

# Definition of conflict of interests and its links to corruption

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Q4



## **Study on corruption in public procurement**

- 20% of studied cases involved the element of conflicts of interests
- Character of those cases
- Case examples
- Under certain circumstances, conflicts of interests can be subsumed under corruption.



## Conflict of interests definition

- EU Financial Regulation (Art. 57):
  - ▶ *"any action [of officials] which **may bring their own interests into conflict** with those of the Union"*
  - ▶ Interest may involve *"family, emotional life, political or national affinity, economic interest or any other shared interest"*
- OECD Guidelines:
  - ▶ *"involves a conflict between the public duty and private interests of a public official, in which the public official has **private-capacity interests which could improperly influence** the performance of their official duties and responsibilities"*



## Conflict of interests – elements

- OECD distinguishes:
  - ▶ **Actual** conflict of interests
  - ▶ **Apparent** conflict of interests (appearance to the outside world)
  - ▶ **Potential** conflict of interests (risk, actual conflict could arise)
  
- Actual conflict – Court of First Instance (T-277/97):

*"... constitutes, **objectively** and in itself, a **serious irregularity** without there being any need to qualify it by having regard to the **intentions of the parties concerned ... in good or bad faith ...***

***without** there being **any need** for it to cause quantifiable **material injury** as well."*



# Public procurement directives: Definition of conflicts of interest

## **1. First EU wide definition of conflicts of interest**

- Obligation for Member States to transpose minimum requirements by 2016

## **2. Outside perception decisive**

- "might be perceived to compromise their impartiality"

## **3. Administrative sanctioning possible**

- Beyond penal law, not linked to a violation of a law



## EU definitions of corruption: narrow

Convention against corruption of EU and MS officials (OJ C 195, 25/06/1997), Art. 2 and 3

- Main elements of passive/active bribery
  - ▶ Requests, receives or accepts a promise / promises or gives
  - ▶ deliberately
  - ▶ directly or through an intermediary
  - ▶ advantages of any kind
  - ▶ for himself or for a third party
  - ▶ to act in breach of his official duties



## EU definitions of corruption: broad

- Commission Communications on anti-corruption policy: COM(2003) 317 and COM(2011) 308

***"abuse of power for private gain"***

*(UN Global Programme against Corruption)*





## Conflict of interests vs. corruption

- Conflict of interests (actual or apparent) = breach of principles:
  - ▶ Transparency
  - ▶ Impartiality (equal treatment / non-discrimination)
- Corruption
  - ▶ **Abuse of power** = e.g. improperly influencing conduct of others; breach of **rules**  
**Private gain** (to be determined)
- Consequently, the existence of the rules is fundamental



# Thank you

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