. Article 145 (1).

are affiliated to) and a full list of past commercial involvement but also any prior involvement in the non-for-profit sectors, including cooperatives and NGOs. It is important to note, that while elected officials are required to disclose the names of the organisations they are or were involved with, under this law, they are not required to disclose the side-earnings they receive. However, they are required to disclose any debt obligations exceeding BGN 5,000 (around EUR 2,500). This requirement complements the Rules of Procedures of the National Assembly, which requires members of the National Assembly to disclose their full income, assets and expenses both domestically but also overseas (Article 146).

C.5. Sanctions and penalties for breach of side earnings rules

The Commission set up by the law Conflict-of-Interest Prevention and Ascertainment Act mentioned under C.3. is in charge of the enforcement of this law. As part of its enforcement powers, the Commission can issue sanctions and penalties to members of the National Assembly who fail to fulfil their legal obligations. Fines are defined in the law regarding other offences relating to broader conflict of interest issues, however, regarding legal obligations relevant to side-earnings, such as failure to disclose ties to private organisation, there are no pre-defined fines and the law foresees that sanctions will be determined on a case by case basis by the Commission.

Moreover, beyond the remit of this law, the legislative framework also foresees sanctions, much like high-ranking civil servants, in case of failure to disclose the required information to the Audit Office. The Bulgarian Audit Office is tasked with the review of the submissions and of their accuracy and enforces sanctions. These sanctions range from fines to prison sentences, which can be up to 3 years.

Part D: Other Public Sector Staff

The law on Conflict-of-Interest Prevention and Ascertainment Act is also applicable to certain high-ranking officials such as Ministers, local elected officials such as mayors and governors, members of the judiciary and of the National Audit Office. Similar to members of the National Assembly, these high-ranking officials are required to disclose any sources of potential conflicts of interests[114]. In more practical terms, this means high-ranking officials are also required to disclose a full list of commercial involvement (i.e. the names of the private institutions they are affiliated to) and a full list of past commercial involvement but also any prior involvement in the non-for-profit sectors, including cooperatives and NGOs[115].

However, unlike members of the National Assembly, they are not required to disclose their earnings, including side-earnings.

References

- Bulgarian's National Assembly. Rules of Procedures. (adopted in 2017, amended in 2018). Available at: https://www.parliament.bg/en/rulesoftheorganisations
- Bulgaria. Law on Conflict-of-Interest Prevention and Ascertainment Act. (2010). Available at: https://www.mi.government.bg/en/library/conflict-of-interest-prevention-and-ascertainment-act-447-c25-m258-2.html
- Bulgaria. Council of Ministers. (2020). Code of Conduct of Civil Servants in the State Administration. Available at: https://europam.eu/data/mechanisms/COI/COI%20Laws/Bulgaria/4.%20Code%20of%20Conduct%20of%20Civil%20Servants%20of%202020_BUL,%20consolidated,%20last%20amended%202020.pdf

[114] https://www.mi.government.bg/en/library/conflict-of-interest-prevention-and-ascertainment-act-447-c25-m258-2.html
[115] Ibid.

C.3 Country Factsheet for Czech Republic

Part A: Definition of Side Earnings

How are side earnings defined?

According to the Czech Republic Labour code ("Zákoník práce") Act No.234/2014 Coll., side earnings are defined as private gainful activities.

There is a distinction between officials, public officials, and civil servant, regarding regulations on side earnings. Each group of employees is regulated differently and have slightly different rights and obligations. According to the Act (No. 159/2006) on "Officials of Territorial Self-governing units" officials include employees of the office of the territorial self-governing unit who are involved in administrative activities. Public officials in central administration are defined - as in the Act law No. 159/2006 – as agents with administrative authority and decision-making responsibilities. Civil servants, are regulated by the Act on Civil Service No. 234/2014 Coll.

Part B: Rules for Officials

B.1. What rules, guidelines and provisions exist to regulate side-earnings?

Founding Regulation/legal basis: **Act on Officials of Territorial Self Governing Units No. 312/2002 coll.**

B. 2. Under what circumstances is it permitted to engage in side-activities?

According to the Act No. 312/2002, Czech Republic officials working for territorial self-governing units are not allowed to perform any gainful activities except in the case where the agent received prior written consent of the territorial self-governing unit s(he) is an employee of. Fixed-term service officials should terminate any gainful activities they had within 15 days of the start of their contract.

Furthermore, officials should not be members of managing, supervising or audit body of a legal person engaged in business activities. This does not apply, to an official who is delegated to be a member of such a body by the territorial self-governing unit. The official delegated in such a way shall not be entitled to remuneration for performing a role as per first sentence. Remuneration may not be perceived by the concerned natural person even after termination of his(her) service relationship.

The limitations do not apply however to scientific, teaching, journalistic, literary, or artistic, activity of court experts and interpreters, participation in advisory bodies to the government and management of one's own property.

B.3. Procedure to request permission to engage in side activities and who is responsible for granting, denying and removing this permission

Officials are not allowed to perform side earnings activities, therefore, there is no regulation on procedures to request permission to engage in side activities.

B.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

Officials working for Self-Governing Units are not allowed to perform side activities, hence there is no regulation on types of information that should be disclosed.

B.5. Sanctions and penalties for breach of side earnings rules

Officials of Self-governing units do not have a disciplinary liability, hence sanctions and penalties for breach of side earnings rules do not apply to them.

Part C: Rules for Public officials

C.1. What rules, guidelines and provisions exist to regulate side-earnings?

- **Act Law No. 159/2006** Coll., on Conflict of Interests for Public Officials

- The **Labour Code** (Law No. 262/2006 Coll „Zákoník práce") regulates the employment relationship of the private and public employees.

C.1.b Public Officials in Central administrations

According to the Act on Conflicts of interests, public officials are:

Any member of the Chamber of Deputies of the Parliament of the Czech Republic; any member of the Senate of the Parliament of the Czech Republic; any cabinet member or any director of a central administration office not headed by a cabinet member; the president of the Office for Personal Data Protection; the president of the Czech Office for Standards, Metrology, and testing; any member of the Council of the Czech Telecommunication Office; any judge; any member of the Bank Board of the Czech national Bank; the president and vice-president and any member of the Supreme Audit office; the ombudsman; the director of the Czech Security information service; any full-time member of a regional council or any member of the Metropolitan Authority of the City of Prague; etc… (see Act of Law No. 159/2006).

Personnel mentioned above is considered as a public official only if they have specific official duties such as handling financial means of public administration authorities, participate directly in the preparation of public tenders, decide in administrations proceedings, participate in criminal prosecution.

C.2. Under what circumstances is it permitted to engage in side-activities?

Public officials that are concerned by the Act 159/2006, (e.g., judges), may not engage in business or any other gainful activity, act as a statutory body or a member of a statutory body, managing body, supervisory body or controlling body of any business corporation, unless specified otherwise by special legal regulations. Public officials may not enter any employment, service, or similar relation, except for relations resulting from and/or related to his/her public office. They are however permitted to engage in scientific, teaching, journalist, literary, artistic, or sporting activities except for business activities in such areas.

Other public officials are not limited in their side earnings.

Some exceptions are however mentioned in the regulation. According to the Civil Service Act Public Civil servants may not be a member of any management bodies except in cases where s(he) has been seconded to these bodies by a service body. The seconded civil servant acts in these bodies as a representative of the state and is obliged to promote its interest. The salary received is limited to the calculation from the possible highest pay grade of an employment to which civil servants are appointed.

C.3. Procedure to request permission to engage in side activities and who is responsible for granting, denying and removing this permission

According to the Act Law (No. 159/2006), it is the duty of a public official to act and to decide impartially, to act in the public interest and to observe constitutional rules and regulations. A public official is prohibited from engaging in other gainful activities. Procedure to request permission to engage in side activities is thus not relevant.

C.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

Public officials must disclose certain information, to make them liable for any breach of their obligations specified in the act of law No. 159/2006:

As a threshold every public official must declare - in the notice of assets submitted every year by public officials to the relevant authority – ownership rights or other material rights (real estate) that exceed CZK 50.000.00. They must declare ownership rights to chattel (or other material assets) that exceeds CZK 25.000.00. Securities or securities related rights must also be declared if their value at the time of acquisition exceeds CZK 100.00.00; interests in other business corporations whose value exceeds CZK 50.000.00 in the case of one corporation and CZK 100.00.00 in the case of several business corporations

C.5. Sanctions and penalties for breach of side earnings rules

The Court will fine a category of public official executing any office or activity classified by the Act of Law No. (159/2006) as incompatible with the post of a public official.

To prevent any conflict of interest each public official shall present a notice of personal interests, a notice of other conducted activities, a notice of all assets acquired during his/her term of office and a notice on income, gifts, and liabilities.

The notice of personal interests allows the public officials to declare relation they could have with a precise issue, point out any personal benefit or injury, state whether he/she has any personal interest in the considered issue. Public officials are expected to declare in writing, precisely and completely relevant information on their possible involvement in side-activities. They must do so by 30th of June of each calendar year.

In the notice of assets every public official is obligated to declare a list of different assets with a minimum value. In the case of a miscellaneous behavior an administrative body or the Court can fine any public officials that do not cooperate honestly and in the allotted time on the different notices of assets required by the administrative court. Fines imposed by administrative bodies are connected to specific obligations of public officials.

Part D: Rules for Public Servants

D.1. What rules, guidelines and provisions exist to regulate side-earnings?

Civil servants – they work in central state authorities (e.g. ministries), regulated by **Act on Civil Service No. 234/2014 Coll**.

D.2. Under what circumstances is it permitted to engage in side-activities?

Some exceptions are however mentioned in the regulation. According to the Civil Service Act Public Civil servants may not be a member of any management bodies except in cases where s(he) has been seconded to these bodies by a service body. The seconded civil servant acts in these bodies as a representative of the state and is obliged to promote its interest. The salary received is limited to the calculation from the possible highest pay grade of an employment to which civil servants are appointed.

D.3. Procedure to request permission to engage in side activities and who is responsible for granting, denying and removing this permission

In practice, a possible scenario how a permission could be requested works as follows: After filing a request to perform a private gainful activity, public servant receive a written response from the administrative hierarchy with which the official is employed prior to start of the private gainful activity. The request is considered by the hierarchical superior of the civil servant, in the case where the request is denied, the civil servant has the right to appeal.

D.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

In the request to pursue a side activity, civil servant must disclose the type of activity they would like to perform, as well as the places where he/she believes there could be conflicts of interests.

D.5. Sanctions and penalties for breach of side earnings rules

The Act No. (218/2002) provides guidance on sanctions applied to Czech civil servants who face charges of disciplinary misconduct. The sanctions range from a written warning to a dismissal from the service relationship. Depending on the gravity of the disciplinary misconduct civil servants also face a decrease in salary by up to 15% for the period of up to 3 calendar months.

A disciplinary committee can be summoned in case of side earnings regulations breaches. They usually emit an opinion on the degree of the severity of the breach and transmit it to the relevant authority in charge of the civil servant. The disciplinary Committee has the responsibility of the final decision.

C.4 Country Factsheet for Germany

Part A: Definition of Side Earnings

How are side earnings defined?

According to the Federal Civil Service Act (BBG), secondary employment or activity (*Nebentätigkeit*) is defined as the 'performance of a secondary office (*Nebenamt*) or the exercise of a sideline job (*Nebenbeschäftigung*)'. Secondary office is understood as 'a group of tasks that does not belong to the main office and is performed on the basis of a public service or official relationship', and sideline job refers to any other activity that does not belong to the main office within or outside the public service. Secondary employment or activity does not include the performance of public honorary posts nor free guardianship or supervision (BBG Section 97).

There is a difference in Germany between the rules on side earnings for officials (Part B) and members of parliament (Part C).

Part B: Rules for Officials

B.1. What rules, guidelines and provisions exist to regulate side-earnings?

Founding Regulation/legal basis:

- The **Federal Civil Service Act** (Bundesbeamtengesetz, BBG, Sections 97 to 105) regulates the secondary employment of public office holders at federal level; the **State Civil Service Acts** (*Landesbeamtengesetzen*) do so at federal state level.
- The **Federal Secondary Employment Ordinance** (*Verordnung über die Nebentätigkeit der Bundesbeamten, Berufssoldaten und Soldaten auf Zeit,* Bundesnebentätigkeitsverordnung - BNV) further develops the federal regulation.

The Federal Civil Service Act was introduced in 1953 and was last revised in 2009 by the Service Law Reform Act. The Federal Secondary Employment Ordinance was first issued in 1964 and was last amended in 2017.

The main rationale for the side-earning regulation for officials is transparency and public information in the disclosure of their side-involvement and the assumption that the income provided within the civil service covers employees.

B. 2. Under what circumstances is it permitted to engage in side-activities?

The German civil servants called *Beamte* or *Beamtinnen* have a privileged legal status compared to other German public employees, who are generally subject to the same laws and regulations as employees in the private sector.

For civil servants, the possibilities to take on secondary employment differ depending on the type of activity.

B.3. Procedure to request permission to engage in side activities and who is responsible for granting, denying and removing this permission

Paid secondary employment must be approved by the superior before it can be taken up (BBG Section 99). Approval is refused when there is a risk that the secondary activity may interfere with the office holder's duties, e.g. if the side-line activity could impact impartiality, create a conflict with official duties or detrimental to the reputation of the public administration. In addition, impairment can generally be assumed if the secondary activity exceeds one fifth of the regular weekly working hours. Approval is refused if the total amount of remuneration for one or more secondary jobs exceeds 40 percent of the annual final basic salary. Approval is granted for a maximum of five years and might be granted with conditions and certain requirements.

Approval (and other decision outcomes) is granted in writing by the highest service authority, which can transfer this responsibility to subordinate authorities. The civil servant must provide the evidence

required for the decision, in particular about the type and scope of the secondary activity as well as the remuneration and pecuniary benefits from it. Every change must be reported immediately in writing or electronically.

Secondary employment or activities not subject to approval (BBG Section 100) are those which by their nature do not lead to a conflict with business interests. These include, for example, all activities that can be assigned to private life but also literary, scientific, artistic or lecture activities. However, if such secondary activities are remunerated, they must be reported in writing or electronically in advance to the superior. The supervisor can also prohibit additional activities that do not require authorization - regardless of whether they are notifiable or not - if their performance violates official duties. Every change must be communicated immediately in writing or electronically.

Secondary employment in the public service (BBG Section 101) may be mandatory for civil servants to take up at the request of the employer or for the fulfilment of an official interest. Secondary activities which are carried out at the request of the employer or voluntarily for him or for another public entity for the federal government, a state or other institutions, foundations or corporations under public law in the federal territory are considered 'secondary employment in the public service' (Federal Secondary Employment Ordinance, BNV, Section 2).

The remuneration of these activities is regulated with annual maximum remuneration limits staggered according to salary groups and, if these are exceeded, delivery obligations exist (see table below). If the maximum remuneration limits are exceeded, civil servants must deliver the difference to their employer.

Remuneration limits by calendar year (BNV, Section 6)

Civil servants in the grades	Euro (gross amount)
A1 to A8	3.700
A9 to A12	4.300
A13 to A16, B1, C1, C2, R1 and R2	4.900
B2 to B5, C4, R3 to R5	5.500
from B6, from R6	6.100

Information requirements are also in place for civil servants several years after their termination of office. Retired civil servants and former civil servants with pensions who want to take up remunerated employment outside of the public service that is related to their official line of work in the public service in the last five years before the end of their civil service relationship and which may constitute a conflict of interests need to notify this in writing or electronically prior to do so.[116] The obligation to notify ends after three years after the end of the civil service relationship in cases where the civil servants retire upon reaching the standard retirement age, and otherwise five years after the end of the civil service relationship.

Remunerated employment or other employment is prohibited if there is any concern that official interests will be adversely affected. The prohibition is to be pronounced for the period up to the end of the notification obligation, unless the conditions for a prohibition only apply for a shorter period. The last supreme service authority is the responsible entity, although it may transfer this responsibility to subordinate authorities. Failure to comply could result in the loss of pension benefits.

B.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

[116] Federal Civil Servants Act (BBG), Section 105, see http://www.gesetze-im-internet.de/bbg_2009/__105.html

Civil servant must submit a statement about their secondary employment remuneration to their superior if the remuneration exceeds EUR 500 (gross) in the calendar year. This applies also to retirees and former civil servants insofar as the remuneration is granted for secondary activities carried out before the termination of the civil servant duties.

Certain activities expressed in the Federal Secondary Employment Ordinance (BNV, Section 6) are exempt from these remuneration restrictions or delivery obligations. These include, in line with the BBG, teaching, lecture and scientific research activities, activities as a judicial or public prosecutor's expert, and activities carried out during an unpaid leave of absence or vacation.

In addition to the federal level, there might be additional regulations at federal state level (*Laender*) in their respective State Civil Service Act (*Landesbeamtengesetzen*), see table below.

Regulations for authorization requirements

Basic authorization requirements	General obligation to notify dealing to permission or prohibition
Federal Government (Section 99 BBG)	Bremen (§§ 70 ff. BremBG)
Baden-Württemberg (§§ 60 ff. LBG BW)	Hamburg (§§ 70 ff. HmbBG)
Bavaria (Art. 81 ff. BayBG)	Mecklenburg-Western Pomerania (§§ 70 ff. LBG MV)
Berlin (§ 29 LBG Bln)	Lower Saxony (§§ 70 ff. NBG)
Brandenburg (§ 85 LBG Bbg)	Saarland (§§ 84 ff. SBG)
Hesse (Section 73 HBG)	Saxony (§§ 101 ff. SächsBG)
North Rhine-Westphalia (§ 49 LBG NRW)	Saxony-Anhalt (§§ 73 ff. LBG LSA)
Rhineland-Palatinate (§ 83 LBG RhPf)	Schleswig-Holstein (§§ 70 ff. LBG SchlH)
Thuringia (Section 51 ThürBG)	

B.5. Sanctions and penalties for breach of side earnings rules

Disciplinary proceedings for federal civil servants violating their duties are regulated in the Federal Disciplinary Act (*Bundesdisziplinargesetz*, BDG). The respective federal state disciplinary law applies to federal state civil servants (e.g. HDG Hessen, LDG Baden-Württemberg, LDG Rhineland-Palatinate).

The disciplinary procedure may result in an official notification, a fine, a salary reduction, a demotion in office or in being expelled from the civil service. The extent of the disciplinary measure is at the discretion of the employer and depends on the severity of the misconduct.

This system is considered by stakeholders to work well and to be implemented in an effective manner.

Part C: Members of Parliament

C.1. What rules, guidelines and provisions exist to regulate side-earnings?

The **Members of Parliament Act** (*Gesetz über die Rechtsverhältnisse der Mitglieder des Deutschen Bundestages*, Abgeordnetengesetz, AbgG) sets down the rights and obligations of members of Parliament (Bundestag), which includes the rules of conduct, and in the rules of procedure of the German Parliament.[117]

The Members of Parliament Act came into force in 1977, the last revision took place in 2021.

[117] Deutscher Bundestag. *Tätigkeiten und Einkünfte neben dem Mandat*, available on https://www.bundestag.de/abgeordnete/nebentaetigkeit#url=L2FiZ2VvcmRuZXRlL25lYmVudGFldGlna2VpdC9uZWJlbnRhZXRpZ2tlaXQtMjEzODI2&mod=mod454218

The underlying rationale for the current regulation is that the focus of Members of Parliament should be the exercise of their mandate.

C.2. Under what circumstances is it permitted to engage in side-activities?

The AbgG stipulates that the exercise of the mandate is the focus of the activities of a member of the *Bundestag*, but activities of a professional or other nature in addition to the mandate are generally permitted. It prohibits, however, the representatives from accepting certain benefits and pecuniary benefits.

C.3. Procedure to request permission to engage in side activities and who is responsible for granting, denying and removing this permission

Current Members of Parliament

There are extensive reporting obligations for the MPs: they have to notify the President of the *Bundestag* of the last professional activity, any paid activities in addition to the mandate and functions in companies as well as in corporations and institutions under public law. Roles in clubs, associations and foundations are also notifiable, as well as holdings in corporations or partnerships and agreements on future activities or pecuniary benefits. Many notifiable activities are voluntary. Certain reporting obligations also apply to donations, other monetary benefits and gifts to members of the public.

With the comprehensive legislative reform in 2021, the significantly expanded disclosure obligations have been included as part of the code of conduct for members of the *Bundestag* (Members of Parliament Act, Section Eleven). The transparency regulation is intended to enable voters to form their own picture of possible links between personal interests and the MPs' independence. In addition, the hope is that the increasing transparency will serve as deterrent for MPs to engage in conflicts of interests and thereby strengthen the self-regulatory dimension of the system.

Former politicians

As for former politicians, a waiting period regulation (also known as cooling off period or *Karenzzeit* in German) was introduced at federal level in 2015 in Germany.[118] It is intended to regulate the transition into the private sector and lobbying activities in order to prevent/ limit potential conflict of interest between the new and old position ('revolving door effect'). Current and former members of the federal government (the chancellor, ministers and parliamentary state secretaries at federal level) must report their intention of taking up employment outside the public service at least one month before commencement of said employment. A committee of recognized personalities is in charge of examining every notification for potential conflicts of interest, and if such conflict exists, impose a waiting period of up to 18 months. The committee is called the ***Karenzzeit-Gremium*** and is based in the Chancellor's Office.

Some federal states have also introduced waiting periods for members of the federal state governments, e.g. Hamburg (2014)[119] and Brandenburg (2015).[120] [121]

C.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

The earnings from each individual secondary activity or employment must be displayed if it is more than €1,000 per month or more than €3,000 per calendar year. If the amount cannot be quantified, the legal position granted to the MP is described and published. This information is publicly available

[118] Gesetz über die Rechtsverhältnisse der Mitglieder der Bundesregierung (Bundesministergesetz - BMinG) law (§ 6a -6c), see https://www.gesetze-im-internet.de/bming/BMinG.pdf. See also: https://lobbypedia.de/wiki/Karenzzeit

[119] First federal state to introduce a waiting period regulation for former members of the government that want to take up employment in the private sector, even before the federal government. Former members of the government must request permission and if, after the examination, there is a "concrete risk of a conflict of interests with your former official position", the Senate can prohibit taking up work for up to two years. See https://www.nd-aktuell.de/artikel/951608.hamburg-bekommt-karenzzeit-fuer-ex-regierende.html

[120] The Brandenburg government can set a ban of up to 24 months if it considers there is a potential conflict of interests.

[121] https://lobbypedia.de/wiki/Karenzzeit_(Bundesl%C3%A4nder)

together with other information on individual MPs.[122]

In addition, MPs that are being paid to work on a subject also being discussed in a committee they are part of have to verbally disclose this connection every time they want to intervene in the discussion (AbgG section 49). This information is noted in the committee's recommendation for a resolution.

C.5. Sanctions and penalties for breach of side earnings rules

If notifiable activities, income or company investments are not reported, the Presidium can set a fine (AbgG, Section Eleven). The amount of the fine is based on the severity of the individual case and the degree of fault; it can be set up to half of the annual parliamentary allowance. The receipt of the benefit must have occurred not more than three years ago and be outside of those allowed in the legislation (AbgG, § 12 Paragraph 3a and § 44a Paragraph 5). In addition, consideration needs to be given to market practice and whether service and benefit were out of proportion. The President determines the quantity of the fine and enforces it by administrative act. At the request of the member concerned, payment in instalments can be agreed.

The finding that a member of the Bundestag has violated his obligations is published as printed matter, irrespective of further sanctions. The finding that there is no violation is published at the request of the member of the *Bundestag*. This system is considered by stakeholders to work well and to be implemented in an effective manner[123]. However, other stakeholders are of the view that increasing independent oversight for rule enforcement and extending limitations to direct family members could be additional steps to strengthen the system.

Part D: Other Public Sector Staff

The rules regarding secondary employment for other staff employed at public institutions is not as strict as that for civil servants. According to the collective bargaining agreement for the public service (*Tarifvertrag des öffentlichen Dienstes*, TVöD), Paragraph 3 (Section 3), secondary employment must be reported in writing in advance. If the employer is of the opinion that the part-time job could interfere with the duties of the main job, he can prohibit it or impose conditions. No time or earnings limits are explicitly stipulated.

Part E: Other Information including good Practices

The German system and regulations of side-earnings has undergone several reforms in recent years and is considered to work well.

Two good practice examples have been identified by stakeholders consulted:

- **The three-level approach in the regulation of side-earnings of civil servants** is considered appropriate and effective. This consists of i) the disclosure of any type of side-earnings to the superiors, ii) the request for approval when required and iii) the transfer of income excess through side earnings to the employer as stipulated in the regulation. This is seen as proportionate and flexible to accommodate different types of side-employment.
- An underlying practice considered key for the functioning of any side-earning regulation is the **appropriate and stable compensation of civil servants**. Only in countries where civil service jobs are remunerated appropriately and cover civil servants living expenses will the risk of excessive involvement in side-earnings e.g. leading to limited dedication to the main office and potential conflict of interests be minimised. Although structural measure, this is also a preventive pe-condition that contributes for a well-functioning system.

In addition, the existence of a research centre focusing only on the Public Administration stands out and could be replicated in other countries. The **German Research Institute for Public Administration** (in German: *Deutsches Forschungsinstitut für öffentliche Verwaltung,* FÖV)[124] has the

[122] See: Deutscher Bundestag. *Gewählte Abgeordnete,* available on: https://www.bundestag.de/abgeordnete
[123] https://eucrim.eu/news/greco-fifth-round-evaluation-report-on-germany/
[124] See website: https://www.foev-speyer.de/

mission of conducting „Research about and for public administration" since it was founded in 1976. As unique entity of its kind in Germany, the institute aims to fil the research gap on the public administration and the civil service in general, considering knowledge and advancement in this area key for good governance. In the last years, the focus has been on the digitization of public services and the public administration, and their Europeanization and internationalization. In doing so, it strives to take a balanced approach between basic and application-oriented research.

C.5 Country Factsheet for Spain

Part A: Definition of Side Earnings

How are side earnings defined?

Law 53/1984, of 26 December, on Incompatibilities of Personnel at the Service of Public Administrations, regulates *side-earnings*, which is understood as a second job, cargo or activity that may prevent or impair the strict fulfilment of the officials' duties or compromise their impartiality or independence.

The Law establishes that, except in the cases provided for in the Law, officials should not receive more than one remuneration that the one received from the budgets of the Public Administrations and the Entities, Organisms and Companies dependent on them or charged to those of the constitutional bodies. The Law defines remuneration as 'as any right of economic content derived, directly or indirectly, from a personal provision or service, whether its fixed or variable amount and its periodic or occasional accrual.'

Part B: Rules for Officials

B.1. What rules, guidelines and provisions exist to regulate side-earnings?

Rules on Side Earnings

- Law 53 / 1984, of 26 of December, related to incompatibilities of workers serving in public administrations.
- Spain Royal Legislative Decree 5/2015, of October 30th, which approves the consolidated text of law for the Basic Statute of Public Employees (Arts. 52-54)
- Law 19/2013, of December 9, on transparency, access to public information and good governance (Arts 25-32)
- Royal Decree 598 / 1985, dated 30 April, related to incompatibilities of State administration, social security workers and entities like, bodies and dependent companies.
- First additional provision of Royal Decree 1777 / 1994 of 5 August, adequacy of rules governing the procedures of personnel management to the law 30 / 1992, of 26 November.
- Resolution 20 December 2011, the Secretariat of State for the civil service, that published the Council of Ministers dated 16 December 2011, which approves the procedure for the reduction, on request, the SPECIFC allowance of officials of the General Administration of the State belonging to the subgrupos C1, C2 and authorises the exceedance, stop the workers at the service of the General State Administration, the limit laid down in Article 7.1 of the Act 53 / 1984, of 26 of December, related to incompatibilities of workers serving in public administrations.
- Act 14 / 2011, 1 June, science, technology and innovation (article 18 first and final). regulation

B. 2. Under what circumstances is it permitted to engage in side-activities?

The following activities are exempt from the regime of incompatibilities of the Law:

- Those derived from the administration of personal or family assets, without prejudice to the provisions of article 12 of this Law.
- The direction of seminars or the dictation of courses or conferences in official centers intended for the training of civil servants or teachers, when they are not permanent or habitual or involve more than seventy-five hours a year, as well as the preparation for access to the public functioning the cases and form that is determined by regulation.
- Participation in Qualifying Tribunals of selective tests for admission to public administrations.
- The participation of the teaching staff in exams, tests or evaluations other than those that usually correspond to them, in the manner established by regulation.
- The exercise of the position of President, Member or member of governing boards of Mutual Societies or Boards of Trustees, provided that it is not remunerated.
- The literary, artistic, scientific and technical production and creation, as well as the publications

derived from them, provided that they do not originate as a result of an employment relationship or the provision of services.
- Occasional participation in colloquia and programs in any social media; and
- Collaboration and occasional attendance at congresses, seminars, conferences or courses of a professional nature.

B.3. Procedure to request permission to engage in side activities and who is responsible for granting, denying and removing this permission

The personnel included in the scope of application of Law 53/1984, of December 26, on incompatibilities of personnel at the service of Public Administrations, who wish to carry out any private activities or a second public activity susceptible of compatibility should request permission to different bodies depending on the case. The request must be addressed to:

- The Minister of Territorial Policy and Public Function (Office of Conflicts of Interest), when the main public activity is attached to the State Administration;
- the competent body of the Autonomous Community, when the main activity is assigned to an Autonomous Administration; or
- the Plenary of the Local Corporation, when the main activity is attached to a Local Corporation

All the requests must be submitted electronically through 'Portal Funciona'.

B.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

The procedure to request permission to engage in side activities is a standardised form that applicants must fill with their personal data and information about the side activity, either public or private.

B.5. Sanctions and penalties for breach of side earnings rules

Failure to comply with the rules on incompatibilities is considered a very serious administrative offense, in accordance with the provisions of Article 95.2.n) of Law 7/2007, of April 12. If it is simply a matter of non-compliance with the deadlines or other procedural provisions in matters of incompatibilities, the offence will be considered serious, provided that it does not involve maintenance of a situation of incompatibility, as established in article 7.1 k) of the Disciplinary Regime of the Officials of the State Administration, approved by Royal Decree 33/1986, of January 10.

Part C: Members of Parliament

C.1. What rules, guidelines and provisions exist to regulate side-earnings?

The same rules apply to Members of Parliament, the Statute of the Members of Parliament and Senate[125] replicate the same provisions provided in the aforementioned legislation.

C.2. Under what circumstances is it permitted to engage in side-activities?

As for officials

C.3. Procedure to request permission to engage in side activities and who is responsible for granting, denying and removing this permission

As for officials

C.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

As for officials

C.5. Sanctions and penalties for breach of side earnings rules

As for officials

[125] https://www.senado.es/web/composicionorganizacion/administracionparlamentaria/normasorganizacion/estatutopersonalcortesgenerales/index.html#7

B.6 Country Factsheet for France

Part A: Definition of Side Earnings

How are side earnings defined?

According to the law "Loi le Pors" n. 83-364 and the Decret n. 2020-69 secondary employment is defined as a private gainful activity (Activité privée lucrative). The "cumul des activities" (accumulation of activities) defines the practice of accumulating sideline jobs. Private gainful activities can be defined as any activities (commercial or wage earning, part time or full time, etc) performed for remuneration. An activity can be considered as 'lucrative' even if it does not produce profits and is loss-making. Participation in the board or in the management of a company can also be considered as a "profitable private activity".

Part B: Rules for Officials

B.1. What rules, guidelines and provisions exist to regulate side-earnings?

The following laws apply to civil servants (fonctionnaires) in regions, and department, towns ("communes"):

- The Law "Le Pors", n. 83-643, provides regulations on the rights and obligations of civil servants.
- The Decret n. 2020-69, concerning the ethical controls of the public function provides conditions under which the prohibition on public officials from excercising a private gainful activity in a professional capacity may be waived.
- The Decret n. 2017-105 relative to the exercise of private activities by public officials and certain contractual agents of private law having ceased their functions, to the accumulation of activities and to the Committee of Ethics of the public service.

The Law "Le Pors", n. 83-643, was introduced in 1983 and was last revised by the Law n. 2019-828 and most particularly by the articles 25 septies and 32.

B. 2. Under what circumstances is it permitted to engage in side-activities? And what types of accessories activities are eligible?

For civil servants, the possibilities to take on secondary employment differ depending on the type of activity they wish to perform and the status of their contract condition. However, in general, unless permitted to do otherwise, civil servants are required to devote the entirety of their professional activities to the duties that they are assigned to. French public officials are allowed to undertake one or more activities alongside their official duties if agreed with their employer. They can work for a public or private entity.

Some categories of civil servants are exempt from requiring derogations to perform side activities: contractual agents who were either employed continually for a period of at least 6 months by the same public authority, or either were recruited for teaching or research functions and were employed by the same public authority for at least 6 months are not required to provide a written request to their supervisors. Public contractual agents of public law of categories B and C, who were employed full time for at least a year by the same public authority are also exempt to requiring derogations to perform gainful private activities.

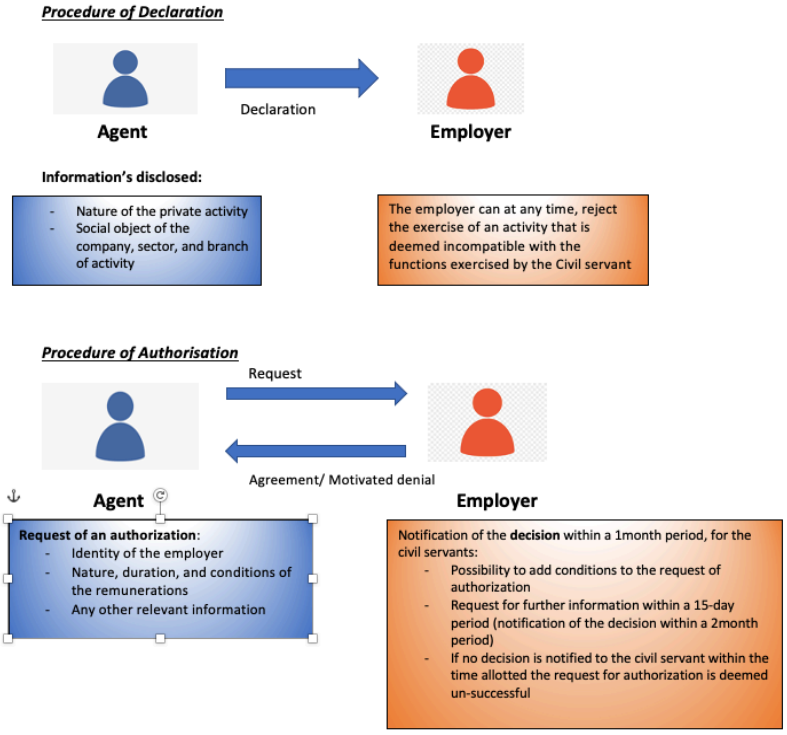
There is no restriction on the level of remuneration or on the number of hours in the French rules on side-earnings (activité accessoire) although there is an overall limit where the office holder accumulates side-jobs, the limit is 40h and 15 minutes if the activity he performs is remunerated.

B.3. Procedure to request permission to engage in side-activities and who is responsible for granting, denying, and removing this permission

The procedure to request permission to engage in side-activities is as follows: the civil servant must present a written declaration to his respective administrative superior. The private activity must not impede with the normal functioning, the independence, and or the neutrality of the service, as well as

not conflict with the ethics principles set out in Chapter 4 of the Décret n. 2020-69. In this declaration the civil servant must mention the purpose of the side-activity and what the activity will involve. The employer has one month to make a decision. The superior can add conditions to the approval or can request further information on the nature of the activity. Officials who work for several authorities are expected to inform all of them in writing. In the case where no answers are received by the official in the allotted time, the request for authorisation is considered unsuccessful.

Procedures of declaration and authorisation of side earnings in France



Where several side activities are undertaken, practically the same procedure applies. Non-full-time officials are defined as having a contract of 24h and 30 minutes' work per week or below. The private activity must be compatible with the obligations of the official job and must not lead to a conflict of interest or impede the normal functioning, independence or neutrality of the office holder or the ethics principles laid out in the decree. The civil servant presents a written declaration to his superior in which he must provide details. The difference with full-time agents, is that non-full-time officials do not require an official authorisation. Civil servants can also undertake activities which are considered as an accessory ('accessoire'). The procedure is practically the same as for exercising a profitable activity.

Below are the activities considered as accessories that should be exercised out of the hours of services of the agent:

List of permitted side activities for officials in France

Permitted Activities	Specification
Advisory work or Consultancy	Scientific advisor, advice, and assistance to communities in the areas of public law, finance public and management.
Teaching and Training	Private training, scholar support
Cultural or sports activity	E.g., referee in sports remunerated by a league….

Agricultural activities	Agriculture machinery operator, dog raising…
Collaborative activity in an artisanal, commercial, or liberal enterprise	Regular professional activity in a company without receiving remuneration and without having the status of partner or employee
Home Helper to a relative	Looking after a family member or relative.
Small-scale work carried out on private premises	Meal delivery, housekeeping, light gardening work, childcare at home.
Public Interest activities, carried out with a public or private entity for a non-profit purpose	For example, population census for a municipality
Personal services as part of a self-employed business	List of activities foreseen by the French code of work
Sales of goods manufactured personally by the agent as part of his/her company	In certain cases, if an official owns a business, they may continue to generate an income from this source.

In the case where ethics principles are respected, the exercise of volunteering activities for non-profit private or public entities is not subject to any procedures.

B.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

The information that must be disclosed when providing a request for side activities are the identity of the employer, the nature, duration, and conditions of the activity and the remuneration as well as any other relevant information. Authorisation may or may not be limited in time. For example, it can be provided for a year. At the end of this time span, the official must request a new authorisation to undertake side-activities, providing further information if relevant and required.

B.5. Sanctions and penalties for breach of side earnings rules

According to the article 432-12, amended by the law n. 2021-1729 – article 15, if a civil servant or a person with a public role, engages in an activity that could compromise his/her impartiality, independence or objectivity, this could, in very serious cases, be punishable with up to 5 years of imprisonment and a 500,000 euro fine.

Part C: Members of Parliament

C.1. What rules, guidelines and provisions exist to regulate side-earnings?

The rights and obligations of members of Parliament (*Parlement*) are listed in the National Assembly constitution (*Assemblée Nationale*), which includes the rules of conduct and of procedure of the French National Assembly. However, if he/she is elected, they must choose, in a determined allotted time, between their mandate and the declared incompatible activity.

C.2. Under what circumstances is it permitted to engage in side-activities?

French deputies, judicial magistrate, and senators are forbidden to perform a wide range of activities during their mandates. These activities include the performance of another public job and professional activities such as a position within a private company. These prohibitions stem from the importance of avoiding a conflict of interests and to provide assurances on their impartiality, independence and objectivity of their positions.

C.5. Sanctions and penalties for breach of side earnings rules

In the case where the parliamentarian engages in side activities that are forbidden by the law, he/she has 30 days to resign from either the mandate or the side activity (e.g. a mayor recently elected deputy

must resign from his mayor functions). Deputies are, however, allowed to retain the following mandates: municipal councillor, regional councillor, county councillor ("conseiller départemental"). These cumulative possibilities are allowed to permit deputies to obtain a better knowledge on local issues.

In France, the Haute Autorité pour la transparence de la vie publique (HATVP) is responsible for upholding the rules on side earnings and other aspects of public office holders' behaviour. This is an independent body that was established in 2013 whose members are nominated for a period of six years. Apart from its President, who is appointed by the French President, the college of the HATVP is composed of twelve other members.[126] The body is responsible for overseeing the regulation of side earnings and other aspects of behaviour of members of the government, deputies and senators. This includes reviewing declarations of (financial) interests, arbitrating in situations where there could be conflict of interest, and providing ethical advice to public office holders. It can intervene before, during and after the term of office of an elected or non-elected public office holder. The HATVP has both investigative and enforcement powers (including fines up to EUR 45,000, as well as a ban on civil rights or a ban on holding public office). Each year, the HATVP submits a public report to the President of the Republic, the Prime Minister and Parliament on its activities.

Part D: Rules for "Haut Fonctionnaires"

C.1. What rules, guidelines and provisions exist to regulate side-earnings?

The rights and obligations of members of Parliament (*Parlement*) are listed in the National Assembly constitution (*Assemblée Nationale*), which includes the rules of conduct and of procedure of the French National Assembly. Elected nationals (e.g., deputies and senators) should not have any side activities.

C.2. Under what circumstances is it permitted to engage in side-activities?

For incompatibility reasons, "Hauts fonctionnaires" are forbidden to perform side activities during their mandates. These activities encompass the performance of a public employment and professional activities such as the participation in a private company. These prohibitions stem from the importance to protect these agents from conflicts of interests and to provide assurances on their impartiality, independence and objectivity of their positions.

C.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

Around 25 000 agents are required to provide an asset declarations and interest declaration. According to the "Code General de la Fonction Publique", Hauts Fonctionnaires must declare a list of their assets as well as like the other category of civil servant a declaration of interest.

C.5. Sanctions and penalties for breach of side earnings rules

In the case where the parliamentary is cumulating activities forbidden by the law, he/she has 30 days to resign from either the mandate or the side activity (e.g., a mayor recently elected deputy must resign from his mayor functions).

Deputies are however allowed to retain the following mandates: municipal councillor, regional councillor, county councillor ("conseiller départemental"). These cumulative possibilities are allowed to permit deputies to obtain a better knowledge on local issues.

Sanctions depend on the gravity of the breach. Some sanctions are dealt by a disciplinary commission, where the agent has the opportunity to explain the miscellaneous behaviour. In the case of a more severe breach, salary sanctions to reciliation of the agent contract, can be put in place.

[126] Two members elected by the Conseil d'Etat (High Court for administrative matters), two members elected by the Cour de cassation (High Court for civil and criminal matters), two members elected by the Cour des comptes (Court of Auditors), each court electing one woman and one man; two further members are appointed by the President of the Assemblée nationale (National Assembly), two members appointed by the President of the Sénat (Senate), each committee electing one woman and one man, and finally, two members are appointed by the Government (again, one woman and one man).

C.7 Country Factsheet for Italy

Part A: Definition of Side Earnings

How are side earnings defined?

According to Article 53 of Legislative Decree no. 165 of 2001 "**paid assignments are all assignments, even occasional, not included in the tasks and duties of the** [public] **office, for which a fee is provided, in any form**." In general, civil servants in Italy cannot engage in any entrepreneurial activity or "profession or be employed by private individuals or accept positions in profit making legal entities"(Art. 60 of Decree of the President of the Republic of 10 January 1957, n. 3). The Supreme Court stated that the public employee's job in incompatible with another employment even if the employee is on leave (order n. 6637 of 09.03.2020).

Part B: Rules for Officials

B.1. What rules, guidelines and provisions exist to regulate side-earnings?

Legal basis and key documents:

- Legislative Decree no. 39 of 2013, Provisions on the non-transferability and incompatibility of assignments in public administrations and in private entities under public control, pursuant to Article 1, paragraphs 49 and 50 of Law no. 190 of 6 November 2012.
- Legislative Decree no. 33 of 2013 Reorganization of the regulations concerning the right of civic access and the obligations of advertising, transparency and dissemination of information by public administrations
- **Legislative Decree no. 165 of 2001 providing "General rules on the organization of work employed by public administrations"**
- Law No 140 of 28 May 1997, and subsequent amendments - "Conversion into law, with amendments, of decree-law no. 79 of 28 March 1997 containing urgent measures for the rebalancing of public finances"
- Law no. 662 of 23 December 1996 "Measures for the rationalization of public finance"
- **Decree of the President of the Republic of 10 January 1957, n. 3 on provisions concerning the status of civil servants of the State ('testo unico')**.
- Document **"General criteria regarding assignments prohibited to public employees"** to support the administrations in the application of the legislation

B.2. Under what circumstances is it permitted to engage in side-activities?

Article 53 of Legislative Decree no. 165 of 2001 regulates the matter of incompatibilities, cumulation of jobs and assignments. In general, full-time employees of the public administrations cannot engage in any outside activity or assignment "**which has not been conferred or previously authorised by their administration**" (Art. 53 (7) of Legislative Decree 165/2001). Employees of public administrations can perform paid assignments conferred by other subjects, public or private, **only if authorized by the administration they belong to**. Public administrations cannot authorise activities which are not related to the public office holder's duties and which are not explicitly foreseen by the law. Special provisions apply to part-time employees, fixed-term university professors and other categories of civil servants to whom it is permitted to engage in specific professional activities ("attività libero-professionali") extra officio (Art. 53 (6) of Legislative Decree 165/2001).

The administrations apply **objective and predetermined criteria** to decide upon the authorization of outside activities. In particular, full-time employees or part-time employees of the public administration (with percentage of part-time work exceeding 50% of the full-time employment) cannot undertake assignments that are not occasional and which can generate a conflict of interest

with the public office or reputational damage for the public administration.[127]

Furthermore, independently of the type of employment (part-time, fix term or full time), **all public officials are not allowed to engage in outside activities which:**

- **Interfere with the ordinary activity** (public office) carried out by the civil servant in terms of to the time, duration, commitment required of him.
- **Take place during office hours** (unless the civil servant is on leave or has different permits)
- **Can compromise the public service** also considering all assignments that have been already conferred or authorized to the civil servant during the calendar year.
- **Are carried out using means, goods and equipment owned by the administration** and which the employee disposes of because of his duties or that take place at the office premises, unless the use is expressly authorized by law or required by the nature of the assignment conferred ex officio by the administration.
- All assignments for which an **authorization is required but it has not been issued**.[128]

These criteria are intended to make sure that civil servants do not carry out activities prohibited by law, undertake activities that might affect his public duties or that may cause a conflict of interest with the public mandate.

B.3. Procedure to request permission to engage in side activities and who is responsible for granting, denying and removing this permission

The authorization to engage in outside activities must be **requested to the relevant administration** by the public or private entities which intend to confer the assignment to the civil servant. It can be also requested by the official concerned. The competent administration must decide on the request for authorization within thirty days of receiving this request. When the request is made by a public administration other than the one the civil servant belongs to, the authorization is subject to the agreement between the two administrations. In this case, the deadline for the competent administration to grant this permission is 45 days.

By 30 April of each year, the public or private entities that paid a compensation to civil servants are required to inform the competent administrations of the remuneration the civil servants received in the previous year (Article 53 of Legislative Decree no. 165 of 2001 modified by DL n. 223 of 04/07/2006).

The **National Anti-Corruption Authority (ANAC)** supervises the respect - by public administrations, public bodies and private law bodies under public control - of the provisions on non-transferability and incompatibility of assignments (Article 16 of Legislative Decree no. 39 of 2013). ANAC is an independent administrative authority whose institutional mission is to prevent corruption in all areas of the public administration. The Authority provides mandatory opinions (consulting function) on the Ministerial directives and circulars concerning the interpretation of the provisions on non-conferrable assignments and incompatibility of assignments of public officials.

B.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

The civil servant is required to submit: a form with information on the salary or any kind of compensation/earning generated by the side activity, the request for authorisation to the administration and a declaration on the compatibility of that activity with the public office. The administration the civil servant belongs to provides him with the forms to make the request. Examples of these forms are provided here.[129]

---

[127] Further information also available at: Affari istituzionali e generali - CONFERENZA UNIFICATA DEL 24.07.2013: Intesa tra Governo, Regioni ed Enti locali recante: Disposizioni per la prevenzione e la repressione della corruzione e dell'illegalità nella pubblica amministrazione - Regioni.it.

[128] Ibidem.

[129] Examples of forms for civil servants of the Tuscany Region Regolamenti (estar.toscana.it).

B.5. Sanctions and penalties for breach of side earnings rules

Civil servants cannot perform outside activities which have not been conferred or previously authorised by the administration they belong to. In case of breach of this rule, the civil servant has disciplinary responsibility and is requested to **cease the unauthorised side-activity within 15 days**. This does not exclude the possibility of more serious disciplinary action (or other sanctions) which are set out in specific provisions by the administration the civil servant belongs to. If within 15 days the official does not comply with the warning, he may be dismissed.

Furthermore:

- If a public administration/body employs a civil servant from a different administration without prior authorisation from this administration, the conferral of such assignment constitutes a breach of the rules by the official responsible for the procedure. This engagement is therefore void by law and the compensation the civil servant received for that engagement should be transferred to the budget of the administration the civil servant belongs to (Art. 53 (8) of Legislative Decree no. 165 of 2001).
- If a public economic body or private company employs a civil servant without prior authorisation, the Ministry of Finance verifies such violations and imposes sanctions through the 'Guardia di Finanza'. The sums collected are acquired by the Ministry of Finance (Art. 53 (9) of Legislative Decree no. 165 of 2001).

In case where the civil servant not only did not request the authorization, but was also in a position of conflict of interest, he can face serious fines or even dismissal (ex. art. 55-56-57 of Legislative Decree 165/01).

Part C: Members of Parliament

C.1. What rules, guidelines and provisions exist to regulate side-earnings?

According to Law No. 441 of 5 July 1982[130], members of the Italian Parliament are required to **declare their financial interests** at the beginning of their mandate including any position they hold in any public or private body as well as any entrepreneurial or professional activity they pursue (see also section C.4).

Since 2016, a **Code of Conduct applies to the members of the Chamber ('Camera dei deputati').** The Code contains the rules of conduct applying to the members of the Chamber and the procedures to ensure compliance with these rules.

In February 2016, the Chamber approved new **rules on the conflicts of interest** of elected public office holders (replacing Law no. 215 of 2014) in order to enhance the preventive control.

For the Senate, the resolution of 21 December 2017 "**Organic reform of the Rules of the Senate**" published in the Official Gazette General Series n.15 of 19-01-2018, states that it is up to the Presidency ('Consiglio di Presidenza') to adopt a Code of Conduct for Senators, which establishes the principles and rules of conduct the members of the Senate have to comply with in the exercise of their mandate.

C.2. Under what circumstances is it permitted to engage in side-activities?

The Code of Conduct of the Chamber is based on the key concept that its members exercise their functions, with discipline and honour, representing the nation and observing the principles of integrity, transparency, diligence, honesty, responsibility and protection of the good reputation of the Parliament. Members do not seek to obtain any direct or indirect financial advantage from their position and address any emerging conflict of interest. Despite this general statement on the conduct of the members of the Chamber, the Code does not define specific circumstances under which a

[130] Law No. 441 of 5 July 1982 on the provisions for the publicity of the financial situation of elective and managerial positions of certain entities.

member of the Chamber can engage in side activities.

However, according to the new rules on conflict of interests for elected members, there is a conflict of interest when an elected office holder also has "a private economic interest such as to condition the exercise of the public functions assigned to him or to alter the market rules relating to free competition" (Art. 4)[131]. Furthermore, based on these rules, any public or private employment or any self-employed, entrepreneurial or consulting activity (even if unpaid) is not compatible with the political mandate.

C.3. Procedure to request permission to engage in side activities and who is responsible for granting, denying and removing this permission

The Code of Conduct of the Chamber does not define the procedure to request an authorisation to engage in side activities. However, the compensation of the member of the Chamber is reduced from EUR5,000 (net salary) to EUR4,750 in case the member also carries out other work activities in addition to his public office.[132]

C.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

According to the Code of Conduct of the Chamber, all members must send a communication to the President of the Chamber to disclose all positions and roles of any type held on the date of the submission of their candidacy, including **any entrepreneurial or professional activity carried out and any self-employment or employment by a private firm**. This communication must be provided within 30 days of the first meeting/session of the Chamber or of the start of the member's mandate. In a separate communication, each member of the Chamber must declare their financial interests and position at the beginning and at the end of his mandate (see below).

If a member of the Chamber takes up a job or role (in any public or private company or even self-employed or entrepreneurial activities) after the start of his mandate, this new activity must be declared to the President of the Parliament within thirty days from its start. This declaration will be published on the website of the Parliament. The level of details provided in such declarations of side-activities by members of the Parliament varies.

According to Law No. 441 of 5 July 1982, Members of the Senate and the Parliament are requested to provide to the presidency of the Senate and the Parliament: **a declaration of financial position (and interests)** covering the rights on movable assets, any company assets and positions held in companies using the formula "on my honour I affirm that the statement is true" and a copy of their last tax return. The declaration of the financial position should be submitted within three months from the election and then updated every year (to disclose any variations of the financial position together with a copy of the new tax return). The declaration is published on the website of the Chamber the member belongs to**.** The declaration on the financial position and the tax return should also cover the member's spouse, his children and relatives within the second degree of kinship (Art. 2 of Law No. 441/1982).

C.5. Sanctions and penalties for breach of side earnings rules

In May 2016, the Presidency of the Chamber established an **Advisory Committee on the Conduct of Members**, which provides opinions on the interpretation and implementation of the provisions of the Code, at the request of the individual Member or the President of the Chamber. The Committee was established on 18 May 2016. In case of breach of the Code, the sanction consist in the announcement of case of non-compliance with (or breach of) the Code in the Plenary and the publication on this information on the Parliament's website.

The Antitrust Authority supervises the implementation of the conflicts of interest rules among members of the Parliament. Any incompatibility found by the Authority must be resolved within 30 days of its communication to the person concerned. In case this is not resolved, it is understood that

[131] https://www.senato.it/application/xmanager/projects/leg17/attachments/documento_evento_procedura_commissione/files/000/004/161/PROF._PINELLI.pdf

[132] XVIII Legislature - Deputies and Bodies - Deputies - Economic Treatment (camera.it).

"the interested party has opted for the position incompatible with the office of government". In this case, the member of the Parliament is requested to abstain and in cases of breach of these rules, a fine commensurate to the advantage obtained could be issued.

As regards breaches of the provisions set out in Law No. 441/1982 regarding the **declaration of the financial position of the member of the Parliament**, the President of the competent Chamber warns the elected member to fulfil his obligations within 15 days (Art. 7 of Law No. 441/1982). If this warning is ignored the President gives notice to the Assembly. In parallel, disciplinary sanctions may be applied according to the Chamber internal regulation.

Part D: Other Public Sector Staff

Provisions set out in Law No. 441 of 5 July 1982 as well as recent rules on conflicts of interests, also apply to other elected or nominated public office holders in Italy (i.e. members of national and regional governments, members of the regional and local councils as well as in the case of conflict of interests rules also members of independent authorities).

C.8 Country Factsheet for Poland

Part A: Definition of Side Earnings

How are side earnings defined?

There is no legal definition of conflicts of interest in commonly binding laws but several legal texts provide for the obligation to report such situations in certain specific circumstances.[133]

The Annex to the Executive Order no. 3 of the Chief of the Chancellery of the President, concerning the anti-corruption procedures at the Chancellery of the President, specifies that a conflict of interest arises when an employee who takes a decision has or might have a personal interest (financial or other) at skate, linked to such a decision.[134] Officials are defined as people occupying senior positions employed on the basis of appointment. There is a narrow concept of the civil service, including only official positions and excluding education, health, armed forces, judiciary, self-government (otherwise referred to as local administration).[135]

As identified in the GRECO evaluation, "the absence of a general definition and of a policy on conflicts of interest, including the fact that this subject is often (mis)understood as referring to conflicts between departments was also documented in comprehensive research work…This clearly points to the need for a more robust set of general rules for PTEFs (persons exercising top executive functions), including on the disclosure and management ad hoc of such conflicts"[136]. However, in 2019, the Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions was instated. This law applies to all persons holding state positions, employees of state offices (inc. civil service), and director generals of departments or voivodeship offices. Its main purpose is to outline the parameters of a conflict of interest.[137] These are listed below:

- Membership of management boards, supervisory boards, or audit committees of commercial companies or their liquidators, as well as a shareholder's attorney
- Receiving funds during bankruptcy proceedings or supervise/manage bankruptcy proceedings
- Being employed or performing activities in commercial companies that "could cause suspicion about their bias or self-interest";
- Membership of management boards, supervisory boards, or audit committees of cooperatives
- Membership of boards of foundations conducting business activity.
- Owning more than 10% of shares in a commercial company
- Conducting business activity as an individual or jointly with others[138]

Part B: Rules for Officials

B.1. What rules, guidelines and provisions exist to regulate side-earnings?

The Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions prohibits officials from performing professional or other activities aimed at generating income or proceeds. This law also "contains certain post-employment restrictions and provisions on financial

[133] GRECO Fifth Evaluation Report on Poland (2017). https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168092005c

[134] Ibidem.

[135] Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions (1997). https://www.eupan.eu/wp-content/uploads/2020/05/Report-The-Civil-Service-System-at-European-Level.pdf

[136] GRECO Fifth Evaluation Report on Poland (2017). https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168092005c

[137] Marshal of the Sejm of the Republic of Poland. (2019). Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions. https://europam.eu/data/mechanisms/COI/COI%20Laws/Poland/2.%20Act%20on%20Restrictions%20on%20Conduct%20of%20Business%20Activities%20by%20Persons%20Performing%20Public%20Functions%20of%202019_POL.pdf

[138] Ibidem.

disclosure."[139]

The draft Act on Transparency in Public Life "foresees that every three months the CAB [Central Anticorruption Bureau] should monitor compliance by PTEFs with the new restrictions." [140] According to the GRECO report, the on-site interviews confirmed that there is a clear need for additional rules and guidance on who to deal with ancillary activities in certain situations. The report also noted it is important that a "more coherent policy and practice is applied for all PTEFs, and that the responsibility for deciding on incompatible ancillary activities is not left entirely to the discretion of the supervising PTEF or body." Such executives may believe that their salaries and/or other contracted remunerations are not commensurate with the tasks and responsibilities they undertake as part of their job, which could lead to them seeking additional income from outside sources, perhaps from entities and businesses with which they have dealings. "GRECO recommends that common cross-government rules and guidance are introduced on ancillary activities."[141]

As argued by Artur Rycak and colleagues, the judicature of the Polish Constitutional Tribunal indicates that all limitations on freedom of engaging in economic activity imposed on persons performing public functions are aiming at protecting the public interest through 'preventing the public persons from engaging in situations and implications that could call their impartiality and integrity into doubt as well as undermine the state institutions' authority and weaken voters' and public opinion's trust as regards their proper functioning'. The aim is removing 'a temptation to abuse the performed position'[142].

According to Agnieszka Rzetecka-Gil, the anti-curruption regulations in Polish law imposing regulations on activities permitted to engage in for public officials (including municipal mayors) are very restrictive, they have a wide scope and, hence, produce far-reaching outcomes, which sometimes causes problems with interpretation of the regulations[143].

B.2. Under what circumstances is it permitted to engage in side-activities?

There is a threshold to how much a public official can earn from side-activities. Benefits obtained by employees such as members of the Council of Ministers, the secretaries and undersecretaries of state in ministries and in the Chancellery of the Prime Ministers, as well as the benefits obtained by spouses of the above persons, are disclosed in the **Register of Benefits**, kept by the State Election Committee. "Such benefits must therefore be declared as donations received from domestic or foreign entitles if their value exceeds 50% of the lowest wage applicable for employees or (approx. PLN 380/Euro 88), other benefits exceeding the above value, domestic and foreign travels not connected with official duties."[144]

As the GRECO report identifies, the Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions actually legitimises officials receiving additional benefits, "whether financial or in kind, provided they are declared if they exceed a certain amount. The acceptance of amounts below the threshold are therefore totally unregulated."[145] Poland should clearly define the circumstances in which benefits, gifts, and other smaller-value side earnings can be accepted.

According to the Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions, public officials and other state employees can engage in side activities if they are a member

[139] GRECO Fifth Evaluation Report on Poland (2017). https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168092005c
[140] Ibidem.
[141] Ibidem.
[142] Rycak, A., et al. (2016) Art. 30, Zakaz wykonywania niektórych zajęć przez pracowników na stanowiskach urzędniczych [in:] Rycak et. al. (eds.) *Ustawa o pracownikach samorządowych. Komentarz, wyd. II.*, Wolters Kluwer, Available at: https://sip.lex.pl/#/commentary/587356321/503976/rycak-artur-i-in-ustawa-o-pracownikach-samorzadowych-komentarz-wyd-ii?cm=URELATIONS.
[143] Rzetecka-Gil, A. (2021) Ustawa o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne. Komentarz, Art. 1, LEX/el., Available at: https://sip.lex.pl/#/commentary/587247898.
[144] GRECO, Op. Cit.
[145] Ibidem.

of a supervisory board of cooperatives of residential districts (Art. 4, Section 3).[146] There is no explanation as to why this is an exception. In addition, the ban on holding positions in company bodies will not apply if indicated by "the State Treasury, other state legal entities, companies with the participation of the State Treasury, local government units, their unions or other legal entities of local government units." With this exception, it is further stated that, "these persons may not be appointed to more than two commercial law companies".[147]

B.3. Procedure to request permission to engage in side activities and who is responsible for granting, denying and removing this permission.

The Chancellery of the President's employees, including advisers, must report in writing about all conflicts of interests (personal, financial or other interests).[148]

They must submit an asset declaration, according to the Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions to the First President of the Supreme Court (if the Prime Minister and Heads of Chancelleries). Other holders of executive positions in the Chancelleries submit their declarations to the Heads of Chancelleries.

Secretaries and undersecretaries of state, and other senior ministerial officials, submit their written declarations of personal, financial or other interests to the relevant minister. The President of the Republic of Poland, Marshal of the Sejm, Marshal of the Senate, Prime Minister, Head of the Chancellery of the President, Head of the Chancellery of the Sejm, Head of the Senate Chancellery, President of the Supreme Audit Office, Public Prosecutor General, Ombudsman, President of the Supreme Administrative Court, President of the National Bank of Poland, chairman of the National Broadcasting Council, Chief Labour Inspector, President of the Polish Academy of Sciences, Manager of the National Electoral Office and the Insurance Ombudsman must submit a financial declaration to the President of the Supreme Court.[149]

In addition, Article 8 of the Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions states that once an individual holding a managerial state position has submitted their declaration, a commission appointed by the Prime Minister, "at the request of the superior or the person concerned, shall issue, within 14 days from the date of the submission of the request, an opinion on whether the economic activity…may give rise to suspicion of bias or self-interest."[150]

B.4. What type of information (if any) should be disclosed about side activities? How often is it required to update this information?

The asset declarations contain a statement on financial interests which could lead to a conflict of interest,[151] including financial resources held in "real estate, stocks and shares in commercial law companies, as well as those acquired by that person or their spouse from the State Treasury, other state legal entity, local government units, their unions or metropolitan association properties that are

[146] Marshal of the Sejm of the Republic of Poland. (2019). Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions. https://europam.eu/data/mechanisms/COI/COI%20Laws/Poland/2.%20Act%20on%20Restrictions%20on%20Conduct%20of%20Business%20Activities%20by%20Persons%20Performing%20Public%20Functions%20of%202019_POL.pdf

[147] Marshal of the Sejm of the Republic of Poland. (2019). Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions. https://europam.eu/data/mechanisms/COI/COI%20Laws/Poland/2.%20Act%20on%20Restrictions%20on%20Conduct%20of%20Business%20Activities%20by%20Persons%20Performing%20Public%20Functions%20of%202019_POL.pdf

[148] GRECO Fifth Evaluation Report on Poland (2017). https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168092005c

[149] Marshal of the Sejm of the Republic of Poland. (2019). Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions. https://europam.eu/data/mechanisms/COI/COI%20Laws/Poland/2.%20Act%20on%20Restrictions%20on%20Conduct%20of%20Business%20Activities%20by%20Persons%20Performing%20Public%20Functions%20of%202019_POL.pdf

[150] Ibidem.

[151] GRECO Fifth Evaluation Report on Poland (2017). https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168092005c

subject to sale by tender."[152]

According to the Lustration Act[153]—a post-Communist employee vetting procedure "designed to either remove or prevent from assuming public office those persons who collaborated with the previous Communist regime or secret security services—the PTEFs or candidates to the positions of PTEFs, including the President of the Republic and Ministers, as well as executive persons in the Chancelleries of the President and the Prime Minister who were born before 1 August 1972. are required to submit statements about their work for or collaboration with secret services under the communist regime (1944-1990). The lustration procedure aims at preventing the officials' vulnerability to undue pressure or blackmail.[154]

Article 8 of the Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions states that persons holding managerial state positions must submit to their superior a declaration on economic activity carried out by themselves and their spouse before being appointed to their position. They must also disclose "the intention to undertake such activity or change of its nature" throughout their employment.[155] Asset declarations must be submitted every year by March 31, accounting for all activity up until December 31 of the previous year, as well as on the day an individual leaves their post.

B.5. Sanctions and penalties for breach of side earnings rules

Gifts that are deemed less serious could entail disciplinary proceedings, but normally the criminal provisions on bribery apply.[156] Unfortunately, there is a lack of definitions and guidance on what constitutes "serious"/"less serious" cases, meaning these situations can be interpreted in different ways.

"The penalties for the violation of public finance discipline include: a warning, a reprimand, a fine, the ban on performing functions involving allocations of public funds. Moreover, embezzlement (Article 296), abuse of power (Article 231) and fraud (Article 286) are criminally punishable."[157] However, there is not a strong, robust mechanism of supervision and sanction for these matters in Poland.

According to the Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions, if a public official is found to be violating the prohibitions (listed above in Part A), the activity is considered a misconduct subject to disciplinary liability or is the basis for termination of employment without notice.[158]

Part C: Members of The Senate and Sejm

Members of the Senate (upper house of Polish Parliament) and Sejm (the lower house) are subjected to the same statutes and sanctions as other state officials. They perform their mandate on a basis of the relevant 'law from the 9th of May 1996 on performing the mandate of member of Sejm and Senat' and the further amendments to it. A member of Sejm (in Polish: 'poseł') and Senat (in Polish: 'senator')

[152] Marshal of the Sejm of the Republic of Poland. (2019). Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions. https://europam.eu/data/mechanisms/COI/COI%20Laws/Poland/2.%20Act%20on%20Restrictions%20on%20Conduct%20of%20Business%20Activities%20by%20Persons%20Performing%20Public%20Functions%20of%202019_POL.pdf

[153] Horne, C. M. (2009). International Legal Rulings on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context. *Law & Social Inquiry*. 34(3). pp 713-744. Available at: https://www.jstor.org/stable/40539376

[154] GRECO Fifth Evaluation Report on Poland (2017). https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168092005c

[155] Marshal of the Sejm of the Republic of Poland. (2019). Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions. https://europam.eu/data/mechanisms/COI/COI%20Laws/Poland/2.%20Act%20on%20Restrictions%20on%20Conduct%20of%20Business%20Activities%20by%20Persons%20Performing%20Public%20Functions%20of%202019_POL.pdf

[156] GRECO Fifth Evaluation Report on Poland (2017). https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168092005c

[157] Ibidem.

[158] Marshal of the Sejm of the Republic of Poland. (2019). Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions. https://europam.eu/data/mechanisms/COI/COI%20Laws/Poland/2.%20Act%20on%20Restrictions%20on%20Conduct%20of%20Business%20Activities%20by%20Persons%20Performing%20Public%20Functions%20of%202019_POL.pdf

is obliged to reveal their incomes from side activities in their declarations of assets[159]. Importantly, when performing the side activities and/or engaging in economic activities, parliamentarians are not allowed to make use of their mandates[160].

The talked-about law imposes a number of limitations on the side activities allowed for the parliament members to get involved in. Firstly, they are not allowed to engage in additional occupations that could undermine voters' trust in their mandate[161]. The parliamentarians cannot enter a formal employment relationship with a number of public offices and control authorities (e.g. with an Ombudsman's office, Supreme Audit Office, government administration, local governments). When holding their mandates they are forbidden to perform military duty, work as court judges, prosecutors, judicial assessors and administrative workers of courts and prosecution offices[162].

Another limitation imposed on members of Sejm and Senat is that they cannot be employed nor perform duties in commercial partnerships or companies where the state or the unit of territorial self-government holds at least 10% of shares[163]. If the state or the unit of territorial self-government purchases at least 10% of shares in a commercial partnership or company where the member of the parliament performs the duties, they are granted with an obligatory, unpaid leave which terminates three months after they stop performing their duties in the parliament[164].

Moreover, the law regulating performing functions of Sejm and Senat members impose restrictions on parlamentarians' remuneration from side activities. Once receiving mandate in Sejm or Senat, a parliamentarian is obliged to take an unpaid leave from where they are employed for a period they hold the mandate and the three months that follow. The fixed-term employment that would terminate before the end of the unpaid leave is extended to three months after the mandate of a parliamentarian terminates[165]. Those members of parliament who decide to remain employed outside of parliament and not take an unpaid leave, those who engage in economic activity and those who did not give up their right to pension or annuities are not paid the parliamentary emolument[166]. Those members of the parliament receive only 25% of the full emolument and are considered non-professional parlamentarians, in contrast to the majority of professional parliamentarians[167].

The parliamentarians are not allowed to receive endowments that could undermine trust of the voters concerning their performing of the function in the parliament[168]. Moreover, when engaging in economic activity the parliament members are not allowed to use the state property. They are also disallowed to manage such a property or perform a function of an intermediary or a representative of someone involved in this type of activity when holding their mandate[169].

In line with the change that has been voted through by the Polish Sejm in 2019[170] and introduced for the current, 9th term of the Polish Parliament, the members of Sejm are not anymore obliged to disclose their incomes from the order contracts (in Polish: 'umowa zlecenie'), the specific-task contracts (in Polish: 'umowa o dzieło') and from tenancy in the applications for their parliamentarian emolument[171]. They must still, however, inform the marshal of the relevant parliament house about

[159] Marshal of the Sejm of the Republic of Poland (2021). Ustawa z dnia 9 maja 1996 r. O wykonywaniu mandatu posła i senatora., Art 35.2., Available at: https://www.sejm.gov.pl/prawo/mandat/kon6.htm.
[160] Ibidem, Art. 33.3.
[161] Ibidem, Art. 33.2.
[162] Ibidem, Art. 30.1.
[163] Ibidem, Art. 30.1a.
[164] Ibidem, Art. 30.3.
[165] Ibidem, Art. 29.
[166] Ibidem, Art. 25.1 & 25.3.
[167] Money.pl (2020) Sejm. Posłowie nie muszą już zgłaszać dodatkowych zarobków. Available at: https://www.money.pl/gospodarka/sejm-poslowie-nie-musza-juz-zglaszac-dodatkowych-zarobkow-6533053062063745a.html.
[168] Ibidem, Art. 33.2.
[169] Ibidem, Art. 34.1.
[170] TVN24 (2020). Dodatkowe zarobki posłów. Szczerba o „odejściu od standardów", CIS o formularzu „zgodnym z ustawą". Available at: https://tvn24.pl/polska/zarobki-poslow-2020-zmiany-we-wnioskach-o-uposazenie-poslowie-nie-musza-informowac-o-dodatkowych-dochodach-4640454.
[171] TVN24 (2020). Op. Cit.

their intention to take up an additional activity, excluding those activities that fall under the law on copyright and other, related laws[172].

This change described above has been widely discussed in the Polish public discourse. The Sejm Centre of Information (in Polish: Centrum Informacyjne Sejmu, *CIS*) issued a statement arguing that 'the rules of granting emolument to parliamentarians had not changed for the previous 24 years and are regulated by the "law from the 9th of May 1996 on performing the mandate of member of Sejm and Senat"' and that 'all the incomes of the members of Sejm are transparent due to the annually submitted parliamentarian's declaration of assets'[173]. Some representatives of the civil society and of the opposition parties have been, however, of a different opinion on that matter. Judge Dariusz Mazur, the spokesperson for the prominent Polish judges' association 'Themis', has been arguing that the repealed obligations 'were supposed to prevent parliamentarians from obtaining potential benefits from engaging in corruption.' and, hence, he continued, 'the proposition to exempt the Sejm members from disclosing gains acquired through civil legal agreements seems impossible to explain, if not shocking […]'. Mr Mazur pointed to the fact that the civil legal agreements are the easiest way to transfer money from corruption-related activities[174]. Member of the Polish Sejm Mr Michał Szczerba commented that the loosening of the regulations 'leaves a huge area for malpractices and conflicts of interest' and 'turn the control of where the Sejm member earn additional money into fiction'[175].

Part D: Other Public Sector Staff

D.1 Civil service

In Poland, civil servants are beholden to laws such as the 2019 Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions. If civil servants or employees of state offices are found to participate in the prohibited activities listed in Part A above, the sanctions listed in B.5 also apply. They are required to submit an asset declaration as well. According to the Article 80.1 of the Polish 'law from the 21st of November 2008 on civil service'[176] the Polish civil service corpse's member's (in Polish: 'członek korpusu służby cywilnej') possibility to engage in side employment and additional gainful activities is dependent on a written agreement of the director general of the office the civil servant works in. Moreover, articles 80.2 and 80.3 indicate that the higher-ranks civil service officials (in Polish: urzędnik służby cywilnej) are subject to the corresponding legal restrictions. The director general employed in civil service, on the other hand, in corresponding circumstances, is obliged to obtain a written permission from the head of the Polish civil service[177]. The sanction for undertaking side employment without obtaining written permission from the employer within civil service is instant termination of employment, as such incident is seen as a heavy breaching of the relevant regulations[178].

The civil servants are also forbidden to engage in 'activities or occupations conflicting with their duties described in the law on civil service or such that would undermine public trust to the civil service'[179]. In his comment to the Polish law on civil service, Mr Stefan Płażek points to ambiguity of this regulation. According to him, the phrasing of the Article 80.1 does not clearly specify if the prohibition of engaging in 'activities or occupations conflicting with one's duties' relates to the activities and

[172] Marshal of the Sejm of the Republic of Poland (2021). Op. Cit., Art. 33.1.
[173] TVN24 (2020). Op. cit.
[174] Gałczyńska, M. (2020). Zarobki posłów poza kontrolą? Sędzia: to szokujące, nie do wytłumaczenia. Available at: https://wiadomosci.onet.pl/kraj/poslowie-nie-musza-zglaszac-dodatkowych-zarobkow-sedzia-to-szokujace-nie-do/ebg04j4.
[175] Dobrosz-Oracz J., Czuchnowski W. (2020). Kancelaria Sejmu do posłów: dorabiajcie! Pełne uposażenie i tak się należy, Available at: https://wyborcza.pl/7,75398,26136341,kancelaria-sejmu-do-poslow-dorabiajcie-pelne-uposazenie-i.html?token=dST4OYCAYzPsAJEsA1-u7huEwcRQh7mnrChtY-cxX4X0UWBo5FO-2_-7c97cBcUX.
[176] Chancellary of Sejm (2008). Ustawa z dnia 21 listopada 2008 o służbie cywilnej, Available at: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20082271505/U/D20081505Lj.pdf.
[177] Ibidem, Art. 80.2, Art. 80.3. & Art. 80.4.
[178] Płażek S. (2021) Art. 80, Dodatkowe zatrudnienie i zajęcia zarobkowe członka korpusu służby cywilnej [in:] Baran, K. W., eds. *Ustawa o służbie cywilnej. Komentarz*, Available at: https://sip.lex.pl/#/commentary/587868930/666370/baran-krzysztof-w-red-ustawa-o-sluzbie-cywilnej-komentarz?cm=URELATIONS.
[179] Chancellary of Sejm (2008). Op. Cit., Art. 80.1.

occupations performed within employment as a member of civil service corps or such that would be performed whenever and wherever during the period when individual's employment relationship with the civil service is maintained. As he points out, the common interpretation extends the scope of the ban on all activities, also those, not directly related to occupational tasks of a civil servant[180].

According to the Polish Civil Corpse website, the principles of the civil service that have to be considered by the civil servant planning to engage in side employment is, firstly, the lack of personal interest[181]. This rule indicates that the civil servant should not receive remuneration from stakeholders engaged in endeavours they deal with as employees of the civil service and should not engage in circumstances where they would be remunerated for side activities that would somewhat intertwine with what they are doing in their work for the civil service. The second principle outlined by the civil service is impartiality, which, in short, should prevent the civil servant from engaging in activities where a conflict of interest would arise or such that would pose a risk that they might be pressured not to make independent decisions in the cases they are engaged in as civil servants. The third of the listed rules is loyalty. This guideline indicates that civil servants should not engage in side activities where they would risk undermining good reputation of civil service[182].

Part E: Sources

- Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions (1997). https://europam.eu/data/mechanisms/FD/FD%20Laws/Poland/3.%20Act%20on%20Restrictions%20on%20Conduct%20of%20Business%20Activities%20by%20Persons%20Performing%20Public%20Functions%20of%201997_POL,%20consolidated%202019.pdf
- Rycak, A., et al. (2016) Art. 30, Zakaz wykonywania niektórych zajęć przez pracowników na stanowiskach urzędniczych [in:] Rycak et. al. (eds.) *Ustawa o pracownikach samorządowych. Komentarz, wyd. II.*, Wolters Kluwer, Available at: https://sip.lex.pl/#/commentary/587356321/503976/rycak-artur-i-in-ustawa-o-pracownikach-samorzadowych-komentarz-wyd-ii?cm=URELATIONS.
- Rzetecka-Gil, A. (2021) Ustawa o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne. Komentarz, Art. 1, LEX/el., Available at: https://sip.lex.pl/#/commentary/587247898.
- Chancellary of Sejm (1990). Ustawa z dnia 8 marca 1990 r. o samorządzie gminnym, Available at: https://sip.lex.pl/#/act/16793509.
- Chancellary of Sejm (1998) Ustawa z dnia 5 czerwca 1998 r. o samorządzie powiatowym, Available at: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19980910578/U/D19980578Lj.pdf.
- Chancellary of Sejm (2008). Ustawa z dnia 21 listopada 2008 o służbie cywilnej, Available at: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20082271505/U/D20081505Lj.pdf.
- Chancellery of Sejm (2022). Ustawa z dnia 21 listopada 2008 o pracownikach samorządowych, Art. 30, Available at: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20082231458/U/D20081458Lj.pdf.
- Dobrosz-Oracz J., Czuchnowski W. (2020). Kancelaria Sejmu do posłów: dorabiajcie! Pełne uposażenie i tak się należy, Available at: https://wyborcza.pl/7,75398,26136341,kancelaria-sejmu-do-poslow-dorabiajcie-pelne-uposazenie-i.html?token=dST4OYCAYzPsAJEsA1-u7huEwcRQh7mnrChtY-cxX4X0UWBo5FO-2_-7c97cBcUX.
- Dziennik Gazeta Prawna (2017). Włodarz gminy może dorabiać. Ale nie zawsze, Available at: https://praca.gazetaprawna.pl/artykuly/1052185,wlodarz-gminy-moze-dorabiac-ale-nie-zawsze.html.
- Gałczyńska, M. (2020) Zarobki posłów poza kontrolą? Sędzia: to szokujące, nie do wytłumaczenia. Available at: https://wiadomosci.onet.pl/kraj/poslowie-nie-musza-zglaszac-dodatkowych-zarobkow-sedzia-to-szokujace-nie-do/ebg04j4.
- Gov.pl (2022). Serwis Służby Cywilnej, Dodatkowe zarobkowanie i zatrudnienie, Available at: https://www.gov.pl/web/sluzbacywilna/dodatkowe-zarobkowanie-i-zatrudnienie.

[180] Płażek S. (2021) Op. Cit.

[181] The direct translation of the Polish word 'bezinteresowność' (selflessness) applied by the civil service does not fit in this context due to the semantic difference.

[182] Gov.pl (2022). Serwis Służby Cywilnej, Dodatkowe zarobkowanie i zatrudnienie, Available at: https://www.gov.pl/web/sluzbacywilna/dodatkowe-zarobkowanie-i-zatrudnienie.

- GRECO Fifth Evaluation Report on Poland (2017). https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168092005c
- Horne, C. M. (2009). International Legal Rulings on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context. *Law & Social Inquiry*. 34(3). pp 713-744. Available at: https://www.jstor.org/stable/40539376
- Jankowska, M. (2018). Jak może dorabiać urzędnik pracujący w samorządzie, Available at: https://www.rp.pl/urzednicy/art2109001-jak-moze-dorabiac-urzednik-pracujacy-w-samorzadzie.
- Jankowska, M. (2018 a). Dorabianie do pensji przez osoby zatrudnione w administracji publicznej, Available at: https://www.rp.pl/praca-w-samorzadzie/art2108971-dorabianie-do-pensji-przez-osoby-zatrudnione-w-administracji-publicznej.
- Jaworski, B. (2020). Pozycja ustrojowoprawna samorządu gminnego w systemie administracji publicznej., Studia Iuridica, vol. 85, pp. 140-156, DOI: https://doi.org/10.31338/2544-3135.si.2020-85.10.
- Marshal of the Sejm of the Republic of Poland. (2019). Act on Restricting the Conduct of Economic Activity by Persons Discharging Public Functions. https://europam.eu/data/mechanisms/COI/COI%20Laws/Poland/2.%20Act%20on%20Restrictions%20on%20Conduct%20of%20Business%20Activities%20by%20Persons%20Performing%20Public%20Functions%20of%202019_POL.pdf
- Marshal of the Sejm of the Republic of Poland. (2021). Ustawa z dnia 9 maja 1996 r. O WYKONYWANIU MANDATU POSŁA I SENATORA. Available at: https://www.sejm.gov.pl/prawo/mandat/kon6.htm.
- Money.pl (2020) Sejm. Posłowie nie muszą już zgłaszać dodatkowych zarobków. Available at: https://www.money.pl/gospodarka/sejm-poslowie-nie-musza-juz-zglaszac-dodatkowych-zarobkow-6533053062063745a.html.
- Płażek S. (2021) Art. 80, Dodatkowe zatrudnienie i zajęcia zarobkowe członka korpusu służby cywilnej [in:] Baran, K. W., eds. *Ustawa o służbie cywilnej. Komentarz*, Available at: https://sip.lex.pl/#/commentary/587868930/666370/baran-krzysztof-w-red-ustawa-o-sluzbie-cywilnej-komentarz?cm=URELATIONS.
- Sekuła, A. (2016). Gmina w systemie zarządzania państwem. [in:] Sekuła A. (eds.) *Meandry zarządzania*, Gdańsk: Wydawnictwo Politechniki Gdańskiej, pp. 57-80, ISBN: 978-83-7348-686-7.
- TVN24 (2020). Dodatkowe zarobki posłów. Szczerba o „odejściu od standardów", CIS o formularzu „zgodnym z ustawą". Available at: https://tvn24.pl/polska/zarobki-poslow-2020-zmiany-we-wnioskach-o-uposazenie-poslowie-nie-musza-informowac-o-dodatkowych-dochodach-4640454.

C.9 Country Factsheet for Romania

Part A: Definition of Side Earnings

How are side earnings defined?

There is not an explicit legal definition of side-earnings or side-activities, but in terms of what side-earnings or side-activities mean, there is no unclarity in practice. The most important legal concept used in connection with side-earnings and side-activities is the concept of '**incompatibility'**.

The Law no. 161/2003 concerning transparency in public dignities stipulates at art. 80 that "Incompatibilities regarding public dignity and public office are those regulated by the Constitution, by the law applicable to the public authority or institution in which the persons exercising a public dignity or a public office carry out their activity, as well as by the provisions of this title."

The 'incompatibility' is the interdiction to exercise another office, dignity, profession or activity, as expressly forbidden by the law, at the same time with a public office or dignity, although no law includes this definition in an explicit way. Therefore, the incompatibility is defined as the interdiction of specified side-activities, although there is no legal text including this definition. This is a definition formulated by the legal doctrine and used by the Romanian courts, based on a systematic interpretation of the legislation.

In practice, experts agree with the definition and problems are raised by the regulation of the specific side-activities that are considered 'incompatible' with a public office, but not with what 'incompatibility' means.

Part B: Rules for Officials

B.1. What rules, guidelines and provisions exist to regulate side-earnings?

Most of the incompatibilities and the most important ones for civil servants, MPs, local elected officials (mayors and members of the local and county councils) and the members of the government are regulated by the Law no. 161/2003 concerning transparency in public dignities.
There are different incompatibilities regulated for:

- Members of the Parliament (art. 82) (see Part C)
- Members of the Government (art. 84)
- Prefects and their deputies (representatives of the Government at county level) (art. 85)
- Local elected officials (the mayors, members of local/municipal councils and members of county councils) (art. 87-90)
- Civil servants (art. 94-96).

Heads of governmental agencies (presidents or directors of the governmental agencies) follow incompatibilities regulations similar to the ones applicable to the members of the government or to the civil servants, in accordance with the statute of each agency.
The functions of the members of the Government (prime-minister, vice-prime-minister, ministers and state secretaries/deputy ministers), are incompatible with (Law no. 161/2003 art. 84):

- Other public offices, with the exception of the position of Member of the Parliament
- Member of the board, director or administrator of companies (commercial societies), including banks or other financial institutions and including state owned companies, or companies where the state is a shareholder (even minority);
- President or secretary of shareholders general assemblies;
- The function of state representatives in the boards or general assemblies of state-owned companies, or companies where the state is a shareholder (even minority);
- Freelancer
- Member of an economic interest group
- A public office entrusted by a foreign state, except for those functions provided for in the agreements and conventions to which Romania is a party

- President, vice-president, secretary and treasurer of trade unions and Confederations of trade union.
- Other employed positions, with some exceptions regarding teaching and research positions

The functions of Prefects and deputy prefects are incompatible with (Law no. 161/2003 art. 85):

- Member of the Parliament
- Mayor of any municipality
- Member of the board, director or administrator of companies (commercial societies), including banks or other financial institutions and including state owned companies, or companies where the state is a shareholder (even minority);
- President or secretary of shareholders general assemblies;
- The function of state representatives in the boards or general assemblies of state-owned companies, or companies where the state is a shareholder (even minority);
- Freelancer
- Member of an economic interest group
- A public office entrusted by a foreign state, except for those functions provided for in the agreements and conventions to which Romania is a party
- President, vice-president, secretary and treasurer of trade unions and Confederations of trade union
- Other employed positions, with some exceptions regarding teaching and research positions
- Other employed positions, with some exceptions regarding teaching and research positions

The functions of mayor and vice-mayor are incompatible with (Law no. 161/2003 art. 87):

- Member of the Parliament
- Member of the Government
- Prefect or deputy prefect
- Civil servant
- Employee (based on a labour contract) of any employer
- Member of the county council.
- Member of the board, director or administrator of companies (commercial societies), including banks or other financial institutions and including state owned companies, or companies where the state is a shareholder (even minority);
- President or secretary of shareholders general assemblies;
- The function of state representatives in the boards or general assemblies of state-owned companies, or companies where the state is a shareholder (even minority), with some regulated exceptions
- Member of an economic interest group
- **any other public office or remunerated activity, in the country or abroad, with the exception of the teaching post or the functions of associations, foundations or other non-governmental organizations**

Mayors cannot be members of the local council as well, while the vice-mayor are by definition members of the local council.

The functions of elected members of local councils (municipality level) and county councils are incompatible with (Law no. 161/2003 art. 88):

- Member of the Parliament
- Member of the Government
- Prefect or deputy prefect
- Mayor
- Civil servant or employee of the institutions under the authority of the local or county council
- President or secretary of shareholders general assemblies of companies considered to be of high local interest or of national interest;

- The function of state representatives in the boards or general assemblies of state-owned companies, or companies where the state is a shareholder (even minority), with some regulated exceptions

One person cannot be member of the local council and member of the county council in the same time.

The function of member of the local council and member of the county council are not permanent. The councils have monthly regular meetings and extraordinary meetings any time it is needed. In this context, there is no clear regulation on incompatibilities/interdictions related to side activities in the private sector. However, if their private capacity can affect the decisions in the councils, the members of the local or county councils must abstain from participating to debates and votes in the councils. If they fail to abstain the members of the councils are considered in conflict of interest. The sanctions and penalties for incompatibilities and conflicts of interests are similar.

Civil servants are incompatible with other positions in the public sector. Civil servants cannot have the following side-activities, either paid or unpaid (Law no. 161/2003 art. 94, alin. 1 and 2):

- Employee of a public institution (beside the one that appointed them as public servants)
- Personal advisor of a member of the government or another public official
- Employee of state-owned companies
- Member of an economic interest group

On the other hand, there are some regulated exceptions, representing mainly situation when the civil servants are appointed to represent the public institutions where they work

Civil servants can exercise side activities, paid or unpaid, in the private sector (employed by private companies, civil society organisations etc.) if their activities have no direct or indirect link with their duties as civil servants.

It should be noted that not all persons working in a public institution is a civil servant. According to the Romanian Administrative Code, the civil servant is the persons appointed in public office as a result of a professional contest and exercising a public power (drafting legislation, drafting or implementing public policies, providing public services). Employees of public institutions that are performing administrative work (not directly involved in drafting legislation, implementing public policies or providing public services) are allowed to have any side-activity and side earnings.

B. 2. Under what circumstances is it permitted to engage in side-activities?

Side-activities that are not regulated as incompatibilities – mentioned above – are permitted.

B.3. Procedure to request permission to engage in side activities and who is responsible for granting, denying and removing this permission

There is no procedure regulated for MPs to request permission to engage in side activities. In practice this leads to situations when the incompatibility is only discovered after generating effects and can be sanctioned, but not prevented. Incompatibilities are regulated in order to prevent conflicts of interests and other corruption incidents. However, there is no mechanism in place to prevent incompatibilities.

B.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

All public officials mentioned have to disclose their assets, earnings (resulting from activities or other sources, e.g. leases, selling of assets etc.) and interests (membership to organisations etc.) in public declarations according to Law no. 176/2010. Declarations for the disclosure of assets, earnings and interests should be done yearly and they are made publicly available by the Parliament and the National Integrity Agency (ANI).

Based on the declarations, ANI can start investigations, done by public servants in the function of 'integrity inspector'. They can ask additional information, beside the content of declarations, in order to determine if a public official is in incompatibility.

B.5. Sanctions and penalties for breach of side earnings rules

The National Integrity Agency (ANI) is the public institution responsible to check the declarations for the disclosure of assets and interest and to ascertain a situation of incompatibility in the case of all mentioned public officials. If the 'integrity inspectors' within ANI structures find that a public official is in a situation of incompatibility the Agency is issuing a report. The report can be appealed in Court. The Court can uphold ANI's Report and it remains definitive or the Court can cancel ANI's report. If not challenged in court a Report finding an incompatibility remains definitive and should generate the sanction: the removal from office.

The sanction for incompatibility in the case of all public officials is the removal from the private office, but there are differences in the procedure applicable for each category of public officials to ensure their removal. However, the sanction is not applied automatically and a disciplinary commission needs to take into account ANI's Report or the Court decision and to order the removal from office.

In practice, over 47% persons identified in a situation of incompatibility resigned after the Court uphold ANI's Report on the incompatibility. Over 32% of the persons identified in a situation of incompatibility have been removed from office by the disciplinary commission on the basis of ANI's Report or the Court decision upholding ANI's Report. Over 20% of cases include either situations when the sanction was impossible (e.g. the person retired legally before any sanction could be applied), the disciplinary commission refused to take the action prescribed by the law or another sanction was applied (according to ANI's Report on 2020).

Part C: Members of Parliament

C.1. What rules, guidelines and provisions exist to regulate side-earnings?

General incompatibilities concerning MPs mandate are regulated at constitutional level by art. 71 from the fundamental law, implying that '(1) No one may be a Deputy and a Senator at the same time. (2) The capacity as a Deputy or Senator is incompatible with the exercise of any public office in authority, with the exception of Government membership. (3) Other incompatibilities shall be established by organic law'. The legal framework of incompatibilities is provided mainly by the legal Statute of MPs, Law no. 96/2006 and other details are also regulated by Law no. 161/2003 concerning transparency in public dignities. The Rules of Procedures of the two Chambers also provide almost the same situations of incompatibilities, but not in an exhausting manner. Thus, MPs cannot engage in the following private activity, according to by Law no. 161/2003, art. 82:

- Member of the board, director or administrator of companies (commercial societies), including banks or other financial institutions and including state owned companies, or companies where the state is a shareholder (even minority);
- President or secretary of shareholders general assemblies;
- The function of state representatives in the boards or general assemblies of state owned companies, or companies where the state is a shareholder (even minority);
- Freelancer
- Member of an economic interest group
- A public office entrusted by a foreign state, except for those functions provided for in the agreements and conventions to which Romania is a party
- President, vice-president, secretary and treasurer of trade unions and Confederations of trade union

C.2. Under what circumstances is it permitted to engage in side-activities?

MPs cannot engage in any other public office beside the parliamentary one. There is only one exception to this rule: MPs can be members of the Government (ministers).

Considering the many MPs are also lawyers, in 2004 the law was amended by the Parliament, including a specific regulation on how MPs can act as barrister in court. MPs can be barristers, but they cannot

take cases in lower courts, cases against the Romanian state and specific public institutions and they cannot act as defense attorney in some criminal cases (according to Law no. 161/2003, art. 82.1).

C.3. Procedure to request permission to engage in side activities and who is responsible for granting, denying and removing this permission

There is no procedure regulated for MPs to request permission to engage in side activities.

C.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

MPs have to disclose their assets, earnings (resulting from activities or other sources, e.g. leases, selling of assets etc.) and interests (membership to organisations etc.) in public declarations according to Law no. 176/2010. Declarations for the disclosure of assets, earnings and interests should be done yearly and they are made publicly available by the Parliament and the National Integrity Agency (ANI).

Based on the declarations, ANI can start investigations, done by public servants in the function of 'integrity inspector'. They can ask additional information, beside the content of declarations, in order to determine if an MP is in incompatibility.

C.5. Sanctions and penalties for breach of side earnings rules

The National Integrity Agency (ANI) is the public institution responsible to check the declarations for the disclosure of assets and interest and to ascertain a situation of incompatibility in the case of an MP, as in the case of all other public officials with regulated incompatibilities. If the 'integrity inspectors' within ANI structures find that an MP is in a situation of incompatibility the Agency is issuing a report. The report can be challenged in Court. The Court can uphold ANI's Report and it remains definitive or the Court can cancel ANI's report. If not challenged in court a Report finding an incompatibility remains definitive and should generate the sanction: the termination of the mandate.

According to the Constitution, incompatibilities for MPs lead to an ex officio termination of the mandate. Still, the procedure provided by Law no. 96/2006 is questionable: the Chamber will decide, by means of political vote, the termination of the mandate, even in cases of court final decisions or definitive ANI's Reports The procedural norms lack clarity and are regulated slightly different by Law no. 161/2003 and the Rules of Procedure of Chambers. Also, Law no. 96/2006 stipulates in detail the procedure to be followed, providing complicated and temporized steps and, eventually, Chambers can override legality by a simple political vote, overlapping ANI prerogatives.

In practice, both the European Commission and GRECO reported that sanctions for MPs identified in a situation of incompatibility are not correctly applied and in several cases the mandate of the MP identified by ANI in an incompatibility situation ended in the legal term before any sanction was applied.

Part D: Other Public Sector Staff

The following persons have the same incompatibilities as the members of the Government (Law. no. 161/2003, art. 99-100):

- members of the Court of Auditors;
- the president of the Legislative Council and the section presidents;
- the Ombudsman and his deputies;
- members of the Competition Council;
- members of the National Securities Commission (financial institution);
- the governor, the vice-governors, the members of the board of directors and the employees with management positions of the National Bank of Romania;
- the directors and deputies of intelligence services
- the members of the Board of the Insurance Supervisory Commission;
- members of the National Audiovisual Council;
- the members of the boards of directors and of the steering committees of the Romanian Broadcasting Company and the Romanian Television Company;

- members of the College of the National Council for the Study of Security Archives;
- the general director and the members of the board of directors of the ROMPRES National Press Agency
- advisors of the President of Romania

There are specific regulations on incompatibilities of magistrates (judges and state attorns/prosecutors): they can only teach in universities and no other side-activities are permitted (Law. no. 161/2003 art. 101-110 and Judiciary laws).

There are specific regulations concerning the incompatibilities of staff in public health facilities and institutions, regulated in Law no. 95/2006 concerning the reform in the health care system. Incompatibilities are regulated concerning: Directors and deputies of County Public Health Directorates; Directors of hospitals; Directors of Emergency Services.

Therefore, public teachers, doctors employed in state owned hospitals (without a leading position) and employees of public institutions performing administrative work (not directly involved in providing public services) are allowed to have any side-activity and side earnings.

Part E: Other Information

The Group of States against Corruption in the Council of Europe[183] and Network for Integrity[184] consider a good practice the Romanian system of public declarations including disclosures of assets, all taxable earnings (related to side-activities or the sell, lease etc. of assets or other incomes), earnings of spouses and interests. The declarations are made yearly and they are publicly available online. Moreover, a dedicated institution: the National Integrity Agency has the responsibility to check the declarations in order to identify:

- Incompatibilities, i.e. forbidden side-activities
- Conflicts of interest
- Unjustifiably large fortunes/assets.

However, the capacity of ANI to verify all declarations is limited in practice. The fact that the system of monitoring and verifying side-activities and side-earnings is so centralized in Romania generates pressure on ANI to make all verifications, but the budget and the staff of the agency are limited. There are 45 integrity inspectors making verifications to identify incompatibilities and they need to check about 300 000 assets and interest declarations every year.

ANI's activity has been facilitated in 2020 by the introduction of electronic assets and interest declarations, which support the application of verifications based on risk assessments and red flags identified automatically in declarations. However, the use of electronic assets and interest declarations is mandatory starting with 2023.

The legal framework on integrity remains fragmented. The 2020 Rule of Law report highlighted continued challenges to the legal framework for integrity and the need for stability, clarity and a robust framework. A series of amendments modifying the integrity laws, notably in 2017-2019, had the effect of weakening the ability of the ANI to carry out its work, as well as exacerbating an already fragmented legal landscape. In particular, two proposals that entered into force in 2019 further increased legal uncertainty as regards the applicable integrity regime and the application of sanctions. The first amendment set a prescription deadline of three years from the facts that determine the existence of a state of conflict of interest or incompatibility, and resulted in the closure of a high number of ongoing cases and doubts on the possibility to impose sanctions. The second amendment introduced a lowered sanctioning regime regarding conflict of interests for local elected officials, which ANI considered does not allow for dissuasive sanctions.

In total, since 2007 until the end of 2020, ANI identified 2 047 cases of incompatibilities, but after appeals only 1 342 cases have been sanctioned. About 71% of these cases refer to local elected officials

[183] https://www.coe.int/en/web/greco
[184] https://networkforintegrity.org/the-network/

(mayors and members of local and county councils), 25% refer to civil servants, only 3% refers to state elected officials, members of the Government or assimilated positions (including 34 MPs in 13 years).

In practice the regulation of incompatibilities in Romania is not designed to ensure a good public management, preventing public officials (elected or appointed) or civil servants to use the resources and time of public institutions for side activities and there is no monitoring of this issue. As designed in the Romanian legal framework, incompatibilities are part of the corruption prevention mechanism, as a way to prevent conflicts of interests. As a result, following the legal provision, sanctions are applicable to a person in a situation regulated as incompatibility irrespective of generated damages or the actual occurrence of a conflict of interests. All forbidden side activities need to be observed and avoided strictly. Only the activities that are not clearly or implicitly forbidden can be undertaken.

Public officials, including representative of ANI, the Ministry of Justice and National Agency for Civil Servants underline that incompatibilities (the regulation of side-activities) are an important corruption prevention mechanism. Ensuring the integrity and independence of the national civil servant in the country is the main reason for the regulation. In this context, the control of ANI over incompatibilities as a corruption prevention mechanism is considered effective and successful within the limits of ANI capacity, as presented above. The high level of corruption and perceived corruption in Romania are, thus, associated with other causes rather than an ineffective control of side-activities.

The restrictive legal framework regarding side-activities and side-earnings is considered to have a good influence on administrative capacity, because it ensures the full availability of the civil servants for their main job. However, this positive effect on administrative capacity is downplayed by other factors (related to how civil servants are recruited and evaluated for their activities, the stability and predictability of the legal framework, the management capacity of directors in public institutions etc.)

The issue of side-earnings is perceived and regulated in Romania separately from side-activities (gainful or not). If linked to side-activities that are permitted side earnings are also permitted. If linked to side-activities that are not permitted or illegal activities, side earnings can be controlled by the prosecutor, during the investigation of related criminal offences. ANI can also identify unjustified differences between the wealth of a public official and his lawful earnings and may notify the court to order the confiscation (Law 115/1996 with subsequent amendments).

Revolving doors regulations are only provided for civil servants which had control and supervision duties, which worked in public procurement or had been involved in awarding grants. These civil servants cannot be employed by the entities they controlled for three years after leaving the public office (Law no. 161/2003 art. 94, alin. (3)), or they cannot be employed by companies to which they awarded public contracts or public grants for one year after leaving the public office (according to legal provisions in procurement and legal provisions regarding the management of grants)[185]. There are no revolving doors regulation concerning elected officials.

Part F: Sources

Laws

Law no. 161/2003 on certain measures for public office transparency, with subsequent amendments.

Law no. 176/2010 on integrity in the exercise of public functions and dignities, with subsequent amendments.

Law no. 95/2006 concerning the reform in the health care system

International Reports

European Commission (2021), Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism

[185] Law no. 98/2016 on public procurement, Law no. 99/2016 on sectoral procurements, Law no. 100/2016 on works grants, Law no. 66/2011 on prevention, ascertainment and sanctioning of irregularities in obtaining and using European funds and / or national public funds related to them - art. 13 para. (1)

European Commission (2019), Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism and the Technical Report

European Commission (2018), Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism and the Technical Report

European Commission (2017, November), Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism and the Technical Report

European Commission (2017, January), Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism and the Technical Report

European Commission (2016), Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism and the Technical Report

GRECO (2016), Forth evaluation round. Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation Report. Romania

GRECO (2017), Forth evaluation round. Corruption prevention in respect of members of parliament, judges and prosecutors. Compliance Report. Romania

GRECO (2019), Forth evaluation round. Corruption prevention in respect of members of parliament, judges and prosecutors. Interim Compliance Report. Romania

GRECO (2021), Forth evaluation round. Corruption prevention in respect of members of parliament, judges and prosecutors. Second Interim Compliance Report. Romania

National Reports

National Integrity Agency (2017) Report on 10 years of activity

National Integrity Agency (2018) Annual Report

National Integrity Agency (2020) Annual Report

National Integrity Agency (2021) Annual Report

Ministry of Justice (2021) The national report on the state of implementation of the National Anticorruption Strategy in 2020.

C.10 Country Factsheet for Sweden

Part A: Definition of Side Earnings

How are side earnings defined?

According to the Public Employment Act (1994:260) amended in 2001 by the Swedish Constitutional Law side activities ("Sidoverksamhet") are defined as "incidental employment".

Public regulations for incidental employment are not exhaustive in the Swedish constitution. Swedish public employment conditions are based on sectoral agreements which complement legislation in other aspects than specified by law.

The state administration in Sweden is organized into two levels: (Part B) Central Government Agencies and (Part C) Government Offices (ministries). The 1992 Swedish Local Government Act regulates division into municipalities and the organisation and powers of the municipalities.

Officials in central government agencies, government offices, employees of the Swedish Parliament (Riksdag) and its authorities[186] are subject to the same regulation. The Chancellor of Justice, the justices of the supreme court and the Justices of the Supreme Administrative Court are regulated - regarding side earnings – with the same rules as officials[187].

Public officials - ministers, parliamentary ombudsmen, auditors general and employees who are local employees of the Swedish States abroad and who are not Swedish citizens[188] - are not subject to the Public Employment Act.

Part B: Rules for Officials in Central Government

B.1. What rules, guidelines and provisions exist to regulate side-earnings?

Founding Regulation/legal basis:

- The **Civil Service Act** (1994) stipulates the basic regulations for Officials.
- The **Public Employment Act (1994:260)** and its amendment "Lag om andring i lagen (1994:260) om offentlig anställning" published in 2002 sets out the disciplinary measures for ALL officials.

B. 2. Under what circumstances is it permitted to engage in side-activities?

According to the amended Public Employment Act[189] (2002) Section 7, an employee may not perform any employment or assignment that may adversely affect confidence in his or any other employee's impartiality. In the case where the employee incidental employment is in accordance with section 7, 7b and 7c of the amendment public employment act, he/she can perform an incidental employment. No other circumstances are mentioned in the regulations on incidental employment.

B.3. Procedure to request permission to engage in side-activities and who is responsible for granting, denying and removing this permission

According to section 7a, 7b and 7c of the amended public employment act[190], Swedish officials are required at the request of the employer to provide information on the nature of their incidental employment, permitting the employer to assess and monitor the side activity congruence to the regulations If the employer based on the information provided by the officials deems the side activity not in accordance with the regulations, the employee shall cease the incidental employment. The employer then notifies the decision to the official in writing and should include reasons for the decision.[191] Officials that report directly to the government are required to notify on their own initiative

[186] Ministry of Justice. 1994. The Public Employment Act (1994:260). Available at: https://www.government.se/4ac877/contentassets/686c614c5f4e4acb9170fb18bdac5c68/sfs-1994260-public-employment-act
[187] Idem.
[188] Idem.
[189] Ministry of Justice. 2002. Lag om ändring I lagen (1994:260) om offentlig anställning
[190] Ministry of Justice. 2022. Law amending the Public Employment Act (1994:260). Available at: https://www.lagboken.se/Lagboken/start/arbetsratt-och-arbetsmiljoratt/lag-1994260-om-offentlig-anstallning/d_47976-sfs-2001_1016-lag-om-andring-i-lagen-1994_260-om-offentlig-anstallning
[191] Idem.

their employer of the type of side employment they have.

B.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

Section 7b of the amended public employment act, states that an employee should, at the employer's request, provide the necessary information for the employer to assess the official secondary employment. Section 7a, requires employers to inform officials on the types of circumstances that may make a secondary job unlawful under Section 7 on incidental employment.

B.5. Sanctions and penalties for breach of side earnings rules

The Public Employment Act (1994:260) does not address the question of what happens if there is a breach of side earnings rules. However, it mentions that disciplinary sanctions for neglect of duty may be imposed on an employee who intentionally or carelessly neglects his or her duties of employment. In the process of a formal request of an employee to perform a side activity, the employer is required to inform the employee of which kinds of side activities are not allowed.

Disciplinary sanctions can include a warning and/or a financial penalty. The limit on the deduction from pay is up to 30 days remuneration or at most 25% of the daily pay rate for the official concerned.

Part C: Rules for Members of the Swedish Parliament

C.1. What rules, guidelines and provisions exist to regulate side-earnings?

- Act (1996:810) on the Registration of the Commitments and Financial Interests of Members of Parliament.
- A Code of Conduct for Swedish Members of Parliament, implemented in 2016, it provides guidelines on different regulations that members of parliament shall follow.
- Riksdag Act ("Riksdagsordning") (2014:801) provides provisions on the office of Members of Parliament**.**

C.2. Under what circumstances is it permitted to engage in side-activities?

According to the Code of Conduct for Swedish Members of Parliament the mandate of a member should be one of high ethical and moral standards. The requirements include refraining, both in private and in office, from what may be legal but may be considered by others as unethical or inappropriate. The Code acknowledges that a Member of Parliament must sometimes make difficult ethical considerations and be aware that an action may be subject to scrutiny as well as being scrutinized to examine whether a particular action would risk damaging public confidence if it became known. Side earnings are not prohibited as long as this basic principle is respected.

C.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

According to the Act (1996:810) on the *"Registration of the Commitments and Financial Interest of Members of Parliament"* the parliamentary administration should keep a register (financial register) containing information on the commitments and financial interests of Swedish Members of Parliament. This act also applies to the President (Act 2016 :1118).

The information to be registered includes interests in companies (e.g. shareholdings), ownership of commercial property, paid employment that is not of a purely temporary nature, self-employed income-generating activities carried out in addition to the office of Member of Parliament, contracts of a financial nature, board memberships and state or municipal offices that are not of a purely temporary nature, as well as certain benefits. Debts arising from business or investment activities must also be registered. New information subject to registration or changes to registered information must be notified in writing within four weeks of the date on which it was created.

Comparators

C.11 Country Factsheet for United Kingdom

Part A: Definition of Side Earnings

The UK has separate rules on side-earnings for officials and MPs. The rules for public office holders of all types are expressed as general principles with considerable discretion for interpretation and no fixed criteria (e.g. limits on the permitted value of side-earnings).

Until the mid-1990s there were no rules at all. An overall framework was put in place following the 'sleaze' scandals that came to light in the mid-1990s with an independent **Committee on Standards in Public Life (CSPL)** being established in 1994. This advises the Prime Minister on arrangements for upholding ethical standards of conduct across public life in the UK. Its terms of reference define its role as being to "examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life."[192] In 1997 its remit was extended to review issues in relation to the funding of political parties.

The CSLP is not a regulator and cannot investigate individual complaints. Instead, it is an advisory non-departmental public body, sponsored by the Cabinet Office.[193] Apart from the Chairperson, the CSPL has seven members, four of which are independent and three of whom are appointed by the Prime Minister on the recommendation of the leaders of the Labour Party, the Conservative Party and the Liberal Democrat Party.

The Committee promotes the "**Principles of Public Life**" (or Nolan Principles, named after the CSPL's first chairman) which outline the ethical standards those working in the public sector are expected to adhere to. The Nolan principles apply to all public office holders and private and voluntary organisations delivering services paid for by public funds. The most relevant of the principles from the point of view of side-earning is second one, namely the obligation to uphold Integrity, i.e. "holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships."

The Nolan principles are enshrined in several more specific codes of conduct across the UK public sector, including the **Ministerial Code and a similar Code for MPs (updated in 2018)**, the **Civil Service Code**, the **Civil Service Management Code**, and **the House of Lords Code of Conduct**.

How are side earnings defined?

There is no formal or over-arching definition of side-earnings in the UK rules. The Civil Service Code refers to activities where there is the "prospect of personal gain" while the Ministerial Code stipulates the need to avoid a situation where a "conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise." Unlike the rules in several countries, there are no fixed side-earnings definitions or thresholds involving the amount of time spent on other activities or the amount of money gained from them.

[192] Public office holders were defined as: Ministers, civil servants and advisers; Members of Parliament and UK Members of the European Parliament; Members and senior officers of all non-departmental public bodies and of national health service bodies; non-ministerial office holders; members and other senior officers of other bodies discharging publicly-funded functions; and elected members and senior officers of local authorities

[193] The Principles of Public Life are defined as: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.

Part B: Rules for Officials

B.1. What rules, guidelines and provisions exist to regulate side-earnings?

The rules for officials are set out in the **Civil Service Code**, a three-page document. This outlines the values and standards of behaviour that civil servants are expected to follow. It forms part of the terms and conditions of an official's contract which in turn stipulates the number of hours an official is expected to work per week and their remuneration. Side-earnings are not forbidden but must either relate to activities outside office hours and/or be approved in advance to ensure compliance with the rules on a conflict of interests.

The Civil Service Code is underpinned by the 2010 Constitutional Reform and Governance Act. The core values are defined as integrity, honesty, objectivity, and impartiality. The code has been updated on several occasions (2006, 2015), albeit it with relatively minor amendments. In addition to civil servants, special advisers are also covered by the code, except, due to the nature of the role, for the requirements for objectivity and impartiality.

B. 2. Under what circumstances is it permitted to engage in side-activities?

Under the heading of 'integrity', the Civil Service code stipulates that an official should not "accept gifts or hospitality or receive other benefits from anyone which might reasonably be seen to compromise personal judgement or integrity." A further reference is provided in relation to 'honesty' where the Code says that an official must "not be influenced by improper pressures from others or the prospect of personal gain." Beyond this, there is no specific guidance or rules on side-earnings for officials un the UK.

B.3. Procedure to request permission to engage in side-activities and who is responsible for granting, denying and removing this permission

If they are in any doubt about the situation with respect to side-earnings, civil servants are expected to discuss the situation with their line manager or someone else in the line management chain. If for any reason this is difficult, the official should go to their department's nominated officers who is appointed to advise staff on the code. Ultimately, the Code includes an independent line of appeal to the Civil Service Commissioners on alleged breaches of the Code.

B.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

The Civil Service Code does not include any provisions with regard to the information that should be provided.

Part C: Members of Parliament

C.1. What rules, guidelines and provisions exist to regulate side-earnings?

In the UK there is a long tradition of MPs pursuing another profession in parallel with their parliamentary duties. Indeed, the system facilitated this because until very recently the House of Commons only started its sessions around mid-day to allow MPs to pursue side-activities in the morning. The rationale for this approach was that it is desirable for MPs to keep in touch with the 'real' world and to bring the expertise gained from other professional activities to bear on political issues. In short, the notion of a full-time professional politician has been fully accepted in the UK, at least until quite recently. There is a Ministerial Code and Code for MPs that has similar rules. The two codes of conduct are intended to complement each other.

The question of MPs outside interests was examined by the Committee on Standards in Public Life in a 2018 report (this updated an earlier 2009 report). The report noted that "Some people's perception that MPs are in office for their personal gain is shaped by a small number of high-profile cases. In these cases, the current Code of Conduct for MPs is insufficient to address the standards issues raised by outside interests." The report reiterated the "principle-based approach to regulating outside interests in the Code of Conduct for MPs. It made the point that "Any strengthening of the regulation of MPs' outside interests needs to consider the potential for unintended consequences on the diversity of

careers and background of MPs. A financial limit on outside earnings could have the impact of limiting some outside interests … which do not bring undue influence to bear on the political system, nor distract MPs from their primary role, and are acceptable to the public."

Its main recommendation was to reduce the range of outside interests MPs can undertake, eliminating roles as parliamentary strategist, adviser and consultant, as these could lead to MPs having a privileged relationship with one organisation and therefore bringing undue influence to bear on Parliament. It also recommended that Register of Members' Financial Interests should be more accessible, searchable and usable.

C.2. Under what circumstances is it permitted to engage in side-activities?

Chapter 7 of the **Ministerial Code** (2019) on 'Ministers' Private Interests' regulates side-earning. It states, as a general principle, that "Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise."

In relation to MPs, the **Code for MPs** stipulates that "any outside activity, whether remunerated or unremunerated, should be within reasonable limits and should not prevent them from fully carrying out their range of duties." As noted above, certain occupations are excluded. According to the rules, Ministers and MPs must scrupulously avoid any danger of an actual or perceived conflict of interest between their (ministerial) position and their private financial interests. They should be guided by the general principle that "they should either dispose of the interest giving rise to the conflict or take alternative steps to prevent it. In reaching their decision they should be guided by the advice given to them by their Permanent Secretary and the independent adviser on Ministers' and MPs' interests.

The system therefore relies heavily on the existence of an actual or potential conflict of interests. This term is not however, defined and left to individual ministers and civil servants to define. The CSPL considered the issue of MPs' outside interests in a 2009 report. At that time, the CSPL recommended that MPs should be able to continue with outside employment, as long as any outside interests were within reasonable limits and there was transparency.

C.3. Procedure to request permission to engage in side-activities and who is responsible for granting, denying and removing this permission

Upon their appointment, Ministers must provide their Permanent Secretary (the most senior official in a department) with a full list in writing of all interests which might be thought to give rise to a conflict of interests. The list should also cover interests of the Minister's spouse or partner and close family which might be thought to give rise to a conflict. A statement covering relevant Ministers' interests is then published twice yearly.

C.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

The updated 2018 Code for MPs acknowledges that there has been a lack of clarity in the rules with regard to the information MPs should provide on outside interests. It argued that the rules for MPs should be revised to make clear when they need to declare pecuniary and non-pecuniary interests, and what level of detail should be provided in declarations of interest. Specific limits on outside earnings are still under consideration.

C.5. Sanctions and penalties for breach of side earnings rules

Breaches of the code are investigated by the parliamentary commissioner for standards. The commissioner gives the MP concerned the opportunity to address any errors of fact in her report before it goes to the Standards Committee. Then, once the committee has received the report, if the MP disagrees with the commissioner's conclusions, they can challenge them either in writing or in person.

Sanctions range from 'rectification' – simply updating declarations as appropriate, through making apologies in writing or in public, and withdrawal of services or access to facilities, to suspension or even expulsion. Any suspension of 10 days or more triggers the Recall of MPs Act which provides that if 10% of an MP's constituents sign a petition opened in their constituency, a by-election shall be held. The 30-day suspension proposed for Owen Paterson would have triggered a recall petition had he not

pre-empted the House's decision by resigning as an MP. It is open to the MP concerned to stand in any by-election triggered by a recall petition.

Part D: Other Public Sector Staff

The Civil Service Code (Section B) applies to all types of officials (Central Government, local government, etc.) as well as those would undertake activities that are publicly funded.

Part E: Sources

https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code

https://www.gov.uk/government/publications/ministerial-code

https://www.parliament.uk/site-information/glossary/code-of-conduct-for-mps/

C.12 Country Factsheet for the United States

Part A: Definition of Side Earnings

How are side earnings defined?

Side-earnings in the US are well-defined, but with some differences between employees of the Executive Branch and the Legislative Branch (Congress). A financial interest, in general, is defined as "any current or contingent ownership, equity, or security interest in real or personal property or a business and may include an indebtedness or compensated employment relationship. It thus includes, for example, interests in the nature of stocks, bonds, partnership interests, fee and leasehold interests, mineral and other property rights, deeds of trust, and liens, and extends to any right to purchase or acquire any such interest, such as a stock option or commodity future."[194]

According to the Office of Government Ethics, "the basic criminal conflict of interest statue, 18 U.S.C § 208, prohibits Government employees from participating personally and substantially in official matters where they have a financial interest. In addition to their own interests, those of their spouse, minor child, general partner, and certain other persons and organizations are attributed to them. Assets and other interests, such as employment interests, may also present potential conflicts under other criminal and civil statutes, as well as the Standards of Ethical Conduct for Employees of the Executive Branch. To assist ethics officials in preventing conflicts of interest, the U.S. Office of Government Ethics has developed a series of guides on identifying potential conflicts of interest that can arise from various types of employment interests, investment interests and liabilities."[195]

Financial interest is defined as those "owned by the employee or by the employee's spouse or minor children…the term includes any current or contingent ownership, equity, or security interest in real or personal property or a business and may include indebtedness or compensated employment relationship. It thus includes, for example, interests in the nature of stocks, bonds, partnership interests, fee and leasehold interests, mineral and other property rights, deeds of trust, and liens, and extends to any right to purchase or acquire any such interest, such as a stock option or commodity future."[196]

This definition also includes "service, with or without compensation, as an officer, director, trustee, general partner or employee of any person, including a non-profit entity, whose financial interests are imputed to the employee".[197]

Part B: Rules for Officials

B.1. What rules, guidelines and provisions exist to regulate side-earnings?

The Standards of Conduct for Employees of the Executive Branch, the US Code Title 18, § 208 outlines the procedure for all Government employees regarding conflicts of interest.

In addition, the Office of Government Ethics adopted a code of Good Administrative Behaviour, which was set out in 2017, to apply to employees of the Executive Branch.[198] Furthermore, the criminal statue,

---

194 Office of Government Ethics. (2020). *Standards of Ethical Conduct for Employees of the Executive Branch.* Office of Government Ethics. Available at: https://www.oge.gov/web/OGE.nsf/0/A8ECD9020E3E384C8525873C0046575D/$FILE/SOC%20as%20of%2085%20FR%2036715%20FINAL.pdf

195 Office of Government Ethics (n.d.). *Analyzing Potential Conflicts of Interest.* OGE. Available at: https://www.oge.gov/web/OGE.nsf/Resources/Analyzing+Potential+Conflicts+of+Interest

196 Office of Government Ethics. (2020). *Standards of Ethical Conduct for Employees of the Executive Branch.* Office of Government Ethics. Available at: https://www.oge.gov/web/OGE.nsf/0/A8ECD9020E3E384C8525873C0046575D/$FILE/SOC%20as%20of%2085%20FR%2036715%20FINAL.pdf

197 Ibid

198 Office of Government Ethics. (2020). *Standards of Ethical Conduct for Employees of the Executive Branch.* Office of Government Ethics. Available at: https://www.oge.gov/web/OGE.nsf/0/A8ECD9020E3E384C8525873C0046575D/$FILE/SOC%20as%20of%2085%20FR%2036715%20FINAL.pdf

18 U.S.C 2018(a) states that "the financial interests of the following persons will serve to disqualify an employee to the same extent as if they were the employee's own interests: the employee's spouse, the employee's minor child, the employee's general partner, an organization or entity which the employee serves as officer, director, trustee, general partner or employee; and a person with whom the employee is negotiating for or has an arrangement concerning prospective employment."[199]

Furthermore, there are key criminal statues regulating side activities:

- 18 U.S.C 208(a) states that "the financial interests of the following persons will serve to disqualify an employee to the same extent as if they were the employee's own interests: the employee's spouse, the employee's minor child, the employee's general partner, an organization or entity which the employee serves as officer, director, trustee, general partner or employee; and a person with whom the employee is negotiating for or has an arrangement concerning prospective employment."[200]
- 18 U.S.C. 201 (b) and (c) prohibit public officials from seeking, accepting or agreeing to receive anything of value in return for being influenced in the performance of an official act, or because of any official act.[201]
- 18 U.S.C. 203(a) prohibits compensation for "any representational services, rendered personally or by another, in relation to any particular matter in which the United States is a party or has a direct and substantial interest before any department, agency, or specified entity. [202]
- 18 U.S.C. 2019 prohibits an employee, "other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee.[203]

The 2012 STOCK Act prohibited members of Congress, the President, Vice President and other high-level staff from engaging in insider trading or otherwise using non-public information for their own benefit. It also attempted to establish publicly-accessible disclosure requirements of financial transactions. However, it has reportedly not been as effective as desired. For this purpose, Congresswoman Katie Porter (CA) and Senator Kirsten Gillibrand (NY) reintroduced the bicameral STOCK Act 2.0 to Congress in February 2022. This Act would require reporting of federal benefits; increase penalties for failure to file STOCK Act Transaction Reports from $200 to $500; expands the list of offices covered by the STOCK Act to members of federal judiciary and Federal Reserve Bank presidents, vice presidents, and members of the Federal Reserve board of directors; bans stock trading; and restates requirements pertaining to transparency of financial disclosure reports, which should be provided by the supervising ethics agencies for those under the STOCK Act.[204]

In 2008, the OGE issued a Memorandum on Book Deals involving Government Employees. This Memorandum sets out the questions an Agency Ethics Official (each US department or agency has one) must ask to determine whether an employee can receive compensation for writing a book. Regular employees are generally prohibited from accepting compensation for writing a book about matters on which they work, agency policies, programs and operations. Special Government employees (explained below) face fewer restrictions on the book's subject matter, but are still prohibited from accepting compensation for any writing "that deals to a significant degree with the matters they are working on for the Government during their current appointment" for SGEs working

[199] Ibid.
[200] Ibid.
[201] Title 18—Crimes and Criminal Procedure. Available at: https://www.govinfo.gov/content/pkg/USCODE-2020-title18/pdf/USCODE-2020-title18-partI-chap11-sec203.pdf
[202] Ibid.
[203] Legal Information Institute. (n.d.). *18 U.S. Code § 202(a) – Special Government Employee.* Cornell Law School. Available at: https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=18-USC-1801931254-322859574&term_occur=999&term_src=title:18:part:I:chapter:11:section:208
[204] Katie Porter. (2022). *Press Releases: Rep Katie Porter, Sen. Kirsten Gillibrand Reintroduce Stock Act 2.0.* Katie Porter. Available at: https://porter.house.gov/news/documentsingle.aspx?DocumentID=435

more than 60 days during any year of their appointment.[205] For those working fewer than 60 days, the subject matter limitation only applies to particular matters involving specific parties in which the employee is personally and substantially involved.[206] If writing took place while an individual is in government service, it is prohibited.

B.2. Under what circumstances is it permitted to engage in side-activities?

The Office of Government Ethics and the Attorney General are responsible for issuing uniform regulations for the issuance of waivers and exemptions. These regulations will list and describe exemptions and provide guidance with respect to the types of interests that are not so substantial as to be deemed likely to affect the integrity of the services the Government may expect from the employee.[207]

In terms of receiving compensation for writing a book, both regular employees and Special Government Employees may write a book related to their official duties and the book may be considered related to an employee's official duties, depending on who is providing the compensation and why. Special Government Employees can receive compensation for writing about ongoing or announced policy, program or operation of the employee's agency. Employees can also receive compensation from a book if the writing itself took place before or after Government service. All employees may be allowed to accept certain payments related to speaking engagements about a book.[208]

B.3. Procedure to request permission to engage in side-activities and who is responsible for granting, denying and removing this permission.

According to the Office of Government Ethics code, "an employee shall obtain prior approval before engaging in outside employment or activities."[209] Subpart H of the Standards of Ethical Conduct for Employees of the Executive Branch states that an employee who wishes to engage in outside employment must comply with "any agency-specific requirement for prior approval of outside employment or activities."[210]

However, the exact procedure of acquiring permission or approval for engaging in outside activities can vary between Agencies, subject to their specific supplemental ethics regulations. Each Agency's Designated Agency Ethics Official (DAEO) can advise employees on the specific procedures for submitting a request for prior approval.[211] If a DAEO concludes that an employee's activities are not prohibited by the agency's supplemental regulations, the Federal Acquisition Regulation (FAR) (which prohibits a contractor from awarding a contract to a government employee), or other prohibitions, the DAEO should still advise the employee regarding criminal conflict of interest statutes and regulatory provisions that could limit private business activities.[212]

B.4. What type of information (if any) should be disclosed about side activities? How often is it required to update this information?

---

[205] Cusick, R. I. (2008). *Memorandum: Book Deals Involving Government Employees*. OGE. Available at: https://www.oge.gov/Web/oge.nsf/Legal%20Docs/7A40ADA00743E87D852585BA005BECD7/$FILE/DO-08-006%20(1)__.pdf?open

[206] Ibid.

[207] Legal Information Institute. (n.d.). *18 U.S. Code § 208 – Acts affecting a personal financial interest*. Cornell Law School. Available at: https://www.law.cornell.edu/uscode/text/18/208

[208] Cusick, R. I. (2008). *Memorandum: Book Deals Involving Government Employees*. OGE. Available at: https://www.oge.gov/Web/oge.nsf/Legal%20Docs/7A40ADA00743E87D852585BA005BECD7/$FILE/DO-08-006%20(1)__.pdf?open

[209] Office of Government Ethics. (2020). *Standards of Ethical Conduct for Employees of the Executive Branch*. Office of Government Ethics. Available at: https://www.oge.gov/web/OGE.nsf/0/A8ECD9020E3E384C8525873C0046575D/$FILE/SOC%20as%20of%2085%20FR%2036715%20FINAL.pdf

[210] Code of Federal Regulations. (2022). *Title V: Chapter XVI, Subchapter B, Part 2635: Subpart H* – Outside Activities. Code of Federal Regulations. Available at: https://www.ecfr.gov/current/title-5/chapter-XVI/subchapter-B/part-2635#subpart-H

[211] Glynn, M. L. (2006). *Letter to a Federal Employee dated December 22, 2006.* Available at: https://www.oge.gov/Web/oge.nsf/Legal%20Docs/E6138482AAD54437852585BA005BECFE/$FILE/6ab37b0d570a447a8038ec690d6c1ab33.pdf?open

[212] Ibid

An important detail an employee must provide is who is providing the compensation and why. This can reveal important ethical conflicts, such as whether the person or entity offering compensation is someone who will be affected by the performance of the employee's duties or is offering compensation primarily because of the employee's official position rather than their expertise.[213]

There are "special government employees", which include officials employed on a part-time or temporary basis.[214] The "official responsible for the employee's appointment, after review of the financial disclosure report filled by the individual pursuant to the Ethics in Government Act of 1978, certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved."[215]

B.5. Sanctions and penalties for breach of side earnings rules

The sanctions listed for Executive Branch employees includes the following: "The punishment for an offense…is the following: (1) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in this title, or both. (2) Whoever wilfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined the amount set forth in this title, or both."

The Attorney General is responsible for bringing civil action in the appropriate United States district court against anyone who violates the rules and "upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater." The Attorney General can also issue an order prohibiting the person for engaging in side activities.[216]

However, "there is no statute of Government wide applicability prohibiting employees from holding or acquiring any financial interest. Statutory restrictions, if any, are contained in agency statues which, in some cases, may be implemented by agency regulations issued independent of this part."[217]

Government agencies offer the employee the chance to divest or terminate their financial interests. "The employee shall be given a reasonable period of time, considering the nature of his particular duties and the nature and marketability of the interest, within which to comply with the agency's direction… a reasonable period shall not exceed 90 days from the date divestiture is first directed."[218]

Part C: Members of Congress

C.1. What rules, guidelines and provisions exist to regulate side-earnings?

The Congressional Research Service set out statutes and laws for outside earnings of members of Congress. A relevant law is The Ethics Reform Act (1989, effective 1991).[219]

Representatives and Senators are prohibited from accepting honoraria—"payment of money or a thing of value for an appearance, speech, or article (including a series of appearances, speeches or

[213] Cusick, R. I. (2008). *Memorandum: Book Deals Involving Government Employees*. OGE. Available at: https://www.oge.gov/Web/oge.nsf/Legal%20Docs/7A40ADA00743E87D852585BA005BECD7/$FILE/DO-08-006%20(1).pdf?open

[214] Legal Information Institute. (n.d.). *18 U.S. Code § 202(a) – Special Government Employee.* Cornell Law School. Available at: https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=18-USC-1801931254-322859574&term_occur=999&term_src=title:18:part:I:chapter:11:section:208

[215] Ibid.

[216] U.S. Code, Title XVIII § 216 – Penalties and injunctions. Legal Information Institute. [online] Available at: https://www.law.cornell.edu/uscode/text/18/216

[217] Office of Government Ethics. (2020). *Standards of Ethical Conduct for Employees of the Executive Branch.* Office of Government Ethics. Available at: https://www.oge.gov/web/OGE.nsf/0/A8ECD9020E3E384C8525873C0046575D/$FILE/SOC%20as%20of%2085%20FR%2036715%20FINAL.pdf

[218] Ibid.

[219] House Rule 3660. (1989). *Ethics Reform Act of 1989*. Office of Government Ethics. Available at: https://oge.gov/web/OGE.nsf/0/3942A940906D39B0852585B6005A15AE/$FILE/PL101-194.pdf

articles…excluding any actual or necessary travel expenses."[220] House Rule XXV also states that a member of Congress may not "receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity that provides professional services involving a fiduciary relationship except for the practice of medicine" or "serve for compensation as an officer or member of the board of an association, corporation or other entity." Senate Rule XXXVI establishes similar provisions.[221]

C.2. Under what circumstances is it permitted to engage in side-activities?

Both Senators and Representatives can only earn up to 15% in excess of their annual congressional salary. According to the Senate and House Ethics Committees, the 2021 limit is $29,595. They may earn income from personal investments, as the law considers them "unearned" income.[222] Personal investments may include rent, interest or stock dividends, and are not included in the 15% rule because the members are collecting income on assets they already own.

According to interviewees, members of Congress can still hold stock, but only in a blind trust. This prevents them from buying or selling stock while in office.

C.3. Procedure to request permission to engage in side-activities and who is responsible for granting, denying and removing this permission.

Employees fill out a financial declaration form and present it to the official responsible for appointing them. This applies to both civil servants, department heads, and Members of Congress.

C.4. What type of information (if any) should be disclosed about side-activities? How often is it required to update this information?

No information on this subject was found.

C.5. Sanctions and penalties for breach of side earnings rules.

According to the research conducted thus far, the sanctions listed above in Part B also apply to Members of Congress.

Part D: Other Public Sector Staff

Due to this wide variation, it is difficult to obtain an aggregate set of rules for public sector staff at the state, county and municipal levels.

Part E: Other Information Including Good Practices

As interviewees mentioned, many ethics rules followed in the US were written as codes, but never into law. This led to issues such as former President Trump never releasing his tax returns and exposing that there was no legally binding rule to do so; his predecessors merely obliged to do so in good faith. Indeed, the rules do not appear to be enforced for monetary conflicts of interest. A public official is more likely to be removed from office or face punitive measures if they are found guilty of harassment or having relations with a member of staff.

While there are reporting procedures in place, elected public officials can still refuse to admit any potential conflicts of interest, and there is no overarching auditing or monitoring body confirming the statements. Interviewees pointed out that many of the hired civil servants rarely have conflicts of interest. They undertake mandatory ethics courses on an annual basis. However, elected public officials tend to be subject to investigations regarding conflicts of interest, and indeed do undertake illegal side activities without repercussions.

---

[220] House Rule XXV: Limitations on Outside Earned Income and Acceptance of Gifts. (2017). https://budgetcounsel.files.wordpress.com/2017/09/house-rule-xxv-limitations-on-outside-earned-income-and-acceptance-of-gifts.pdf

[221] Ibid.

[222] Congressional Research Service. (2021). *Congressional Salaries and Allowances: In Brief.* https://crsreports.congress.gov/product/pdf/RL/RL30064

While the US itself does not exhibit many best practices, interviewees have recommended some that could greatly reduce the number of conflicts of interest/unethical side-activities and increase public trust in their government.

- Uniform rules on reporting, transparency, and other requirements.
- Establish an overseeing auditor or ethics body to hold officials accountable, and to prevent candidates who refuse to comply with reporting or transparency rules from being on the ballot for any level of office.

According to interviewees, the Institute for Ethics in Government created a massive open online course (MOOC) on Outside Activities Analysis.[223]

Part E: Sources

- US State Department Office of Allowances. (n.d.). Summary of Allowances and Benefits. https://aoprals.state.gov/content.asp?content_id=134&menu_id=75
- US Office of Government Ethics. (n.d.). Analyzing Potential Conflicts of Interest. https://www.oge.gov/web/OGE.nsf/Resources/Analyzing+Potential+Conflicts+of+Interest
- Code of Federal Regulations. (2022). *Title V: Chapter XVI, Subchapter B, Part 2635: Subpart H* – Outside Activities. Code of Federal Regulations. https://www.ecfr.gov/current/title-5/chapter-XVI/subchapter-B/part-2635#subpart-H
- Title 18—Crimes and Criminal Procedure. https://www.govinfo.gov/content/pkg/USCODE-2020-title18/pdf/USCODE-2020-title18-partI-chap11-sec203.pdf
- 18 U.S. Code § 208 - Acts affecting a personal financial interest. https://www.law.cornell.edu/uscode/text/18/208
- US Office of Government Ethics. (n.d.). Standards of Conduct for Employees of the Executive Branch. https://www.oge.gov/web/oge.nsf/resources_standards-of-conduct
- Congressional Research Service. (2021). *Congressional Salaries and Allowances: In Brief*. https://crsreports.congress.gov/product/pdf/RL/RL30064
- U.S. Code, Title XVIII § 216 – Penalties and injunctions. Legal Information Institute. https://www.law.cornell.edu/uscode/text/18/216
- House Rule XXV: Limitations on Outside Earned Income and Acceptance of Gifts. (2017). https://budgetcounsel.files.wordpress.com/2017/09/house-rule-xxv-limitations-on-outside-earned-income-and-acceptance-of-gifts.pdf
- 18 U.S. Code § 202(a) — Special Government Employee. https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=18-USC-1801931254-322859574&term_occur=999&term_src=title:18:part:I:chapter:11:section:208
- Institute for Ethics in Government. (2019). *Outside Activities Analysis*. Institute for Ethics in Government. https://extapps2.oge.gov/Training/OGETraining.nsf/OGECourse.xsp?action=openDocument&documentId=1FF190FBFD0BAEA3852584710048D9E3
- Cusick, R. I. (2008). *Memorandum: Book Deals Involving Government Employees*. OGE. https://www.oge.gov/Web/oge.nsf/Legal%20Docs/7A40ADA00743E87D852585BA005BECD7/$FILE/DO-08-006%20(1)__.pdf?open
- Glynn, M. L. (2006). *Letter to a Federal Employee dated December 22, 2006.* https://www.oge.gov/Web/oge.nsf/Legal%20Docs/E6138482AAD54437852585BA005BECFE/$FILE/6ab37b0d570a447a8038ec690d6c1ab33.pdf?open

[223] Institute for Ethics in Government. (2019). *Outside Activities Analysis*. Institute for Ethics in Government. Available at: https://extapps2.oge.gov/Training/OGETraining.nsf/OGECourse.xsp?action=openDocument&documentId=1FF190FBFD0BAEA3852584710048D9E3

- Office of Government Ethics. (2020). *Standards of Ethical Conduct for Employees of the Executive Branch*. Office of Government Ethics. https://www.oge.gov/web/OGE.nsf/0/A8ECD9020E3E384C8525873C0046575D/$FILE/SOC%20as%20of%2085%20FR%2036715%20FINAL.pdf
- Katie Porter. (2022). *Press Releases: Rep Katie Porter, Sen. Kirsten Gillibrand Reintroduce Stock Act 2.0*. Katie Porter. https://porter.house.gov/news/documentsingle.aspx?DocumentID=435

The study on 'Practices on the Side-Earnings of EU Public Office Holders and Functionaries' was carried out for the European Parliament's Budgetary Control Committee in 2022. The study highlights significant differences in the rules being applied in the various EU Institutions and Member States. It highlights a number of good practices and the possible implications for the proposed EU ethics body.

PE 732.269
Print ISBN 978-92-846-9423-5 | doi:10.2861/012456 | QA-09-22-180-EN-C
PDF ISBN 978-92-846-9424-2 | doi:10.2861/167929 | QA-09-22-180-EN-N